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TOWARDS A BETTER FUTURE

DEMOCRACY, EU INTEGRATION AND CRIMINAL JUSTICE

Volume II

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UNIVERSITY "ST. KLIMENT OHRIDSKI"– BITOLA,
REPUBLIC OF NORTH MACEDONIA

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Editors
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Ass. Prof. Dr.sc Angelina Stanojoska

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PREFACE

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

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

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

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

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

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

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

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

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

Towards a better future!

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

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Original Scientific Article
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EXECUTION OF THE DECISIONS OF THE EUROPEAN COURT OF HUMAN RIGHTS IN THE LEGAL SYSTEM OF THE REPUBLIC OF MACEDONIA

Assistant Professor Mirjana Ristovska, PhD
Faculty of Law, "St.Kliment Ohridski" University – Bitola, Republic of Macedonia
e-mail: mirjana.ristovska@uklo.edu.mk

Full Professor Natasa Pelivanova, PhD
Faculty of security, "St.Kliment Ohridski" University – Bitola, Republic of Macedonia
e-mail: natasa.pelivanova@uklo.edu.mk

Abstract
Subject: The subject of this paper is the execution of the European Court of Human Rights (hereinafter: ECHR) decisions in the legal system of the Republic of Macedonia, through a normative analysis, in particular the Law on Execution of the European Court of Human Rights Decisions and the Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter: ECHR).
Method: The study of this paper' s subject will be primarily realized by applying the method of normative analysis, as well as the methods of comparison, analogy and case law method.
Aim: The main aim of this paper is to present the Macedonian system of execution of decisions adopted by the European Court of Human Rights as one of the necessary conditions for applying the rule of law principle.
Conclusion: In the conclusion of this paper, we will try to provide recommendations and guidelines for improving the system of execution of decisions adopted by the European Court of Human Rights, taking into account the practice of the other member states of the Council of Europe.

Keywords: *execution, decisions, European Court of Human Rights.*

INTRODUCTION

Today, the ECHR is the cornerstone of the protection of human rights and freedoms on the European continent. The established mechanisms for control and audit of the ECHR Contracting States in the field of respect or disrespect of the individual rights and freedoms give a particular impetus to the strengthening of the rule of law principle as a basic postulate of modern legal systems. The extensive case law deriving from the ECtHR is an important corrector of the authorities functioning in the ECHR Contracting States. Namely, many of the delivered decisions are legal basis for amending the legislation in the Contracting States, primarily in the direction of solidified and improved respect for human rights and freedoms. One of the most important segments regarding the decisions delivered by the ECtHR is their effective execution, i.e. implementation in the internal system of the

Contracting States, thus completing the process that was conducted before this Court.
In this context, the Opinion no. 13 (2010) on the role of judges in the execution of court decisions in the internal systems of the Contracting States determines that:

"The effective execution of a binding court decision is an essential element of the rule of law. It is necessary to ensure public confidence in the authority of the judiciary. Judicial independence and the right to a fair trial (Article 6 of the ECHR) are at stake if the decision is not executed. "

Although the stated Opinion no. 13 (2010) refers to the execution as a legal institute and mechanism in the internal systems of the Contracting States, in accordance with the principle of analogy, we could apply the principle mentioned above to decisions delivered by the ECtHR. Indeed, the decisions of Strasbourg have the same legal force and effect as the decisions delivered by the competent judicial authorities and become part of the internal system of the Contracting States that have been parties to the dispute in concreto.
The Consultative Council of European Judges in this Opinion emphasizes that the conduct in the Contracting States must be carried out in accordance with the fundamental rights and freedoms guaranteed by the ECHR and must not be undermined by external intervention, or the legislature, by imposing retroactive legislation, may not be postponed, except on the grounds determined by law, whereby any delay should be assessed by the judge. Execution should be quick and effective. The necessary means for the execution should therefore be provided. There should be clear legal regulations regarding the available resources, the competent authorities and the procedures for implementing their award.
Proper execution of Strasbourg judgments is highly important; both for the applicant who has won his or her case, and for the development of the national legal order concerned, in order to prevent future violations. The international control over the observance by States of human rights treaties by means of individual applications does not only aim at general effects (recours objectif), the control also aims at 'doing justice' in individual cases (recours subjectif) (Barkhuysen and van Emmerik, 2003).

BINDING FORCE AND EXECUTION OF DECISIONS ACCORDING TO THE ECHR
The provision of Article 46 of the ECHR defines the following:

"1. The High Contracting Parties undertake to abide by the final judgments of the Court in t in any case to which they are parties.
2. The final judgment of the Court shall be transmitted to the Committee of Ministers which shall supervise its execution. "

This provisions explicitly determines that the decisions delivered by the ECtHR are binding for the Contracting States, that is, they have an obligation to carry them out in their legal systems. This provision was taken from Article 94 (1) of the United

Nations Charter. Although, in 1950, as a initial Foster proposal, which envisaged that the future Court would be able to "prescribe remedies, or require the state concerned to impose criminal or administrative measures against any person responsible for violating, annulling, suspending or amending the impugned decision" was too ambitious, the system now seems to be moving in that direction. (Abdelgawad, 2008).

The obligation to execute the decisions delivered by the ECtHR, in principle, refers to the overall state authorities (legislative, executive and judicial).

This principle is particularly important from the aspect of the European values system, because under certain circumstances the decisions of Strasbourg are recognized as having direct effect in the Contracting States. Pursuant to the provision of Article 46 of the ECHR, the decisions are with binding effect inter partes, that is, the legal effect applies solely to the parties in the concrete case. However, according to some authors, these decisions also have an erga omnes effect, in certain circumstances: *"While the erga omnes effect for the judgments of the ECtHR is not expressly provided by the ECHR, the principle of res interpretata and the margin of appreciation doctrine de facto translate to introduce such an effect.*" (Arnardóttir, 2017).

Decisions delivered by the ECtHR have a declarative legal nature, because the Court determines whether the Contracting State has violated or has not violated a particular article of the Convention, with which a certain right or freedom is guaranteed. At the same time, these decisions also have a condominiary legal nature.

From this same article of the Convention the following obligations arise:

(a) to terminate the violation with regards to the applicant;

(b) to provide the applicant with restitutio in integrum (that is restoring the situation prior to the violation), and

(c) to take measures to prevent future violations (also with regard to other individuals similarly affected by the violation, for instance by changing the law). (Tom Barkhuysen and Michiel L van Emmerik).

EXECUTION OF THE ECtHR DECISIONS ACCORDING TO MACEDONIAN LEGISLATION

The procedure for the execution of decisions delivered by the ECtHR in the cases against the Republic of Macedonia is regulated by the Law on Execution of Decisions of the European Court of Human Rights.[1]

According to this Law, the execution of the ECtHR decisions is ensured by undertaking three types of measures:

A) By providing the applicants with the damages as fair compensation;

B) By adopting and undertaking individual measures and

[1] Official Gazette of the Republic of Macedonia No. 67 of May 29, 2009. In 2014, the Law Amending the Law on Execution of Decisions of the European Court of Human Rights (Official Gazette no.43 of 4 March 2014) was adopted.

C) By adopting and undertaking general measures.

The first type of measures practically refers to the applicant, i.e. the applicants in the concrete case. The main purpose of this type of measures is the achievement of restitution in integrum to the greatest extent possible, i.e. the fair compensation of the applicant who suffered a violation of the rights and freedoms guaranteed by the ECHR. According to the legal definition, fair compensation is a fine in the amount that the Court awards to the applicant when it finds that there is material or non-pecuniary damage to the applicant resulting from a violation of the Convention and the protocols.
The individual measures are measures that the Republic of Macedonia can adopt in the domestic legal order in order to eliminate the specific violation established by the Court against the applicant as well as to eliminate the possible consequences of the violation. In doing so, the state is free to choose the means by which it will perform its legal obligations. This kind of measures are practically taken in cases when the consequences of the violation of the rights or freedoms guaranteed by the ECHR are not adequately remedied by the awarding of funds or by the finding of the violation, but it is necessary to undertake additional measures for the elimination of the harmful consequences. One of these measures is, for example, a repetition of the procedure (reopening the case, de novo), which was concluded by a decision with legal effect res judicata. (Van Mechelen v. The Netherlands).
According to the Law, the general measures are a set of systematic measures, legislative changes, changes in the judicial and administrative practice and the actions of the competent state bodies, as well as all other measures that the state undertakes to effectively overcome the identified systemic legal deficiencies, insufficient legal regulation, as well as the non-compliance of the domestic legislation with the provisions and standards of the ECHR and other accepted international standards and commitments that are produced violations of the Convention in accordance with the rationale and directions of the judgment delivered by the Court.
These types of measures are directed towards the Republic of Macedonia, as a sued country before the ECtHR. Namely, the purpose of these measures is to undertake actions that would prevent future similar violations of the rights and freedoms guaranteed by the Convention, such as the violation found in the actual case. In this context, the decisions taken in the cases against other states - Contracting Parties for the same or similar allegations - are important, in order to avoid the so-called "cloned" cases before the ECtHR.

The legal system for executing the decisions delivered by the ECtHR

The competent authority for monitoring the execution of the decisions delivered by the ECtHR in the Republic of Macedonia is the Inter-ministerial Commission for the execution of the decisions of the ECHR, which was established by the Government of the Republic of Macedonia. The composition of the Commission is determined by the legal provisions. Namely, this Commission is consist of the officials who manage the Ministry of Justice, the Ministry of the Interior, the Ministry of Foreign Affairs and the Ministry of Finance. The presence of the

officials is mandatory at the meetings of this Commission. If the ministers are unable to attend the meeting for justified reasons, their presence may be replaced by deputy ministers, but the presence of deputy ministers is not taken into account in determining the majority for decision-making process during the meeting.
Ex officio, members of this Commission are the President of the Judicial Council of the Republic of Macedonia, the President of the Supreme Court of the Republic of Macedonia, the President of the Constitutional Court of the Republic of Macedonia, the President of the Court of Appeal in Skopje, the President of the Court of Appeal in Stip, the President of the Court of Appeal in Bitola, the President of the Court of Appeal in Gostivar and the President of the Higher Administrative Court, the President of the Council of Public Prosecutors, the Public Prosecutor of the Republic of Macedonia and the Government agent. If the listed officials are not able to attend the meeting, their deputy may attend instead of them, by applying the previously stated principle, i.e. their presence will not be taken into account in determining the majority for decision-making process during the meeting.
In some cases, other representatives of the relevant institutions may take part in the work of the Inter-ministerial Commission, in accordance with the adopted Commission's Rules of Procedure. The Commission is headed by the Minister of Justice. The Commission meets as necessary, but at least once in every three months. The professional and administrative work of the Inter-ministerial Commission is carried out by the Bureau for representation of the Republic of Macedonia before the European Court of Human Rights. The Bureau is a state administrative body within the Ministry of Justice. From the organizational point of view, the Bureau is consists of: Director, Department for representation of cases against the Republic of Macedonia before the European Court of Human Rights, Department for Execution of Individual and General Measures following a decision of the European Court of Human Rights and the Department for Financial Operations and other administrative matters.
The work of the Bureau is managed by the Director - Government Agent, appointed and dismissed by the Government of the Republic of Macedonia for a term of five years, with the right to reappointment.
From an administrative and legal point of view, the composition of the Commission is a combination of representatives of the executive and judicial authorities, as the most responsible authorities for implementing the decisions delivered by the ECtHR. The Commission prepares an annual report for its work, which submits to the Government and the Assembly Permanent Inquiry Committee on citizens' rights and freedoms and the Assembly of the Republic of Macedonia, through the Ministry of Justice, no later than March 31st the following year.

Execution procedure of decisions delivered by the ECtHR

1. Providing the applicants with the damages as fair compensation

The procedure for execution of the decisions delivered by the ECtHR begins with an initial action of the Bureau for representation of the Republic of Macedonia before the European Court of Human Rights, which has an obligation within one month from the day of publication of the decision of the ECtHR to prepare an

official translation of the decision in Macedonian language and its Cyrillic alphabet and it should be published on the website of the Ministry of Justice.
The Bureau, through the Government Agent, has a duty not later than 30 days after the announcement of the decision of the ECtHR to send written information to the Government, which shall state the content of the adopted decision and the obligations established for the Republic of Macedonia. On the basis of the Information, the Government may decide to submit a request for review of the particular case before the Grand Chamber, if the ECtHR has delivered a judgment. The deadline for submitting this type of application is three months from the date of publication of the judgment delivered by the ECtHR.
The government agent is also obliged to notify the Government about the decision on the payment of the fair compensation. The deadline for the payment of the fair compensation is three months and begins to run from the receipt of the notification of the final decision by the ECtHR. The Government Agent immediately prepares written information for the Ministry of Finance, after receiving the data on the bank account for payment of funds by the applicant or his attorney, who, within 5 days after the premise of the Information, should submit a draft decision for payment of the awarded funds. Subsequently, the government agent, the Information and the draft decision, sends to the Government of the Republic of Macedonia, within a deadline not longer than 45 days. After the Government will consider the received written documents, it should make a decision, which should be carried out by the Ministry of Finance. Upon successful payment, the Government agent, that is, the Bureau, submits evidence of the payment made to the European Court of Human Rights' Judicial Unit at the Directorate General for Human Rights and Legal Affairs of the Council of Europe and the Permanent Mission of the Republic of Macedonia to the Council of Europe.

2. Adopting and undertaking individual measures

The procedure for adopting and undertaking individual measures is similar to the previous one. Namely, the government agent has an obligation within two months after the submission of the Notification of the finality of the Court's decision that violates the rights guaranteed by the Convention, to send the Information accompanied with the translation of the decision into the Macedonian language to the Supreme Court of The Republic of Macedonia, the Administrative Court of the Republic of Macedonia, all appellate courts, the basic court and all other institutions or entities that were directly involved in the particular case for which the decision was made. The government agent is also obliged to notify the Inter-ministerial Commission of the taken decision, the violations found, and to propose possible individual measures for elimination of the violations determined by the decision within three months of the submission of the Notification by the ECtHR.
The inter-ministerial commission, after detailed analysis making process of the decision and the measures proposed by the Bureau, has an obligation to prepare a recommendation to the competent state bodies, the units of local self-government, the judiciary and the public prosecutor's office for taking appropriate individual measures for possible removal of the violation established by the Court and preventing the occurrence of identical or similar violations. The individual measure

is recommended depending on the violation found and the situation of the applicant at the time of the violation.

3. ***Adopting and undertaking general measures***

If a decision delivered by the ECtHR establishes a violation that arises directly from the provisions of a particular law, other regulation or practice of the competent state bodies, the units of local self-government, the judiciary and the public prosecutor's office, the Bureau or the Inter-ministerial Commission is obliged to prepare a recommendation for undertaking general measures to overcome the shortcomings that led to the filing of an appeal before the Court, as well as the appropriate prevention of the same or similar violations established by the Court.

In accordance with our positive regulations, the following general measures can be taken:

1) amendments and supplements to the laws and other regulations that caused the violation found and monitoring of their application;
2) changes in the actions of the competent entities in accordance with the law;
3) providing legal expertise for legal projects;
4) professional training and improvement of judges, public prosecutors, lawyers, employees in state administration bodies, migration service employees and other categories of employees whose work is related to the enforcement of laws and other regulations, and in order to ensure the proper application of the Convention and the case-law established by the Court and
5) other measures determined in accordance with the decision of the Court for the prevention of violations of the Convention with the aim of removing the deficiencies of systemic character and providing compensation for the consequences of injuries under the supervision of the Committee of Ministers of the Council of Europe.

CONCLUSIONS

The effective execution of decisions delivered by national or international judicial institutions is a condition sine qua non for respecting the rule of law principle in modern democratic states. Respecting the human rights and freedoms is an additional fundamental value that complements this principle and an indicator that the state has established an efficient functional system in all spheres.

Since the ratification of the European Convention on Human Rights by the Republic of Macedonia on 10 April 1997, the European Court of Human Rights has delivered 153 judgments and 450 decisions on admissibility or for the removal of applications from the list of cases before the Court in cases against the Republic of Macedonia. In 2018, 12 judgments and 24 decisions against Republic of Macedonia were delivered.

Of the total number of judgments against the state, 134 were adopted by the committee, 17 by the committee of three judges in the so-called " "Repetitive" objects or the well – known cases of well-established case-law (WECL) and 2 by

the Grand Chamber. Decisions on admissibility in 186 cases were adopted by the chamber and 264 by the committee.[2]

With the adoption of the Law on Execution of Decisions of the European Court of Human Rights, we consider that our country has established an efficient, comprehensive and detailed system of implementation of these decisions. However, there are some criticisms regarding the work of the Bureau of the Republic of Macedonia before the ECHR.

Thus, according to the 2018 Pribe Report, the following factual situation was ascertained:

"Only about a dozen out of around 100 judgments of the European Court of Human Rights against the state seems to have been properly executed. There may be many reasons for this, and one of them seems to be the lack of resources and capacities of the Government Agent (Priebe Report of June 8, 2015).

The Bureau before the ECtHR has made significant efforts to ensure the speedy execution of ECtHR judgments (" immediate reform priority ") and has achieved good results. The country has reduced the number of ECtHR judgments to be completed by more than half to 56, 3 of which are under enhanced surveillance. However, the Bureau still remains without sufficient staff ... "(State Progress Report for 2016)."

Yet at the beginning of 2018 the European Commission recognized "the engagement of The Bureau for representation before the ECtHR to improve the execution of the judgments of the ECHR, despite insufficient staffing capacities ..."[3]

Therefore, from the stated deductions we could draw the conclusion that the legal framework for the execution of the decisions delivered by the ECtHR against the Republic of Macedonia is satisfactory, but the institutional framework, from the aspect of human resources, is not appropriate according to reality and requirements. In the future it is inevitable to take measures to increase the number of employees in the Bureau, which would also increase the efficiency of the execution of the decisions adopted by the ECtHR, and will improve the image of our country in the international reports.

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HARMONIZATION OF PUBLIC PROCUREMENT LEGISLATION IN THE REPUBLIC OF NORTH MACEDONIA WITH THE EU LAW, A NEVER-ENDING PROCESS

Ph.D. Tatjana Spaseska,
*Associate Professor at the St. Kliment Ohridski University in Bitola, Faculty of economics-Prilep, e-mail***:** *tatjana.spaseska@uklo.edu.mk*
Ph.D. Dragica Odzaklieska,
Associate Professor at the St. Kliment Ohridski University in Bitola, Faculty of economics-Prilep, e-mail: dragica.odzaklieska@uklo.edu.mk
Ph.D. Emilija Gjorgjioska,
Assistant Professor at the St. Kliment Ohridski University in Bitola, Faculty of economics-Prilep, e-mail: emilija.mateska@uklo.edu.mk

Abstract
The process of using public funds by the contracting bodies for the supply of goods, providing services or performing construction works should be based on basic principles of economy, efficiency, competitiveness among economic operators, transparency, equal treatment of economic operators and proportionality. The public procurement regulation is a subject of constant upgrading, modifying and amending, in order to more consistently implement and respect the basic principles while using public funds, i.e. providing effective public procurement with effective utilization of state budget funds when delivering quality public services to citizens, with a high level of transparency and accountability. The criticism by the Macedonian and world public for insufficient transparency, corruptive activities, and other drawbacks have resulted in adopting a new Law on Public Procurement (Official Gazette no. 24/2019), which is completely adjusted with the European public procurement directives. The paper will analyze the practice so far when implementing the public procurement procedures, as well as the impact of the new Law on Public Procurement on the total public procurement system, the advantages it offers, in order for higher transparency, modernization and harmonization with the European legislation.

Keywords: public procurement, efficiency, transparency, harmonization, rule of law, EU.

INTRODUCTION

Taking into consideration the aspiration of the Republic of North Macedonia for accession to the European family, in 2001, the Stabilization and Association Agreement between the Republic of Macedonia and the European community and its member countries was concluded[4]. According to art. 68 of the Agreement, the Republic of Macedonia has an obligation to adjust the existing and future legislation with the legislation of the Community. One of the laws was the Law on Public Procurement.

The regulation of the public procurements started in 1998 when the The Assembly of the Republic of Macedonia adopted the Law on Public Procurement ("Official Gazette of the Republic of Macedonia" no. 26/98) which start to apply as of 20.06.1998, then the Law on Public Procurement ("Official Gazette of the Republic of Macedonia" no. 19/2004) which was start to apply as of 07.04.2004, after the Law on Public Procurement ("Official Gazette of the Republic of Macedonia" no. 136/2007) which was adopted on 12.11.2017, and start to apply as of 01.01.2008 and in the end the Law on Public Procurement ("Official Gazette of the Republic of Macedonia" no. 24/2019) which was adopted on 01.02.2019, and will start to apply as of 01.04.2019[5].

The Law on Public Procurement from 2007 had undergone a series of modifications and amendments, based on the Directives for public procurement of the European Union of 2004. In the meantime, numerous changes and amendments of the law were adopted, which, according to the assessment of the European Union, distanced it from the European legislation in this area. Also, in 2014 new Directives for public procurement were adopted in the classic public sector 2014/24/EU and in the sector activities 2014/25/EU which were not implemented in the existing law. Also, the implementation of this Law identified a number of shortcomings and drawbacks which were noted in the reports of the European Commission for the progress of the country[6], the detailed analysis of SIGMA, the observations of the Final Report for

[4] Official Gazette of the Republic of Macedonia no. 28/2001.

5 Before adopting the first Law on Public Procurement, a separate articles of the Law on rights, obligations, and responsibilities of the republic bodies in terms of assets in social ownership which they are using, were applied ("Official Gazette of SRM" no 41/85 and 51/88).

[6] So, in the COMMISSION STAFF WORKING DOCUMENT The former Yugoslav Republic of Macedonia 2018 Report, European Commission, April 2018 pg.57, „The country is moderately prepared in this area, which is particularly vulnerable to corruption. Some progress was made with the launch of the reform of the public procurement legal framework. Some of the recommendations of the 2016 report were implemented. However, substantial efforts are still needed to ensure a stable, transparent, efficient and effective public procurement system. Further efforts are needed to prevent irregularities and corruption during the procurement cycle. Investigations into allegations of serious conflicts of interest and abuse of public office need to be followed up. In the coming year the country should in particular: → step up efforts to finalize the reform of the public procurement system by approximating to the 2014 EU Directives on public procurement especially by reconsidering the mandatory use of e-auctions; → ensure that reports of irregularities related to public procurement, in general, are properly investigated and offenders are sanctioned; → strengthen the administrative capacity of the Public Procurement Bureau regarding oversight and monitoring of public procurement and of the Ministry of Economy regarding management of concessions and public-private partnerships".

conducted performance audit by the State Audit Office[7] and the reports of the non-governmental organizations included in tracking the public procurement system.[8]

ANALYSIS OF CERTAIN DECISIONS OF THE LAW ON PUBLIC PROCUREMENT OF 2019

Prompted by the indicated drawbacks of the previous Law, as well as the need for adjustment with the EU legislation, the new Law on Public Procurement is in accordance with the Directive 2014/24/EU of the European Parlament and of the Council from 26th of February 2014 for public procurement, the Directive 2014/25/EU of the European Parlament and the Council from 26th of February 2014 for procurement of entities who work in water management, energetics, transport and postal services, the Directive 2007/66/EC of the European Parlament and of the Council of 11th December 2007 for amendment of Directive no. 89/665/EEC of the Council and the Directive no. 92/13/EEC of the Council for improving the effectiveness of the audit procedures when awarding public contracts. The new Law is expected to provide higher transparency and the best value for the spent public funds, an efficient supervision system based on recognizable experiences of some European countries, but also is expected to simplify the procedures, which will normally result in decreasing the administrative burden of the contracting bodies in the implementation of the Law.

Furthermore, the paper will present part of the legal decisions, their advantages, and drawbacks which could appear during their implementation.

Increased valued threshold of procedures which do not include conducting public procurement and introducing an electronic market for small value procurement

One of the mitigating circumstances is the increasing of the value threshold of the procedures which will not be subjected to public procurement procedures. So, if according to the Law on Public Procurement of 2007 it applied to procurements with a total monthly amount not higher than 500 euro in denars without value−added tax, the new Law increases this threshold in such a way that it stipulates that the total value of the procurements under the value threshold of the public procurement procedures annually cannot be above 12.000 euro in denars at the contracting bodies in the classic public sector, i.e. 24.000 euro in denars in the current year at the contracting bodies of the sector activities. This would practically mean that the contracting parties in the classic sector, can on average per month purchase goods, services or works in the amount up to 1.000 euro VAT excluded even though the right of the contracting body to use this limit in one month is not excluded. Of course, the contracting body has no right to violate this mitigating circumstance, so for that purpose and for higher transparency of these procedures which were not reported to the Electronic System for Public Procurement (hereinafter referred to as: ESPP) website so far, the contracting body now has an

[7] More in the Final report of performance audit "Efficiency of policies and instruments in the public procurement system and the procedure for giving consent for publication of public procurement announcement", State Audit Report, no. 15-194/9 from 26.04.2017.

8 Report on impact assessment of the regulative, Ministry of Finance, Draft Law on Public Procurement, page 3.

obligation to publish these agreements in the quartal records which is publicly available on ESPP. The positive side of this legal decision is that a high number of contracting bodies so far had an obligation to conduct a public procurement procedure and when the value of the procurement amounted was too little over 500 euro VAT excluded. It meant additional costs for the contracting bodies for publishing and conducting the procedure, and in situations when an urgent need for such procurement had appeared, it could not be realized due to a procedural burden. Normally, there is always a room for violations, so the legislator had stipulated a fine in the amount of 500 to 1.000 euro in denars for the responsible person i.e. the authorized person of the legal entity who is a contracting body if: wrongly estimates the value of the procurement or unduly divides the procurement into separate procedures in a manner that will result in circumventing the application of the Law on Public Procurement or in selecting an inappropriate public procurement procedure.

The new law for the first time implements an electronic procurement market of small value which is an electronic platform in the form of electronic catalog managed by the Public Procurement Bureau and which is used for small value procurements. According to the Law, small value procurement of goods and services are considered the procurements in the amount up to 10.000 euro in denars and an execution of works up to 20.000 euro in denars. The procurement through the electronic market is conducted in such a way that the contracting body publishes a notification on the electronic market of small value procurements for the intention to make a procurement within at least 48 hours before realizing the procurement while giving a brief description of the subject of the procurement. The manner of conducting of this type of procurement will be regulated in more details by an act adopted by the Minister of finance. Anyway, such a manner of procurement would mean realization of the procurement within a much shorter period of time and by using a more simplified and transparent procedure. According to the data of the Report on the activities of the Public Procurement Bureau in the functioning of the public procurement system 2017[9], out of 27.031 procedures, 7.957 procedures were conducted by using a simplified competitive procedure of small value (up to 5.000 euro), 7.823 were conducted by using simplified competitive procedure and 9.128 by an open procedure.

Also, the new law increases the value threshold for implementation of public procurement procedures for both procurements of small value and for an open procedure, as the most commonly used procedures which indicate to relaxation and simplification of the procurements procedures, which is of significant importance for a large part of the contracting bodies which are not staffed and prepared for conducting very complex and complicated procedures.

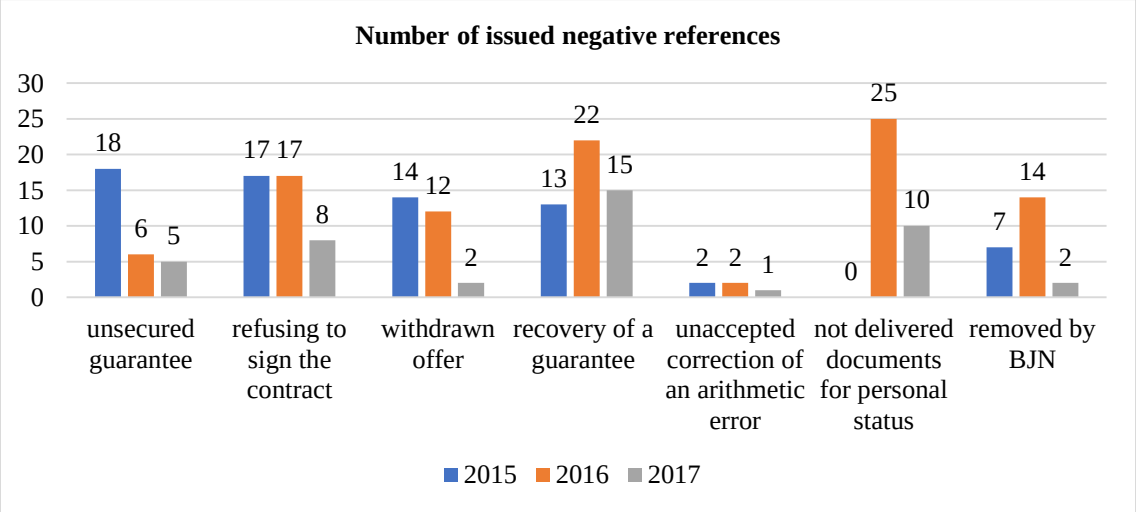
[9] The Report on the acitivies of the Public Procurement Bureau in the functioning of the public procurement system 2017, June 2018, Public Procurement Bureau, page 60.

Redefining the negative reference

Another weakness of the Law on Public Procurement noted also in the Reports for the progress of the country from the European Union, was the publication of the negative reference for the economic operators in a situation when the guarantee of the offer was collected, the donated funds were retained or the statement on steadiness of the tenderer was broken. The negative reference was issued also for withdrawal of the offer before the expiration of its validity; not accepting the correction of the arithmetic mistakes; not signing the public procurement contract according to the conditions of the tender documentation and the delivered offer, and not providing performance guarantee if the contracting body had stipulated it. The negative reference meant excluding the respective tenderer from all future procedures for awarding public procurement contracts within a year from the date of publication in case of first negative reference. The exclusion period increased for an additional year during every future negative reference but it could not last for more than five years.

During 2015, a total of 64 negative references were issued by the contracting bodies to the economic operators[10]. During 2016 a total of 84 negative references to the economic operators[11] were issued by the contracting bodies while during 2017 a total of 41 negative references to the economic operators were issued by the contracting parties[12].

Chart 1: Display of issued negative references on different grounds in 2015, 2016 and 2017



The legislator imposed a draconian prison sentence from one to five years for the president of the public procurement committee, his deputy, members and

[10] Report on the activities of the Public Procurement Bureau in the functioning of the public procurement system 2015, May 2016, Public Procurement Bureau, page 10-11.

11 Report on the activities of the Public Procurement Bureau in the functioning of the public procurement system 2016, September 2017, Public Procurement Bureau, page 14.

[12] Report on the activities of the Public Procurement Bureau in the functioning of the public procurement system 2017, June 2018, Public Procurement Bureau, page 14-15.

their deputies who had failed to issue a negative reference i.e. to the person or person in charge of the organizational form who will fail to publish a negative reference on the website of ESPP.[13]

Since the previous legal decision was not in accordance with the judicial practice of the Court of Justice of the EU, but also with the EU Directives, the Law on Public Procurement of 2019 has limited the term for issuing a negative reference to six months after publication, by increasing the time period for additional three months for every future negative reference but not more than a year. But besides the decision of the EU directives for excluding the economic operators from participation in public procurement procedures due to not meeting the criteria for personal status of the candidate or the tenderer, stated in article 45 par. 1 and par. 2 of the Directive 2004/18[14], without publishing and forming of a blacklist of excluded economic operators, the Macedonian legislator has decided on the same reasons for issuing a negative reference just as in the previous legal decision, with the exclusion of collection of performance guarantee for quality execution of the contract.[15]

Termination of obligatory use of the lowest price criteria

According to the legal decision from the previous law, normally the criterium for awarding public procurement contract was the lowest price. As an exception, the criterium for awarding a public procurement contract could have been the most economically advantageous tender for the procurement of consultant or other services of intellectual character, for procedures for awarding contract for public-private partnership, as well as in cases where due to the specificity of the subject of the contract the quality or other elements such as minimum conditions of the technical specifications cannot be precisely determined. The criterium for the most economically advantageous tender was obligatorily used in the procedure with competitive dialog and in case of an alternative offer. A certain period of time the legislator had limited the application of the criterium for the most economically advantageous tender by getting consent from the Council for public procurements.[16] The data that the Council for public procurements in 2014 had accepted 12 and rejected 74 requests is striking, and in 2015 it had accepted 14 and rejected 61 requests for using the criteria for the most economically advantageous tender. In practice, it meant that the lowest price criterium was obligatorily used in almost all procedures.

The data from the Report on the activities of the Public Procurement Bureau in the functioning of the public procurement system 2017 show that in 17

[13] Art. 232-m from the Law on Public Procurements ("Official Gazette of the Republic of Macedonia" No. 136/2007, 130/2008, 97/2010, 53/2011, 185/2011, 15/2013, 148/2013, 160/2013, 28/2014, 43/2014, 130/2014, 180/2014, 78/2015, 192/2015, 27/2016, 120/2016, 165/2017 and 83/2018).

[14] Report for the review of the public procurement system, Sigma, April 2016, page 46.

[15] Besides obtained observations for drawbacks of the First draft law, stated in page 11 of the Preview of proposals obtained in the process of the first draft, for not terminating the negative reference, the legislator believes that: "Using negative references is significantly limited compared to the existing law. It is, also related to using a statement on steadiness of the tenderer, which is in the economic operators' interest."

[16] Stipulated by art. 22 of the Law on amendment od the Law on Public Procurements (Official Gazette of RM 148/2013).

210 procedures the lowest price criterium was used, and only in 10 procedures the most economically advantageous tendercriterium was used (these data do not include some of the published contract notices for restricted procedure and negotiated procedure with a prior publication of a contract notice).[17] Since before 01st of May 2014, before the start of implementation of art. 22 of the Law on amendments of the Law on Public Procurement published in the Official Gazette of RM no. 148/2013, the contracting bodies could freely choose the criterium for conducting public procurement procedures, the practice shows that in 15926 procedures the lowest price criterium was used while in 2665 procedures the most economically advantageous tender criterium was used.[18]

The past legal decision was largely criticized in the EU Reports and in the Sigma Report.[19] The observations referred to the fact that the cheapest offer is not always the most affordable, i.e. it can mean ineffective use of budget funds for delivery of quality public service to the citizens. Also, according to art. 53 of the Directive 2004/18/EU the contracting bodies are free to choose which criterium they will implement in conducting the procedure, so it would provide the most efficient use of the public funds.

The new legal decision is diametrically opposite. The legislator is now introducing the the most economically advantageous tender as the only criterium for awarding the contracts. Excluded are the procurements of small value of goods and services with an estimated value up to 10.000 euros in denars and execution of works up to 20.000 euros in denars when the procurement is done by the electronic market of procurements of small value of ESPP, for procurement of standard goods and services, when the lowest price criterium is implemented.

Optional use of electronic auctions

Another modification of the Law on Public Procurement is the optional electronic auctions. According to the previous law, the electronic auctions were mandatory for all published contract notices from 01st of January 2012, with certain exceptions stipulated by the Law when the contracting body was obliged to give an explanation about the reasons for the inability to use an electronic auction in ESPP.

The new legal decision is in accordance with art. 53 of the Directive 2004/18/EC and is in accordance with the recommendation in the Sigma Report.[20] In the reports of the international and domestic public, it is stated that the obligatory nature of the electronic auctions resulted in delivering offers with unusually high prices in the stage preceding the auctions so that tenderer can have a room for decreasing to a "real" market prices during the stage of the e-auction itself, so based on that the

[17] Report on the activities of the Public Procurement Bureau in the functioning of the public procurements system 2017, June 2018, Public Procurement Bureau, page 57.

[18] Report on the activities of the Public Procurement Bureau in the functioning of the public procurement system 2013, May 2014, Public Procurement Bureau, page 56.

[19] Report review of the public procurement system, Sigma, April 2016, page 84-86.

[20] Report review of the public procurement system, Sigma, April 2016, page 11.

savings realized by using e-auctions, according to the calculations of Public Procurement Bureau, do not reflect the actual savings.

Partnership for innovations

As a separate type of procedure, the law for the first time implements the partnership for innovations and the objective for this type of procedure is meeting the needs of the contracting bodies for innovative goods, services, and works, which can not be met by procurement of goods, services or works which are no longer available on the market. With this type of procedure will encourage, higher growth of the companies, right to intellectual property, economic growth, and development etc.

Greater application of electronic means

The Law stipulates electronic records of the public procurement procedures in a separate records book of ESPP. This means that the contracting bodies will no longer print and archive the documents of public procurement procedures, which means saving time and resources, and the archiving and keeping of the complete file of the procedures at a state level will be stored in an electronic form of ESPP. It would mean a higher safety, saving data and providing audit trace of the manner of spending public funds.

In accordance with the trend for replacing the conventional manner of communication with an electronic, a new manner of filing an appeal is stipulated. The economic operators will file an appeal only through ESPP to the State Appeals Commission and at the same time to the contracting body. The complete manner of communication in the appeal procedure will be done electronically. Also, the new law decreases the compensation for conducting the appeal procedures.

In order to increase the transparency, besides the previous publication of contract notices and tender documentation, the notifications for concluded contracts, an obligation is stipulated for the contracting bodies to publicly publish the Public procurement plans, the notification for realized contracts, the notification for modification of contract etc.. These measures aim at increasing the transparency and the rationality when using public funds.

On the other hand, besides simplifying the public procurement procedures for the contracting bodies, the stipulated modifications related to proving the capability and the criteria for participation in public procurement simplify the terms for participation in public procurement procedures for the economic operators. For the first time, a single document for proving the capability is introduced which will automatically provide the economic operators, through a tender file, issuing of all necessary documents for proving the capability from the Central Register.

CONCLUSION

The new Law on Public Procurement includes a series of modifications and qualitative improvements against the previous legal decision. The modifications provide simplifying and relaxing the public procurement procedures from the unnecessary formalities so far, for both contracting bodies and economic operators, increasing the transparency in using public funds, increasing the application of the

criterium for the the most economically advantageous tender, relaxation of the terms and manner of using negative references, increasing the application of electronic means for running an electronic procurement market, and also in terms of running electronic records of procedures, electronic filing an appeal, response to an appeal and decision on appeal etc.. The stated legal act represents a big step forward in adjusting and harmonization of the Macedonian legislation with the EU legislation, following the good practices of the EU member states which is of crucial importance for the further progress of the country in the EU membership negotiations. The drawbacks and issues from the implementation of the law remain to be seen from the practical application of the new law after 1st of April 2019.

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CURRENT TRENDS IN SANCTIONING OFFENSES AGAINST PROPERTYIN THE ROMANIAN CRIMINAL LAW

Ph.D. Ioana - Celina Paşca
West University of Timişoara, Faculty of Law

Abstract
The European criminal codes have adopted, in recent years, a liberal policy of distrust in severe punishments, arguing that the main concern regarding the offender should be social reinsertion, and not prevention or retribution.
Romania has aligned itself with these trends, bringing significant changes to the sanctioning regime of the offenses against property. The present study aims to analyse the current regulation of offenses against property, in the context in which some of them allow, as a novelty, the reconciliation of the parties, resulting in removal of the criminal liability or, due to the reduction of the punishment limits, some allow solutions for the conditional suspension of the execution of the prison sentence in the case of some offenses that have been viewed, until recently, as very serious (felonies).

Keywords: Liberal law system, authoritarian law system, offenses against property.

INTRODUCTION

The significant change in the 1968 Criminal Code, as a result of the adoption of the Constitution in 1991[21], consisted in the abolition of differentiated incriminations for offenses in the detriment of state property and those in the detriment of private property. This ensured an equal treatment of protection of the private and state property. This guideline was followed by the 2009 Criminal Code[22], which entered into force in 2014, in which private property is defended in the same manner, whether state-owned or privately owned.
Furthermore, it is worth mentioning the introduction, in the 2009 Criminal Code, of market-specific incriminations, such as misuse of trust through defrauding creditors, simple bankruptcy, bankruptcy fraud, insurance fraud, fraud committed using computer systems and material exploitation of a vulnerable person.
Until the fall of communism and the adoption of the 1991 Constitution, Romania adopted an authoritarian criminal policy model, so the main concern of the legislator was to defend the society before the individual. After the fall of communism, Romania gradually evolved into a system of liberal criminal policy, without however completely abandoning the authoritarian dogma.

ioana.pasca@e-uvt.ro
[21] Published in the Official Journal, Part I, no. 233 of 21 November 1991.
The Constitution was amended and completed by means of the Law of Revision of the Romanian Constitution no.429/2003, published in the Official Journal, Part I, no. 758 of 29 October 2003.
[22] Published in the Official Journal, Part I, no. 510 of 24 July 2009.

Following the liberal criminal policy model (Pradel 2016, 929), Romania granted greater powers to the owner of the goods in the case of offenses against property, in the sense that either the criminal action is subject to their prior complaint, or the parties' reconciliation has as a result the termination of criminal action.
In the current regulation, in the case of some of the offenses against property, we notice the significant reduction of the penalty limits or the provision of an alternative sanctioning regime, with the prison sentence being imposed alternately with the fine, the legislator considering that even such a sanctioning regime is able to determine a change in the attitude of the defendants towards the violated social values.
Reducing the penalty limits in the case of certain serious offenses, in conjunction with the defendant's personal circumstances, allows for solutions of suspension under supervision of the execution of the prison sentence in the case of offenses that have been viewed, until recently, as very serious.
On the other hand, however, the legislator considered that certain practices that have been approached until recently only by means of civil law, must be sanctioned according to criminal law as well, in order to strengthen the contractual discipline and to secure the civil circuit, for whose good functioning, it is essential to act in good faith.

THE SANCTIONING REGIME OF THE OFFENSES AGAINST PROPERTY. NOVELTY ASPECTS.

Theft

The Romanian legislator meant to significantly modify the sanctioning regime in the case of theft, which, according to the current regulation, shall be punishable by no less than 6 months and no more than 3 years of imprisonment or by a fine, whilst in the former regulation, the punishment was from one to 12 years of imprisonment. Beyond the significant reduction of the penalty limits, the current regulation provides for an alternative sanctioning regime, with the prison sentence being provided alternatively with the fine. A significant reduction of penalty limits is also to be noted in the case of qualified theft, the offense being sanctioned in the 2009 Romanian Criminal Code with imprisonment from 2 to 7 years, whilst in the old Criminal Code, the prison sentence was from 3 to 15 years of imprisonment.
Taking into account the penalty limits laid down in the old Criminal Code, both for simple theft and for qualified theft, the suspension of execution of punishment applied for these offenses was possible, at least theoretically, because the suspension under supervision could be ordered when the punishment applied was of no more than 4 years. Practically, however, this was almost impossible, due to the high penalty limits set. Qualified theft, regulated by Article 209 par. (3) was exempted from the rule, since the suspension of the execution of the sentence under supervision could be ordered only if the punishment was imprisonment for no more than 2 years[23].

[23] Article 86¹ par. (3) Criminal Code, The provisions of Article 86¹ par. (3) have been revoked by means of Law no. 278/2006 publishes in the Official Journal no. 601 of 12 July 2006.

We remark, as a novelty, that the new Romanian Criminal Code allows the reconciliation of the parties in the offense of theft, as well as in some of the normative versions of qualified theft, the offense being by far the most frequent in the Romanian judicial landscape. Reconciliation of the parties, obviously, leads to the removal of criminal liability.
This is how an offense, until recently considered as serious, can be managed by the protagonists of the conflict, i.e. the perpetrator of the offense and the victim, who will be able to put an end to the conflict through reconciliation and, thus, prevent the state bodies from investigating the crime and order a conviction.
We find that, despite the efforts of the judicial bodies to stop the criminal phenomenon, the latter is amplified and the parties' reconciliation in the case of such offenses is not such as to lead to what the legislator was aiming at, namely to facilitate the social reinsertion of the defendant and their awareness of the social values infringed, but, on the contrary, the prospect of a future reconciliation appears to encourage the criminal phenomenon of theft.

Robbery
Another example of alleviating the criminal liability as opposed to the old regulation is the offense of robbery. In the new Criminal Code, the penalty provided for this offense is imprisonment from 2 to 7 years, whilst in the old regulation the penalty was from 3 to 18 years of imprisonment. We remark that the maximum limit of punishment for robbery in the current regulation is significantly lower than in the old regulation, even lower than the half of the maximum limit stipulated in the old regulation.
The maximum limit of punishment in the old Criminal Code was of 18 years. Consequently, according to Article 81 par. (3) of the Criminal Code[24], until 2006, robbery was exempted from both the conditional suspension of the execution of the punishment and from the application of suspension under supervision[25]. Both the conditional suspension of the execution of the sentence and the suspension under supervision could not be ordered in the case of intentional offenses for which the law provided for imprisonment for more than 15 years. Under these conditions, it was not even theoretically admissible to apply one of the two manners of individualizing the punishment, so that the punishment for robbery was always executed.
The offense of robbery, as regulated in the new Criminal Code, due to the reduction of the penalty limits, allows solutions of suspension under supervision of the execution of the prison sentence, the limit imposed by this institution being the imprisonment penalty of up to 3 years.
If in the old regulation, the Romanian legislator considered that the social reintegration of the defendant can be achieved only by deprivation of freedom in relation to the nature and gravity of the offense, being an offense against property committed with violence, in the current regulation, the legislator considered that the

[24] Article 81 par. (3) Criminal Code
The provisions of Article 81 par. (3) have been revoked by means of Law no. 278/2006 publishes in the Official Journal no. 601 of 12 July 2006.
[25] Article 86[1] par. (3) Criminal Code

form of action towards this offense must not be firm, since the preventive and punitive purpose of the punishment can be attained also by ordering suspension under supervision as a means of individualizing the applied punishment.
Recent practice is extensive in what regards the solutions of sentencing to prison sentences with suspension under supervision of the execution of the punishment when the defendant's personal data are positive and confirms that the educational purpose of punishment can be achieved without their deprivation of freedom.
The release of the convicted person is likely to contribute to their better reintegration in society, avoiding the risk of criminal contagion specific to the execution of sentences in places of detention.
The case-law solutions of ordering prison sentences under suspension are vehemently criticized, since, in the opinion of the doctrine, the dissuasive and exemplary role of punishment can only be achieved by its executing in detention.

Misuse (breach) of trust through defrauding creditors
As a novelty, the Romanian Criminal Code from 2009 regulates a new offense, namely the misuse (breach) of trust by defrauding creditors, the offense being committed in two variants.
In the variant provided by Article 239 of the Criminal Code, par. (1), the act consists in the act of the debtor to dispose of, conceal, damage or destroy, in whole or in part, assets or values they own or to invoke fictitious acts or debts in order to defraud creditors.
In the variant provided by Article 239 of the Criminal Code. par. (2), the act consists in the deed of the individual who, knowing that they will not be able to pay, purchases goods or services, thus causing damage to the creditor.
This new offense is considered in the specialized literature as "a variant of the misuse (breach) of trust" (Pascu 2016, 451), but in our opinion, outside of the name, the link between the two offenses is rather insignificant. It is true that both in the case of the misuse of trust and in the case of the misuse of trust through defrauding creditors, the offender has an abusive and damaging behaviour at the expense of the person who entrusted them with a good based on a title, but this element is not sufficient to transform the latter into a variant/species of the former one (Kuglay 2014, 50).
By criminalizing the misuse of trust through defrauding creditors, the legislator brought into the sphere of criminal offenses relations that, until February 2014, when these provisions came into force, were specific to the sphere of civil law. The remedy for the debtor's abusive attitude consisted only in a civil litigation, without having them exposed to any criminal sanction.
Although it is certain that such abusive practices, largely specific to commercial, business relations, but without excluding private ones, still exist at present, in the current judicial practice we have not identified causes that have such an object, which means either that the injured persons are not yet aware of the possibility to also act using a criminal proceeding, as this offense can only be investigated following the preliminary complaint of the injured person, formulated within 3 months after the commission of the deed, not *ex officio*, or that the judicial

authorities are still reluctant to label such deeds as offenses, remaining tributary to the opinion that they belong in the sphere of civil law.
In the case of misuse of trust through defrauding creditors, in both variants, a legal obligation has been established between the debtor and the creditor, whereby the debtor undertakes to execute a counter-performance as a result of the creditor's performance. In the variant provided in par. (1), the counter-performance is sabotaged by the voluntary act of damaging, destroying some goods or assets from the property or invoking fictitious acts or debts in order to defraud the creditor. By invoking fictitious acts or debts, the debtor, by fraudulent means, either simulates the impossibility to pay the due benefit, or effectively diminishes their property in order to render ineffective any form of forced execution against it. The debtor, by their own actions, willingly enters a state of insolvency.
Prior to the criminalization of these deeds as an offense, the civil remedy was constituted by the so-called revocatory or "paulian" (derivative) action, whereby the court allowed the defrauded creditor to recover their debt by tracking the assets already in the patrimony of a person other than their own debtor, although that person was not directly involved in the fundamental relationship between the parties.
In the case of the variant provided in par. (2), the legislator criminalizes the act of the perpetrator who "knowing that they will not be able to pay, purchases goods or services, thus causing damage to the creditor". In our opinion, this criminalization is a form related to the crime of misrepresentation in conventions, provided by the old criminal code, but which in the present code is no longer a distinct form, but, because the legislator sanctions the simple fact of acquiring goods or services knowing that they will not be able to pay, the offense no longer requires a misleading of the creditor, a prerequisite in the case of misrepresentation. Although it is true that at the time of the acquisition of the goods the perpetrator foresees that they will not have the money available on the date when the payment obligation becomes due, this aspect is a mere non-fulfilment of the contractual obligations which, until recently, were dealt only through civil law means, the creditor of the unexecuted performance disposing of a civil action under contract liability. Although the mere non-fulfilment of contractual obligations cannot be assimilated to fraudulent means which could impose a criminal sanction, in order to strengthen the contractual discipline, the Romanian legislator chose to criminally sanction those persons who, from the very outset, foresee the future fact of the impossibility to pay and, nevertheless, acquire goods or services, thus causing damage to the creditors.

The material exploitation of a vulnerable person

The material exploitation of a vulnerable person is a new offense in the Romanian legal landscape, so that a comparison of the current regulation with other previous possible regulations is impossible. Previously, the material exploitation of a vulnerable person could only be the object of a civil litigation.
What draws attention to this regulation is the intention of the legislator to provide increased protection to certain categories of people found in difficulty and who engage, for this reason, in an unbalanced and unfair legal relationship with other

people. The features of the persons protected by this incrimination are the constituent elements of this offense. The vulnerability of individuals has previously been protected only by its stipulation as an aggravating circumstance.
Thus, the new Criminal Code, in its Article 247, criminalizes the offense of material exploitation of a vulnerable person, which consists in the "The act of a creditor who, when lending money or property, by taking advantage of the debtor's obvious vulnerable state due to age, health, disability or dependency of the debtor on the creditor, makes him establish or transfer, for oneself or for another, a real right or claim, the value of which is manifestly disproportionate to the benefit".
Similar to the misuse of trust through defrauding creditors, in the case of this offense, between the debtor and the creditor is established a legal obligation through which the debtor undertakes to deliver a counter-performance as a result of the creditor's performance. In the present case, the fundamental relation between the parties is the loan agreement, which represents the premise of some burdensome conditions for the debtor in the restitution of the obligation. The counter-performance is clearly disproportionate, in relation to the value of the debt, and its payment is due to the exploitation of the vulnerability of the person. The debtor, found in a delicate situation "due to age, health, disability or dependency on the creditor" is obliged to accept terms of restitution, regarding the amount of the debt, which under normal conditions would be impossible to accept. The debtor's persuasion occurs upon the conclusion of the loan agreement between the two parties, having as object of money or goods, or even after its conclusion, as long as on the basis of this agreement, the debtor, namely the vulnerable person, gives the creditor a property right or a right of claim whose value is disproportionate to the amount of the loan (Neagu 2014, 247). However, in order for such facts to constitute an offense, it is necessary that the relation be grafted on a visible state of vulnerability, that is to say, a state of vulnerability obvious to anyone, beyond reasonable doubt. In the absence of this premise, a loan agreement, however unbalanced, may not constitute a basis for engaging criminal liability.

Disturbance of possession

The Criminal Code of 1968, in Article 220, criminalized the offense of disturbance of possession consisting in "occupying in whole or in part, without right, a property in the possession of another, without their consent or without prior approval received under the law or the refusal to vacate the building occupied in such manner". In par. (2) of the same article, the previous Criminal Code provided for an aggravated version of the offense "occupation by violence or threat or by the abolition of the landmark signs of a building".
The new Criminal Code chose, however, to abandon the criminal sanction of the offense in its simple form, regulated by the Criminal Code of 1968, maintaining as offense only its aggravated variant. Under these circumstances, the occupation must be done exclusively by means of violence or threat or by the abolition of landmark signs, any other form of occupation of a real estate, even abusively, being a deed from the sphere of civil unlawfulness (Pascu 2017, 370).
The new Criminal Code is more favourable both in terms of partial decriminalization, but also as regards the sanctioning regime, the offense being

sanctioned with a prison sentence of between 1 and 5 years or, alternatively, the penalty of fine, while the previous Criminal Code sanctioned the same offense with the prison sentence of 2 to 7 years. The act is only pursued upon the prior complaint of the injured person.

CONCLUSIONS

The new Romanian Criminal Code, following above all a model of liberal legislative policy, guided itself, at least in the field of offenses against property, upon the principle of minimal intervention, rethinking the sanctioning regime and adopting relatively symbolic preventive strategies as compared to the previous regulations.

In this respect, the Romanian legislator enhanced the victim's desire to reconcile with the perpetrator of the offense, providing, in certain offenses against property, for the possibility of ending the criminal action through the reconciliation of the parties. We remark, as novelty, the provision of the termination of the criminal action through reconciliation in the case of theft.

Regarding the amount of punishments provided for offenses against property, the new Criminal Code undoubtedly represents a more favourable law, the reduction of punishment limits being significant, and, for some offenses, it was envisaged, alternatively, the possibility of sanction by means of a fine.

Unfortunately, statistics from recent years demonstrate that the adoption of a milder sanctioning regime and the execution of sentences outside of prison do not ensure better social reintegration, the dissuasive and exemplary role of punishment is not achieved, as the degree of recidivism in the case of persons benefiting from these provisions is very high.

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SOCIAL, CULTURAL AND POLITICAL CHANGES AND CONSEQUENCES INTEGRATION OF SERBIA IN THE EUROPEAN UNION[26]

Nada Novakovic, Phd[27]
Marijana Maksimovic, PhD[28]

Abstract
The subject of sociological and economic analysis is the most important social, economic, political and cultural preconditions of Serbia's integration into the EU. It appears on two levels: the first is normative and the other is empirical or real. On the one hand are the goals and achievements of EU integration, and on the other hand are the assumptions, actors, and achievements of Serbia in EU integration. Special attention is paid to the subjects, institutions, legislation and the consequences of Serbia's Eurointegration in the field of education, industrial relations, pension, health, and social protection reforms. It concludes that the ruling political elites play an important role in the slow European integration of the country, and the consequences of this affect the majority of the population of Serbia.

Keywords: EU, Serbia, development, education, industrial relations, political elites

INTRODUCTION

The strategic orientation of Serbia's political elites for integration into the European Union (EU) has its dynamics, goals, subjects and economic, political and social "price". This is influenced by external factors, primarily in the EU, and changes in Serbia. In the focus of the survey, the changes and consequences in the EU caused by the global economic crisis in 2008 and the processes of disintegration are spurred by mass intercontinental international migrations. This manifests itself as slow economic growth, the growth of unemployment, economic and social inequalities, poverty, political populism and the collapse of the "European" social model. All of this reflects on events in the countries in the region, with which Serbia compares. The internal factors that determine the way, goals, and achievements in Serbia's EU integration are multiple. In their importance, the symbiosis of the interests of the economic and political elite in power (those are fractions of the capitalist class), the underdeveloped market economy, the "lack of" democracy, high unemployment,

[26] Work is the result of research on the project: "Structural social and historical changes of Serbian society in the context of European integration and globalization" (179039). and on the project "Modeling the development and integration of Serbia into world trends in light, economic, social and political movements" (179038). Both projects are funded by the Ministry of Education, Science and Technological Development of the Republic of Serbia, 2011-2019.
[27] Institute of Social Sciences, Center for Economic Research, Queen Natalia Street 45, Belgrade, mmaksimovic@idn.org.rs
[28] Institute of Social Sciences, Center for Sociological Research, Queen Natalia Street 45, Belgrade, novakovic.nada@gmail.com

poverty and growth inequality, high conflicts of society and a marked gap between the legal norms adopted and their applications. The first part of the paper is dedicated to the problems facing the EU in the last ten years, and the second one concerns changes in the socio-economic, political and social development of Serbia and its efforts to integrate it in the EU.

THE EUROPEAN UNION AND ACHIEVEMENTS IN SOLVING THE ECONOMIC, SOCIAL, POLITICAL AND SECURITY CRISIS

- *The Global Economic crisis and Slow Economic Growth in EU lasting several decades.*

The crisis since 2008. is the biggest crisis since the Second World War. The EU is only at the beginning of the exit from it. This is indicated by data on GDP growth, unemployment, public debt, financial consolidation, fiscal and monetary GDP growth in the EU, the eurozone, and the most developed countries is different.[29] Policies and austerity measures have deepened inequalities between the most developed countries and the most. The unemployment rate is 8.7% and lower than in 2009. The level of unemployment is different in some countries, but it is several times higher than the EU average and the most developed EU countries, wherein in 2017 it fell to a level lower than in 2008 (7.4). In Spain, it was 16.7, and it was the highest in Greece (20.6) [30]

According to the European Commission, the employment rate of population (from 20 to 64 years) was 72.2% in 2017. The highest in Sweden is 82%, and the smallest in Greece is 58%. A new phenomenon is that they are among the employed workers and are poor. The greater the intensity of the work activity of family members, the greater the poverty. Poverty is related to employment, sex, age, ethnicity, country of origin, type of household. The European Institute for Gender Equality (EIGE) announced that 5.5 million people in the EU were at risk of poverty. They spent 1.9 euros a day.

- *EU and Migrants Crisis* - which culminated in 2015. Its important causes are geopolitical, regional, local conflicts and climate change. Some EU members have directly participated in this. The EU reacted late to the migration crisis, not uniquely, ad hoc measures, making decisions by informal agreements of the strongest members and short-term and unsustainable solutions. In doing so, it jeopardized some of the most important values it stands for (freedom of movement, right to life, security ...). Germany is one of the most desirable destinations of migrants, and its Chancellor Angela Merkel played the most important role in resolving the crisis. German society is demographically old. The average age is 45.8 years, with 13.2% of children (0-14). An elderly dependent person comes to three workers, while in Ireland this ratio is five to one (Vukelic 2018, 76, 77).

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[29] See more about that in Maksimovic Marijana, Nada Novakovic. „EU and challenges of integration: changes in the Western Balkans regio“. (International Scientific Conference: „Security, Political and Legal Challenges of Modern World“, Bitola, 19 - 21. October 2018.). In *Conference Proceedings, Volume II,* Editors Prof. Dr. Sc. Svetlana Nikoloska, Ass. Prof. Dr. Sc. Angelina Stanojoska, (Bitola: "St. Kliment Ohridski" University – Bitola with financial support by the Hanns Seidel Foundation, Republic of Macedonia. 2018.), especially 66-68.

[30]Eurostat, „Unemployment statistics“, February 2019. https://ec.europa.eu/eurostat/statistics-explained/pdfscache/1163.pdf (accessed 11. March 2019.)

- Brexit and consequences for EU and Serbia - This is the first case that a member of the EU has exercised the right (Article 50) under the Lisbon Treaty to withdraw from the EU. The terms and conditions under which they will end will be uncertain and unknown. After Brexit (June 23, 2016), neither Great Britain nor the EU will be the same. According to Dusko Lopandic: "Britain's EU outbreak will be a real geopolitical earthquake and will significantly affect changing and potentially quantitative weakening of the EU" (Lopandic 2017, 63). Ognjen Pribicevic explored in detail the causes and consequences of Bregzita and concluded the following:

> The victory of Bregzit was decisively influenced by a dramatic increase the number of migrants in the UK in the last decade, dividing in Conservative parties, a badly run campaign by those who advocated for the UK's stay in the EU and increasingly distrustful voters according to the political class and the ruling establishment. (Pribicevic 2018, 185)

The growth of *populism, nationalism* and the weakening of the EU's attractiveness by its citizens will further delay the integration of other countries. Nada Novakovic said:

> The global economic crisis has exposed the crisis of neoliberal capitalism, but also the crisis in the EU. The ideology of market omnipotence, the sanctity of private property and capital is seriously undermined. In the "solution" of the crisis, the most powerful national states of the EU have the most important influence. Poor countries are condemned to lagging, destroying and subverting powerful centers of economic and military power. All this is accompanied by an increase in inequality in EU members and the rise of separatistic movements (Novakovic 2017, 281).

This will slow down the European integration and prosperity of the countries that are striving to enter the EU.

SOCIAL, ECONOMIC AND POLITICAL CHANGES IN SERBIA AND INTEGRATION PROCESSES IN THE EU

Labor legislation and the labor market in Serbia have been liberalized. In many of their elements, they are far below the standards and practices that exist in the most developed EU member states. This is most suited to entrepreneurs and the ruling elite with an attractive workforce attract investors. Flexible labor legislation reduces the level of economic, social and trade union rights of workers. It is against the interests of young people, older workers, women, disabled people, and vulnerable groups, which is contrary to the values that the EU stands for.

- *The inefficiency of human resources*- was a feature of these societies even before the transition. It was a consequence, to a large extent, of the nature of the social and political system, and only then of the impact of new technologies and markets. This is evidenced by the rates of labor productivity, employment and the level of education of the employed and the rest of the population. In Serbia, there is a low rate of activity in the working age population (15-64), 66.7%, and a high rate of inactivity (33.3%). The educational structure of employees is unfavorable and cannot be a factor in the growth of labor productivity. Most have (56.7%) secondary education, each fourth is employed with (25.4%) secondary and 17.6% has lower education. It is a limiting factor in the creation of a knowledge-based economy.

Certainly, we need to add specific cultural and political opportunities to individual societies, which contribute to this. A comparison of the achieved level of human resource utilization makes sense to see the level of achieved development of a society in relation to the region and the EU. According to economic data, labor productivity in the WB countries (especially in the industry) is far behind the EU average. In some of them (as in Serbia), this is below the level that existed before 1990 (Novakovic 2016, 748) This is not a coincidental fact, it is a consequence of de-industrialization. The conditions in which deindustrialization would be launched today are far more difficult and complex. For this, there are insufficient and quality material, human and political preconditions. In addition, the human resources of the employees in the economy in society are not sufficiently used due to insufficient investments and investment in training and training. Maksimovic Marijana said: "For Serbia, it is possible to increase the competitiveness of investments in talent and retain them and keep track of their work."(Maksimovic 2017a, 118; Maksimovic 2017). The entrepreneurial layer is not interested in this because of massive unemployment. Unemployment in Serbia is structural and long-term. Unemployment rate (14,1%), especially young people (31,9%), Nearly one million people are unemployed, and their educational structure is unfavorable. High, higher and secondary professional education has 43.7 percent, highly qualified and qualified 23.7 percent, unskilled 29.6 percent and semi-skilled and lower professional education 3.5. percent. (Labour Force Survey, 2017, 47) More than 70% of the unemployed have previous work experience.(Statistical Yearbook of Serbia 2018, 76, 82).

- *The dominance of the private sector of ownership of the means of production* - was realized during the transition of society. In 1988, 38% of the GDP were created in private ownership, 32% in social and 27% in mixed goods. (Sukovic ed, 2002, 58). At the end of the transition of the society (ie 2017.), the private sector dominates, and the social one is marginal. Of all employees, 61% worked in the private property sector, 38% in the state, and only 1% in other forms of ownership (Statistical Year Book of Serbia 2018, 78). From the above data, it can be concluded that almost all social property has disappeared, and the big owner of the means of production has become a state. The privatization process was a key factor in the disappearance of earlier forms of ownership and the destruction of social structures. The largest single owner and employer became the state. New and old private individuals have gained wealth through various means, and by purchasing (and destroying) social enterprises, they have come to a capital. After 2000, quick privatization was carried out. It led to de-industrialization, de-urbanization, massive job losses and a fall in GDP below the level that existed before the start of a transition. Privatization has attracted both the labor productivity rate, the rate of investment in fixed assets and their efficiency (Novakovic 2016, 748, Stavljanin 2017). Global Competitiveness Index of the Serbian economy is at a low level. International comparisons of the Serbian economy with others in the world additionally confirm this. The value of this index was 60.9 in 2018, which ranks 65th out of 137 countries (Tanaskovic and Ristic, 2018).

- *The high level of gray economy in Serbia* - exists throughout the transition period. It is still far above the level in the developed capitalist economies. This was

influenced by systemic factors: the neo-liberal model of transition, privatization, the decay of the welfare state, the pronounced influence of foreign financial institutions, the low activity and employment of the working-age population, high unemployment, low productivity, labor legislation, the tax system, mass poverty public morality (bribery and corruption). (Novakovic, 2015, 259-279). Corruption is ubiquitous in society and a significant barrier to the emergence of healthy business and civic morale. Moreover, corruption is one of the strong obstacles to the adoption of European values and progress in the Eurointegration

- *Education and social inequality* - Reform of the education system at all levels is "unfinished" and below the achieved standards in other European countries. Students' protests against higher education reform indirectly point to all the difficulties encountered by those who impose the Bologna Declaration, as well as students and their parents. The results of this reform so far confirmed the thesis that the reform has a class character, and that education is far more accessible to children of higher classes and layers than those from the bottom of the social pyramid of wealth and power. Inequalities in the crushing positions of the children of rich and poor parents form in the youngest age. They are only deepening during schooling. Sociological research on the social background of students in Serbia unambiguously indicates this. In the research on young people in Serbia, the authors conclude that :

> A young person whose parent has primary education has 4.2 times less chance of completing secondary education a school with a young person whose parents have secondary education and 7.9 times less chance of completing a college or faculty in relation to the child of highly educated parents. Young parents with secondary education are 3.5 times smaller a chance to complete a college or college, compared to young people whose parents have higher education. (Tomanovic, Stojanovic 2015, 27)

In short, the spatial mobility of students proclaimed by the Bologna reform is insufficient to eliminate classical inequalities of vertical mobility.

- *Poverty and inequalities in Serbia*-.During the transition, an increasing part of the society was growing. Serbia is one of the European countries where the distribution of income is fast growing, and education policy and social policy reproduce the class structure of society in general. Here we present data on inequalities in income

Growth of inequality in income among the population with the highest and lowest income (excluding income in kind) in the period 2006-2016. is higher than in the EU. Gini coefficient in Serbia in 2006 was 35.4 and in the EU 3.2. In 2010, it was 33.0 in Serbia and 30.5 in the EU. In both cases, Household Consumer Survey data were used. Subsequently, a comparison was made on the basis of the Survey on Income and Living Conditions. In the next five years (2010-2015), inequality of income in the EU rose to 31.0. In Serbia, there was faster layering. Gini coefficient in 2015 was 38.2 and in 2016 38.6 (Arandarenko et al. 2017, 12). This surpassed the values of the Gini coefficient of Macedonia (35.2), Croatia (30.6) and Slovenia (24.5). According to the findings of the same research, the ratio of the share of 20% of the population with the highest income and 20% of the population with the lowest income has increased. In 2013, this ratio was 8.6, and in 2016, 9.7. These inequalities are significantly higher than in the EU and developed OECD

countries.[31]Data on official statistics on the poverty of citizens have shown for a long time that the poverty level of 2006-2016 has not significantly decreased. The absolute poverty rate at the beginning of the observed period was 8.3 (703 976 citizens) and at the end 7.3 (or 492 306 persons). Meanwhile, the population of Serbia also decreased. Poverty has been affected to some extent by individual social groups, and "The risk of poverty in Serbia is twice as high as the European average" (*Danas,* 15. October 2017.), and amounted to 25.4%.

- *Society "lacks" democracy* - the term is the one that most closely characterizes the reach in the development of the political system (Stojiljković, 2017, 21)32Multilateral parliamentarian has been established, but the behavior of the parties, their funding and the functioning of the parliament are far beyond the established ideal-stable parliamentarianism. Frequent election cycles, invisible sources of party funding, an unclear interest of political parties. economic and other elites are present in the WB countries. Political instability is associated with the circulation of elites in power that have weak modernization and democratic potentials. The consequence is the absence of a political will to launch radical economic and social reforms. This is often associated with massive disregard of procedures in passing laws, numerous affair and corruption in making major economic and other decisions. These are the conditions from which capital flows, and attract "hot" domestic and foreign capital. All this contributes to the weakness of the judicial system and the underdeveloped legal system.

- *High conflict of the society of Serbia and region* - are unable to develop more rapidly and join the EU. Numerous sources of conflict are long-lasting, historically inherited, and new ones arise during transition and integration in EU. This is a place where the interests of different ethnic, religious, military, political, cultural groups and communities are in conflict. It has always been a place where powerful world powers have collided, but today it is a factor that hampers the successful development of these societies. Therefore, it is difficult to achieve good inter-neighborhood, since conflicts are present in each of these societies. The belief that economic progress will alleviate and suppress it has not yet been achieved in practice. Still, state-building and national interests are more important than the reforms of the economic, social and political system. The ruling political elites in the region thus continue the same tactics of governance, ie, conflict instead of peace and development.

- *Resistance to social change and Eurointegration.*-Resistance to faster entry into the EU comes both from the ruling class and from lower classes and layers. The political elite is inclined to declare a decisive commitment to EU integration, and it is really slow to give up its monopoly of decision-making in various areas. Any commitment to an independent judiciary and the rule of law, for example, impedes

[31]„Eurostat: Differences in income of rich and poor in Serbia are higher than in EU, Macedonia, and Turkey". *New Serbian political thought*, 19. March 2017. http://www.nspm.rs/hronika/eurostat-razlike-u-prihodima- rich-and-poor-in-serbia-greater-than-in-eu-macedonia-and-turkey.html (accessed 10. August 2018.)

[32]Zoran Stojiljkovic says that Serbia is a weak state with "a lack of democracy" In *Collapse or collapse of democracy? (Decline or Eclipse of Democracy in Europe's New Democracies?),* Ilija Vujacic and Bojan Vranic (eds.). (Belgrade: Association for Political Sciences of Serbia; Universities of Belgrade, Faculty of Political Sciences.
2016.), 9-30.

the implementation of many members of the political elite in power. In negotiations with EU representatives, she is ready to adopt laws and rules imposed by EU institutions and often does not implement them in practice. Accelerating economic and political reforms corresponds to only one part of the economic elite, while the richest citizens are close to the authorities. In the processes of globalization and regional integration, middle strata lose security, and savings measures bring them job losses and lower wages. These are some of the reasons for the growth of Euroscepticism in Serbia are multiple. One is the result of the long process of waiting, negotiating and meeting a growing number of conditions. Other are domestic origins, from falling living standards, political instability, the growth of nationalism to the spread of inequality and mass poverty of citizens (Todorovic-Lazic 2018, 81, 86, 91, 93, 98).

CONCLUSION

The European Union has been in big changes for the last decade. They are political, institutional, environmental, social, cultural and security. Most often, the EU is in crisis. In doing so, an emphasis is placed on one of the mentioned problems, and it is often unilaterally concluded that the EU as a "peace project" has failed. The participation of its largest and most developed members in numerous "humanitarian" interventions in the world raises this issue at work. There are also questions of the "imperfection" of the joint superiors and the possibilities of preserving national identity and the state. For the "Brussels" bureaucracy, many citizens of individual EU member states are inclined to say that they are alienated, and in this respect, they express doubt about the need to preserve the EU. All this additionally brought into question the migrant crisis, which peaked in 2015.

Serbia has delayed its integration into the EU. Numerous causes are. In the first place, this is the nature of the realized concept of transition (neoliberal) and privatization. In the first decade, the changes were relatively slow, complicated by war events in these areas, UN sanctions, and bombing from NATO in 1999. During that time, it was changing economically. The political and social structure of society. A new capitalist class was created, which was also helped by the war and privatization for the rise of the ruling positions. Sociologists from Serbia and the region wrote about its educational, social structure and limited modernization potentials.

The big event happened in Serbia on 5. October 2000. The new ruling political elite was replaced by a new one, which accelerated and ultimately led to the privatization of social ownership and the transition of the society to the creation of a capitalist semi-periphery society. Here are briefly listed some of the most important indicators of the achieved level of economic development of the society, the results of labor market reforms, education, pension system, and social protection. They worked together on the emergence and growth of mass unemployment and the growth of income, political, educational, regional and other inequalities. The objective and subjective poverty of the employed and the rest of the population of Serbia is extremely high. It is an important obstacle to the progress of society and integration into wider European or other communities.

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IMPARTIALITY OF THE JUDGE IN THE MISDEMEANOR PROCEDURE OF THE REPUBLIC OF SERBIA

Mladen Jeličić, PhD
Judge, Misdemeanor Court in Šabac, Serbia
e-mail: mladen.jelicic.kaishin@gmail.com

Abstract
Misdemeanors are the most common penal offenses and they come under the penal law of the Republic of Serbia. Impartiality of the judge is the basis of a fair misdemeanor procedure. The author dedicated special attention to the virtues that a judge must possess in order to conduct a misdemeanor impartially because human qualities and a continuous improvement are an imperative of professional and dignified performance of judicial function. The paper points to manifestations of impartial treatment of the first-degree judge and second instance panel in practice. The subject of the analysis is also some legal solutions and court decisions violating the principle of impartiality. A particular emphasis is placed on the relation of the considered principle with the obligation of the judge to explain his decision. The author concludes that the impartiality of the judge is the pillar of the rule of law and citizens' confidence in judicial power.

Key words: right to a fair trial, misdemeanor proceedings, impartiality of the court, burden of proof, explanation of court decision

INTRODUCTION

Going to the judge means going to justice. These Aristotle's words describe the key virtue of the judge - justice. The ancient Greeks had two goddesses, Dike, the goddess of righteousness and Themis, the goddess of law and order. The Romans shaped the virtues of these two goddesses in one divinity. The Goddess of Justice. Justicia was portrayed as an honorable woman with eyes bound, holding a sword in the right hand, and the scales in the left. These two symbols express her need to measure accurately guilt and innocence. Since the time of ancient Greeks and Romans, justice has been set up as an ideal law and a cornerstone of a judge's call. For judges, this sublime value which has been shaped through court proceedings for centuries, imposes an obligation of impartial treatment. Only if it is impartial, a judge can make a fair decision. The integrity of the judge is determined by his inner qualities. Righteousness as a virtue is an ethical reflection of impartiality. It is not only the duty of the judge to be impartial. The trust in the judiciary is based on the perception of citizens that their rights and obligations will be decided by an impartial tribunal. Since the ancient times, the impartiality of the judge has found its place in international documents because it is recognized as a universal value. And the right to have an impartial judge, as a basic human right.

JUDGE'S IMPARTIALITY IN INTERNATIONAL DOCUMENTS AND PRACTICE OF THE EUROPEAN COURT OF HUMAN RIGHTS

Human rights are the basis of human existence, and their identification have been the main task of the human species for centuries. They are defined as rights and freedoms for all people, that belong to them simply because they are people (Phillips 2009, 15). After the Second World War, fundamental texts relating to human rights were the Universal Declaration of the United Nations of 1948, followed by the European Convention on Human Rights of 1950 with a series of protocols that subsequently followed. (Villey 1983, 9). The European Convention on Human Rights and Fundamental Freedoms (ECHR) was created under the auspices of the Council of Europe after the end of the Second World War, as a result of the aspirations of the people of Europe to create a different and more modern way of mutual cohabitation, as well as a different and more modern attitude of people towards the authorities in his own state. (Jakšić 2006, 11). It is prescribed that everyone has the right to impartial court by Article 6 of the ECHR which defines the right to a fair trial.

There are several international documents highlighting the impartiality of the judge for the rule of law. The most important are United Nations Basic Principles on the Independence of the Judiciary,[33] Council of Europe, Recommendation No. R (94) 12 of the Committee of Ministers to the Member States on Independence, Efficiency and Role of Judges,[34] Bangalore principles of judicial conduct[35] and Magna Carta of Judges (Fundamental Principles).[36] In each of these acts, the basic principles of impartiality of the judge are defined more closely.

The United Nations Basic Principles on the Independence of the Judiciary define that the judiciary shall decide matters before them impartially, on the basis of facts and in accordance with the law, without any restrictions, improper influences, inducements, pressures, threats or interferences, direct or indirect, from any quarter or for any reason.[37] In achieving their rights judges shall always conduct themselves in such a manner as to preserve the dignity of their office and the impartiality and independence of the judiciary.[38] The Council of Europe pointed out in the above recommendation that judges should have unfettered freedom to decide cases impartially, in accordance with their conscience and their interpretation of the facts, and in pursuance of the prevailing rules of the law.[39] Also, judges should in particular have the following responsibilities to conduct cases in an impartial manner in accordance with their assessment of the facts and their understanding of the law, to ensure that a fair hearing is given to all parties and that the procedural

[33] Adopted by the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders held at Milan from 26 August to 6 September 1985 and endorsed by General Assembly resolutions 40/32 of 29 November 1985 and 40/146 of 13 December 1985.

[34] Adopted by the Committee of Ministers on 13 October 1994 at the 518th meeting of the Ministers' Deputies

[35] The Bangalore Draft Code of Judicial Conduct 2001 adopted by the Judicial Group on Strengthening Judicial Integrity, as revised at the Round Table Meeting of Chief Justices held at the Peace Palace, The Hague, 25-26 November 2002.

[36] Consultative Council of European Judges was adopted this document on 17 November 2010.

[37] Principle 2.

[38] Principle 8.

[39] Principle I.2.d.

rights of the parties are respected pursuant to the provisions of the Convention.[40] In the Bangalore principles of judicial conduct[41] is especially emphasized that impartiality is essential to the proper discharge of the judicial office. It applies not only to the decision itself but also to the process by which the decision is made. A judge shall perform his or her judicial duties without favour, bias or prejudice.

The European Court of Human Rights (ECtHR) has had many cases relating to the impartiality of the court. The ECtHR has indicated that there is a difference between a subjective approach, that is endeavouring to ascertain the personal conviction of a given judge in a given case, and an objective approach, that is determining whether he offered guarantees sufficient to exclude any legitimate doubt in this respect.[42] So, we can say that there is subjective and objective impartiality. The impartiality of a tribunal must be assessed by means of a subjective test, which consists in seeking to determine the personal conviction of a particular judge in a given case.[43] That means that no member of the tribunal should hold any personal prejudice or bias. Personal impartiality is presumed unless there is evidence to the contrary.[44] The tribunal must also be impartial from an objective viewpoint, that is, it must offer sufficient guarantees to exclude any legitimate doubt in this respect.[45] Under the objective test, it must be determined whether, quite apart from the judge's personal conduct, there are ascertainable facts which may raise doubts as to his impartiality. In this respect even appearances may be of a certain importance.[46]

In all the above documents, the link between impartiality and the independence of the court is particularly emphasized. The ECtHR has stated that a court must be independent of the executive and also of the parties.[47]

BASIC REMARKS ON THE POSITION OF MISDEMEANOR COURTS IN THE SYSTEM OF JUDICIAL POWER OF THE REPUBLIC OF SERBIA AND CHARACTERISTICS OF MISDEMEANOR PROCEEDINGS

Misdemeanor Courts were introduced in the judicial system in the Republic of Serbia in 2010, as courts of special jurisdiction. Forty-four first instance misdemeanor courts were created, as well as Misdemeanor Appelate Court as a court of republican rank, with headquarters in Belgrade and departments in Niš, Kragujevac and Novi Sad. Until then, misdemeanor bodies, as a part of executive power acted in misdemeanor matter. Now, the misdemeanor procedure is conducted by the misdemeanor courts, as well as the Republic Commission for the protection of the rights in public procurement procedures, which conducts the first instance misdemeanor procedure in accordance with the law governing public procurement. The decision by which the Republic Commission can lead first instance misdemeanor proceedings on the basis of a special law violates the original concept

[40] Principle V.3.b.
[41] Value 2.
[42] *Piersack v. Belgium*, ECtHR judgment of 1 October 1982, para. 30.
[43] *Tierce and Others v. San Marino*, ECtHR judgment of 25 July 2000, para. 75.
[44] *Daktaras v. Lithuania*, ECtHR judgment of 10 October 2000, para. 30.
[45] *Academy trading and Others v. Greece*, ECtHR judgment of 4 April 2000, para 43; *Padovany v Italy*, ECtHR judgment of 26 February 1993, para 25.
[46] *Thorgeir Thorgeirson v. Iceland*, ECtHR judgment of 25 June 1992, para. 51.
[47] *Ringeisen v. Austria*, ECtHR judgment of 16 July 1971, para. 95.

that the misdemeanor procedure is organized exclusively as a court, and the legislator did not take into account that such a decision could be contrary to Article 6 of the ECHR, and that other procedural provisions that are intended for court procedure can not be applied in the procedure conducted by the Republic Commission (Petrović 2014, 15).

All areas of life regulated by legal norms are in touch with misdemeanor law. Judges of the Misdemeanor Courts handle about 286 laws and about 800 sub-legal acts. The subjects of misdemeanor responsibility may be a legal entity, responsible persons in a legal entity, natural persons, entrepreneurs, foreign natural persons, foreign legal entity, responsible persons in foreign legal entity and minors. The challenges of applying the law to a specific case, impose the obligation on judges to improve continuously, monitor the legal regulations and acquire the knowledge they need to judge in this wide matter.

The Law on Misdemeanors[48] of 2013 changed the concept of misdemeanor proceedings. The introduction of the principle of proof was abandoned by the principle of determining the material truth which implied that the court was obliged to establish truthfully and completely the facts that are important for proving and making a lawful decision (Djuričić, Bejatović 2015, 90).

Article 89, paragraph 2 of the Law on Misdemeanors prescribes that the burden of proof mark of the misdemeanor and misdemeanor responsibility is on the applicant for the initiation of misdemeanor proceedings. The new concept of evidence procedure caused a radically different position of the court, emphasizing the principle of impartiality.

It is important to point out that there are two ways of initiating a misdemeanor procedure: by submitting a request for the initiation of a misdemeanor proceeding of the authorized body or the injured party or on the basis of a misdemeanor order, against which a request for judicial decision was submitted.

The virtues of the judge as the basic of the judge's impartiality

The guarantees provided in Article 6 of the ECHR are applied on the misdemeanor procedure which the ECtHR has confirmed with its decisions.[49] A judge is required to conduct proceedings impartially, in accordance with his/her own assessment of facts and interpretation of law, ensuring fair trial and compliance with procedural rights of parties guaranteed by the Constitution, the law and international acts.[50] The judges of the Misdemeanor courts have the obligation to be impartial which is defined by the Constitution of the Republic of Serbia.[51]

[48] Published in the Official Gazette of the Republic of Serbia, No. 65/2013 and 13/2016.

[49] The European Court of Human Rights in the judgment *Engel and Others v. The Netherlands* of 8 June 1976 set the criteria that the criminal connotation which can have punishable offenses which under domestic law are not explicitly envisaged as criminal offenses.See also: *Phillips v. The United Kingdom* of 5 July 2001, *Grande Stevens and Others v. Italy* of 4 March 2014, *Maresti v. Croatia*, 25 July 2009, *Muslija v. Bosnia and Herzegovina* of 14 January 2014.

[50] Article 3 paragraph 2 Law on Judges of the Republic of Serbia. Published in the Official Gazette of the Republic of Serbia, No. 116/2008, 58/2009 - decision CC, 104/2009, 101/2010, 8/2012 - decision CC, 121/2012, 124/2012 - decision CC, 101 / 2013, 111/2014 - decision CC, 117/2014, 40/2015, 63/2015 - decision CC, 106/2015, 63/2016 - decision CC and 47/2017)

[51] Published in the Official Gazette of the Republic of Serbia, No. 98/2006. Article 32, paragraph 1.

It raises the question of what virtues a judge must possess to preserve his impartiality. The Law on Judges in the provision of Article 45 paragraph 4, prescribes that the moral characteristics that the judge should possess is honesty, conscientiousness, justice, dignity, persistence and morality. Their omnipresence in the conduct and actions of the judge is the basis of his impartiality.

Awareness of this duty and consideration of the role of a judge in a misdemeanor procedure is an initial step towards applying the principles in practice. It should be clear to the judge that his management of the misdemeanor proceedings must be impartial and that all the procedural activities he undertakes must be in that direction. There must be no difference in the procedural position of the parties for him, and he mustn`t show the affection or intolerance of any kind to any of the parties or participants in the proceedings. Respect for the parties and participants in the proceedings (defense attorney, injured party, witness, expert, proxy etc.) is expressed through a polite relationship. On the other hand, there must be sufficient distance as a condition for the professional integrity of the judge. The judge must not show neither prejudice about the outcome of the proceedings, nor the party from his behavior can conclude what kind of decision he will make. He is obliged to refrain from any comments and statements that may cast doubt on his impartiality. He must show balance in his behavior.

The behavior of parties and other participants in the proceedings, must not compromise the judge's handling of the procedure and its reaction with both inappropriate emotions. The key virtue of a judge is self-control.

A judge must not show any kind of discrimination. His actions should be without prejudice, based on respect for diversity. In doing so, the judge is obliged to preserve the honor and dignity of the profession and to ensure the respect of the court as an institution.

It follows from all of the above that a decent performance of a trusted function requires from a judge to notice personal imperfections which prevent him from attaining impartiality and to correct them. That is why personal improvement is an imperative of a judge's call.

All external circumstances come under the light of the objective criteria of impartiality. They can be different. They relate to the absence of circumstances that constitute reasons for the judge's exemption.[52] The judge must always ask himself whether a neutral observer who watches his behavior could conclude that he is impartial.

PROCEDURAL ASPECTS OF THE IMPARTIALITY OF THE JUDGE IN THE MISDEMEANOR PROCEDURE

The institute exemption of a judge is a procedural mechanism for ensuring impartial conduct in misdemeanor proceedings. The Law on Misdemeanors prescribes compulsory and optional reasons for the judge's exemption.[53] Compulsory reasons for the judge's exemption may be grouped into three groups. For each of them, it is characteristic that they are based on the judge's attitude towards the misdemeanor,

[52] See *De Cubber v. Belgium*, ECtHR judgment of 26 October 1984, para 27.
[53] Article 112.

other participants in the proceedings and the court case. The law introduced the absolute assumption that the existence of one of the reasons for compulsory exemption indicates that a judge can not be impartial, and for that reason he must be excluded from the proceedings.
The judge, participating in the proceedings, will be exempted if he is damaged by a misdemeanor.[54] The judge's attitude towards other participants in the proceedings is manifested in two ways. The first is the existence of a blood or in-laws relationship in relation to the defendant, the defense counsel of the defendant, the representative of the accused legal entity, the petitioner of the motion to institute the misdemeanor proceedings, the injured party or his/her legal representative or proxy, is his/her spouse or a direct relative up to any degree of relationship, up to the fourth degree in the collateral line and, in in-law relationship, up to the second degree.
The existence of civil or legal kinship as a compulsory basis for the exemption of a judge exists in the case of a defendant, the representative of the accused legal entity, the defense counsel of the defendant, the official person who, in the name of the authorized authority, has put forward the motion to institute the misdemeanor proceedings or with the injured party in the relationship of the guardian, ward, adopter, adoptee, breadwinner or a sustained.
The judge can not have different procedural roles in the misdemeanor procedure. The reason for the exemption exists if the judge in the same case, as an official person, in the name of the authorized authority, has put forward the motion to institute the misdemeanor proceedings or has participated as the representative of the accused legal entity, the defense counsel of the defendant, the legal representative or proxy of the injured party, or has been heard as a witness or as an expert witness. Also, if the judge participated in handing down of the first-instance judgment.
The existence of the above circumstances imposes on the judge an obligation to interrupt any work on the case and inform the president of the court who will appoint a second judge.
The optional reason for the judge's exemption is the existence of circumstances that cast doubt on his impartiality. In this case, the judge addresses the president of the court but continues to act in the case until the decision on his exempton is made.
The request for exemption of a judge may also be submitted by the parties (the applicant for the initiation of the misdemeanor procedure and the defendant, as well as the lawyer of the defendant). The conduct of misdemeanor proceedings by a judge who had to be exempted represents an absolutely essential injury of the provisions of the misdemeanor proceedings.
The help to a party which requires legal assistance is the basic principle of misdemeanor proceedings. The doctrine is unique in the view that this principle applies only to the defendant or the injured party, if they do not have a defense counsel or proxy. The public prosecutor, as a legally educated person, and the administrative bodies, various inspectors and other bodies and organizations exercising public authority can not be considered as a party which requires legal

[54] For example, in the event that a judge participated in a traffic accident and has suffered a damage, and has received the case to act.

assistance because the detection of the misdemeanor and the submiting of a request for initiating the misdemeanor proceedings belongs to the domain of their duties (Delić, Bajović 2018, 137). The help of the court to a party which requires legal assistance that shows its procedural position, indicates the rights and obligations, and the consequences of undertaking or not taking particular actions, must be implemented in practice in a way that the court preserves its impartiality and ensures the equal position of the parties. (Jeličić 2018, 235).

The consequences of the previous position of misdemeanor judges as part of the executive branch are still present today. It appears that the procedural role of the court as an impartial arbitrator is still not clear to the prosecutors in the misdemeanor procedure. There is still a perception that the misdemeanor court is "on the same side" as the applicant for the initiation of a misdemeanor proceeding. In practice, authorized prosecutors do not understand what the realization of the burden of proof means and what is their role in the misdemeanor procedure. The legacy of the past, when the applicant considered that all his work was completed by submitting a request for the initiation of a misdemeanor procedure, while not providing in a certain number of cases even the smallest evidence for the allegations made in the application (Bošković, Skakavac 2017, 84) is still present. The authorized prosecutor is a party in a procedure with a clearly defined procedural role - to prove the mark of the misdemeanor and misdemeanor responsibility. He must bear the consequences of his inactivity or his mistakes. The doctrine indicates correctly that the court can not prove on the side of the prosecution by self-initiative acquiring evidence that supports his request, because it would call into question the equality of arms and the role of an impartial arbitrator (Delić, Bajović 2018, 136). As the judge can not instruct the defendant how to present his defense in order to avoid misdemeanor responsibility, the judge also must not help an authorized prosecutor. Unfortunately, in the case law there are wrong examples where the misdemeanor courts favour the authorized prosecutor, and at the fault of the defendant, thereby violating the principle of impartiality of the court.

EXPLANATION OF THE COURT DECISION AND IMPARTIALITY OF THE JUDGE

The judge must act in a civilised manner. He must be accountable for the exercise of his power and authority (Samuels 1981, 51). In law, and often elsewhere, giving reasons is seen as a necessary condition of rationality (Schauer 1995, 633,634). The benefits of reason giving inure to different parties. Reason giving benefits the parties to a dispute when the decisionmaker has listened to or accounted for the positions of the interested parties and then based the decision on rational and publicly accessible grounds (Effron 2013, 713,714).

The reasoning of the court decision shows whether the judge acted impartially. The court's findings must be properly argued. The factual legal elaboration of a concrete case presented in the reasoning of the decision shows whether the judge led the misdemeanor proceedings impartially. In other words, whether it enabled the parties to exercise their rights without compromising their equality. In the reasoning of the decision, the judge is obliged to state for what reason he has performed certain

evidence, and for that reason he refused the performance of certain evidence. He is particularly obliged to explain why he ex officio carried out additional evidence.
All of the above is important not only in the first instance procedure, but also in the second instance. It could be said that the reasoning of the second instance decision, for several reasons, is even more significant. The nature of the instructions of the second instance court and the manner in which they are reasoned show whether the second instance court, in the appeal proceedings, preserved impartiality. However, certain explanations of the second instance courts can not be considered correct from the aspect of the impartiality of the court.
In the reasoning of its decision, the second instance court can not inform the applicant about the specific activities it can take in order to fulfill his procedural role of the authorized prosecutor.
It is not justified, for example, when the second instance court orders the first-instance court to order a principal process to invite the defendant and authorized representative of the applicant to initiate a misdemeanor procedure to pronounce it and specify it in relation to the time when the misdemeanor was committed[55] or when in the second instance decision it is stated that it is necessary for the first instance court in a re-trial to determine a principal process on which the authorized representative of the applicant for the initiation of the misdemeanor proceedings will be called to clearly define the attitude of the defendant in the disputed situation and to state it as clearly unlawful[56] Errors in these instructions of the second instance court are reflected in the fact that it is not the duty of the court to invite the applicant to edit the same because it helps him in this way.
Such instructions impose the impression that the court helps the applicant in the realization of his duty to perform properly the factual identification of the misdemeanor. Contrary to this, the second instance court should point out to the observed omissions, but its instructions must not impair the impartiality of the court. The reasoning of the second instance decision must not lead to the conclusion that the applicant for initiation of the misdemeanor procedure is favourable in relation to the defendant. Therefore, instructions of the second instance court must be process neutral, that is, the principle of equality of the parties must be respected. The language formulation of the second instance court's instructions shows whether the court has preserved impartiality. Therefore it is relevant in what way the second instance court will point out omissions in the first-instance judgment and order the first-instance court to remove them.
A more correct reasoning is when the second instance court states that "the first instance court will order a principal process where the authorized applicant has the opportunity to change the request for the initiation of the misdemeanor proceedings, and if he does so, the defendant will be allowed to state the content of the amended request for initiating the misdemeanor proceedings."[57]

[55] Judgment of the Higher Misdemeanor Court in Belgrade, Prž. 7688/12 from 20 April 2012.
[56] Decision of Misdemeanor Appelate Court, department in Novi Sad, Prž. 13729/16 from 20 June 2016.
[57] Decision of Misdemeanor Appelate Court, department in Novi Sad, Prž. 21726/18 from 16 October 2018.

SOME CONTROVERSIAL LEGAL SOLUTION OF THE LAW ON MISDEMEANORS

The Law on Misdemeanors contains certain solutions that are doubtful from the aspect of the impartiality of the court. The most drastic example is the institute of a misdemeanor order. The editing of an issued misdemeanor order or request for initiating a misdemeanor procedure, at the court's order, is justified in case of formal defects that prevent the court from acting. Whenever there is a factual identification of an offense in an indictment, the authorized prosecutor must bear the consequences of its inadvertence. The unsustainability of the legal solution is especially noticeable in the situation when the defendant, along with the request for a court decision on the issued misdemeanor order, delivers a written defense stating that the legal mark of the offense does not result from the factual description of the misdemeanor. In this case, the legal provision Article 176, paragraph 4 by which the court is obliged to order the issuer of the misdemeanor's order to regulate the factual description of the misdemeanor, makes no sense. Substantial anomalies of the indictment related to the factual identification of the misdemeanor must be sanctioned by the court by issuing a decision rejecting the request for the initiation of a misdemeanor proceeding in accordance with Article 184, paragraph 1, point 1 of the Law on Misdemeanors, when the act described in the request is not a misdemeanor. When it comes to a misdemeanor order, the same procedure should be applied in the case if the legal mark of the misdemeanor does not result from the factual description of the mesdemeanor, the court should reject the issuing of the misdemeanor order in analogy with the application of the quoted provision.

CONCLUSION

An impartial judge is a pillar of citizens' trust in the judicial system and judicial power.

A judge must act as a fair judge and be impartial. It is his duty and responsibility towards the trusted function. Only in this way the judicial power will be a basis of the defense of the rule of law.It is up to judges of misdemeanor courts to act like this in practice.

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INTERNATIONAL AND REGIONAL STANDARDS OF LABOR REGARDING PRIVATE EMPLOYMENT AGENCIES (SERVICES)

Dr. Danilo Rončević, Director
Human Resources Management Service of the Government of the Republic of Serbia
danilo.roncevic@gmail.com

Dr. Dejan Kostić, Assistant Director
Human Resources Management Service of the Government of the Republic of Serbia
dejankostic@gmail.com

Dejan Vučinić, Teaching Assistant
Faculty of Law, University of Kragujevac
dvucinic@jura.kg.ac.rs

Abstract
The paper analyzes the implementation of the International Labor Organization Convention No. 181. on private employment agencies and Directive 2008/104 EC of the European Parliament and the European Council on work through temporary employment agencies. In the globalized economic conditions, there is a tendency towards labor flexibility and labor deregulation. Employment intermediation is increasingly being dealt with by private agencies, among which temporary employment agencies are particularly important because they also appear in the role of the employer. In particular, the authors deal with the labor status of the workers employed by these agencies, while working for another employer (the service user). The topic of the article is particularly the issue of protecting the "rented worker", guarantee of same treatment, the right to association and collective bargaining, which are preconditions of social peace. The paper also contains the results of research on the implementation of the aforementioned convention and directive, with a proposal to provide at the national level the equal treatment of agency workers and other employees with the employer.

Key words: *private employment agencies, Convention No. 181, Directive 2008/104, agency workers, principle of equal treatment.*

INTRODUCTION

Traditional employment, based on the classical contractual relationship between the worker and the employer, has long become inadequate to satisfy many work needs of the employer, and at the same time has become a kind of obstacle to engagement of the larger workforce.

Namely, modern processes of labor and production with the use of modern technologies, the extinction of old and the emergence of new specific occupations, the nature and periodicity of work, world economic trends, mobility and competitiveness of the workforce are just some of the elements that lead to employers reducing the number of employees and transfer production into countries with more affordable labor (Godfrey, 2006). Also, the need to reduce the rate of unemployment, both at global and local levels, leads to labor deregulation and reduction of elements of worker protection, with the aim of attracting foreign investment. (Šunderić 2011, 245)

Increasing flexibility of work and labor markets is present in many countries, both in the developed market economy and in developing countries, faced with uncertain challenges. This phenomenon appears to be particularly pronounced in developing countries, where, as a rule, unemployment and a general standard of living are at an unsatisfactory level.

There are new (atypical) forms of work that differ from the classical work relation. These forms of work, although not a product of the new age, are an increasingly common way of employing workers, since they enable employers to get the necessary workforce easier, as well as freeing up the excessive workforce, and the degree of responsibility they have towards the workers is diminishing

The importance of such a complex issue, more specifically the issue of unemployment and employment, has been recognized by the International Labor Organization (hereinafter ILO), from its very inception to this day, a whole series of legal instruments have been adopted in order to regulate certain issues in the field of employment and bring order and security in this field, on a global level. The importance of this issue is recognized at the level of the European Union as a regional organization, so that its community law also regulates one aspect of employment, namely the aspect that relates to the private employment agencies in the part where the agency deals with the transfer of labor, bearing in mind the significant number of workers engaged in this way. In the opinion of some authors, international instruments should focus on mitigating the effects of unfair globalization (Reinert, 2006).

In addition to the national services (Bureaus) which intermediate in the employment, an increasingly important role is played by the aforementioned private employment agencies, whose activities include many types of services, among which of particularly importance are employment intermediation and employment services where a private agency appears as one of the sides in the work relationship. Private employment agencies are the subject of this paper, more specifically international and regional standards concerning their organization and activities, especially in the context of the fact that the space for abuse of workers thus engaged is extremely high. The practice so far shows that private employment agencies often transfer the intermediation service fee to the employee, and on the other hand, the legal position of workers in whose employment the agency appears as one of the parties is worse than the legal position of workers who are directly employed with the employer for whom the work is done.

FLEXIBILIZATION OF WORK AND PRIVATE AGENCIES

Modern conditions of work, business, automation of the production process and new technologies have influenced, we may say, every segment of the society. Even work relations were not exempted, so the traditional form of work in terms of continuity of employment, working hours and other aspects, is often replaced by alternative forms of work. These forms are precisely the flexible (atypical) forms of employment.

The post-World War II period is a golden period of development of labor law and industrial relations. This period is characterized by stability and social protectionism of individual and collective labor relations. Individual work relations were mainly based on the conclusion of an employment contract for an indefinite period of time and full-time work. The golden period of capitalism ended with the first oil crisis in 1974, which, inter alia, marked the end of the cheap energy era, and new challenges arose in the face of needs and interests of the so-called "atypical workers", i.e. workers who have established working relationships for a limited time or part-time, as well as self-employed workers. (Kalamatiev, Ristovski 2014, 133-114)

There are contradictory views on whether these forms of employment represent atypical forms of work engagement or new ones, but it is undisputed that these forms are not the classical, indefinite full-time work. (Jašarević 2012, 186)

Flexibilization simultaneously means labor deregulation and reduction of workers' protection, because such normative elements are considered obstacles to further economic growth. (Urdarević 2016, 115) Therefore, the interest of economic well-being is more prevalent in relation to the position of workers.

The most commonly used atypical forms of employment are fixed-term contracts and temporary work through private employment agencies. (Urdarević 2015, 586) As a result of the flexibilization of work with private employment agencies, they become a very important subject through which the workforce becomes easily accessible, the costs of dismissals are reduced, and also the scope of the rights of employees. Apart from the opportunities that this kind of working engagement provides, and by this we primarily mean reduction of unemployment, it also opens up numerous opportunities for abuse and exploitation of the workforce.

However, despite what has been mentioned, private employment agencies have become an inevitable reality in the whole world, as evidenced by the stance of ILO itself. Namely, this organization has enacted the Convention No. 34 on employment agencies that charge their services, in 1933, which prohibits the work of such agencies. And the later Convention No. 96 on Employment Service Officers, 1949, foresees the same obligation, but in a slightly milder form. Only the adoption of Convention No. 181 on Private Employment Agencies corrected ILO's previous position. The reason for this was in large part that the work of such agencies was often contrary to the principles and attitudes that ILO had advocated in its work and the protective role towards workers as a weaker side in the worker-employer relationship. (Brković 2018, 289)

INTERNATIONAL AND COMMUNITY LAW FRAMEWORK

The International Labor Organization has devoted much attention to the issue of employment since its inception, and therefore has adopted a series of conventions and recommendations that address specific issues in order to create opportunities for full employment in member states (Pešić, 1969, 88). In this regard, there are several legal instruments. Chronologically, these are the Convention No. 2 on Unemployment (Source: ILO official page) of 1919 and Recommendation No. 1 to the Convention. The convention introduces state-controlled bureaus, which mediate for the purpose of employment, without commission. Recommendation prohibits the establishment of services, companies and bureaus that charge for intermediation. Subsequently, Convention No. 34 on employment bureaus that charge their services (Source: ILO official page) of 1933. It provides for the prohibition of private employment agencies within three years. However, since the number of ratifications of this Convention remained low, it's practical effect also remained modest. Interestingly, this convention is considered to be radical (Nakayama, Samodorov 2004, 24) precisely because of its ambition towards the complete abolition of private employment agencies in a very short term.

Subsequently, Convention No. 88 on the Organization of the Intermediation Service (Source: ILO official page) of 1948. This Convention provides for the obligation of States to organize National Employment Services, as well as to ensure better cooperation between this service and public and private institutions with a view to better employment opportunities. Employment mediation is done free of charge. The Convention is supplemented by Recommendation No. 83 and refers to the organization of the employment service.

Convention No. 96 on Employment Service Offices (Source: ILO official page) of 1949 provides for a more flexible regime for the regulation of private employment agencies. Namely, it foresees the gradual abolition of these agencies or their regulation by a special law. It was primarily due to the fact that Convention no. 34 did not give the expected results, but also because of the fact that the issue of abolishing the agencies that charge their services is much more complicated.

The most important legal instrument from the ILO regarding private employment agencies is the Convention no. 181 (Thuy, 1999, 77) from 1997, which provides a legal framework for the operations of these agencies, and in part also the protection of workers who use their services. (Brković 2015, 1384)

Although at the first glance it seems that, by the adoption of this convention the issue of employment through private agencies is fully regulated, it does it in a fragmentary way. Specifically, its first articles define the notion of private agencies which includes any natural or legal person, regardless of public authority, which provides one or more of the following services:

-Services for the provision of mutually suitable job offers and employment applications, whereby the private employment agency does not become a party to an employment relationship which may result from it;

-The second set of services consists in employment services for workers in order to place them at the disposal of a third party, which can be a natural or legal person (user enterprise), which assigns them tasks and supervises the execution of those tasks;

-The third group of services consists in services of job seeking established by the competent authority after consultations with representative organizations of employers and workers, such as providing information, whose intention is not to find mutually suitable job offers and job applications. (Source: ILO official page)

Upon further analysis of the Convention, after the articles which determine the notion of an agency, follow the articles that determine its purpose. The purpose of the Convention is to facilitate the operation of private employment agencies, as well as to provide protection to workers users of their services. It seems that the convention in the first part of its task fulfilled the purpose as it creates preconditions for facilitating the operation of private employment agencies, as well as cooperation with other public employment services.

However, in the second part of its task (purpose) relating to the protection of workers, the convention regulates only the protection of workers only by two articles, in such a way that protection of workers' rights (referring to minimum wages, working hours, trade unions, collective negotiation, etc.) shall be provided in accordance with the regulations of the Member States. Therefore, the states themselves provide protection regarding these rights.

It must be noted that the Convention did not implement the distribution of rights, obligations and responsibilities among all three entities involved in the supply of workers (the second set of services), but rather that it dealt with the issue of regulating the status of these agencies. It did not regulate agency employment as a key atypical form of employment, but it provides the basis for a new legal act in the future which would, on the basis of the Convention, regulate work through private employment agencies more completely, as well as a more concrete mechanism for protecting employees who are their users.

The negative side of the convention is that, among other issues, some of the standards it contains are not widely accepted, as can be seen from the number of ratifications of the Convention (33).

At the level of the European Union and its Community law, the Directive 2008/104 EC (eur-lex.europa.eu) of 19 November 2008 is the most important. The adoption of the said regulation was a long process, bearing in mind that the national legislations of the Member States differed in their approach to the problem of employing and engaging workers through private agencies. The aforementioned directive was preceded by several unsuccessful attempts to pass the appropriate legal act, which was contributed by the social partners' disagreement regarding the degree of protection of this category of workers. However, during the 1990s, the European Commission again initiated the resolution of the status of temporary work through agencies, this time with three separate packages of proposals, which concerned working conditions, unfair competition, and health and safety at work. (Blanpain, 1993, 41) It is worth mentioning the Member States' fear that this directive would open up national labor markets for the arrival of workers from other countries and that their workers would be unprotected in this situation and the labor market would be incompetent. So, fear of social dumping that exploits lower labor costs in some countries due to lower income and which creates unfair market competition.

The Directive defines the basic concepts as well as the entities to which it applies. Accordingly, the workers to whom it is applied are workers with a contract of employment or in employment with a temporary employment agency that is assigned to user enterprises for a fixed-term work under its control and instructions.
Companies that are covered by the directive include public and private enterprises engaged in temporary employment, but also included are user enterprises that perform economic activities, whether profit or non-profit.
Companies engaged in temporary employment (agencies) are defined as any physical or legal person which, in accordance with national regulations, concludes a contract of employment or work relationship with workers in order to put them at the disposal of the user enterprise for fixed-term work, under their supervision and management. A user enterprise is any physical or legal person, for whom, under whose supervision and instructions, temporary work is performed. The appointment is the time during which temporary worker is employed in work for the user enterprise.
The Directive is significant because of the principle of equal treatment which permeates almost all of its text. Exactly what has not been done by the ILO Convention No. 181, which is the protection of workers employed through temporary employment agencies, has been largely achieved by this Directive. Namely, the basic work and employment conditions for persons who are in employment with the agency, during which the company is assigned to the user, must be at least equal to the working conditions that would apply to them had they been employed directly with the labor user enterprise.
The directive also envisages what kind of working conditions it is referring to. It stipulates that these are the conditions envisaged by law, sub-legal acts, collective agreements or other general acts that apply to the user enterprise, which relate to holidays, breaks, night work, working hours and overtime, income and leave.
In addition, the Directive also contains a guarantee of equal treatment with regard to personal characteristics, that is, sex, race, religion, ethnicity, disability, age or sexual orientation. (Brković 2017, 117) In Article 6 of the Directive, temporary workers must be informed about vacancies in the company of the labor service user enterprise, giving them the same opportunity as other workers to establish an indefinite period of employment, so that in this aspect the principle of equal treatment is consistently implemented. However, some issues have been omitted from the Directive. The issue of dismissal, or social security protection, are not regulated.
Also, the possibility for member states to exclude the principle of equal treatment in terms of earnings, with prior consultation with social partners, has been left. Member States have other options regarding exclusion, but these exclusions are possible more as protective measures, functioning to protect the national labor markets.
Therefore, the principle of equal treatment is a key feature of this Directive, and the exclusions that have been foreseen remained as the result of a compromise in order for it to be adopted. Nevertheless, most of the countries today recognize the same basic rights to agency workers as they do to other workers, regardless of the form of work.

IMPLEMENTATION OF INTERNATIONAL AND REGIONAL STANDARDS IN SERBIA AND COUNTRIES IN ITS ENVIRONMENT

The nature of international legal acts is such that they often express general ideas and principles, and that the possibility of immediate application after the ratification is very limited. In this respect, the International Labor Organization leaves room for members to, bearing in mind the specificities of national legislation, enact the necessary regulations and create preconditions for the *de jure* and *de facto* fulfillment of the international standards contained in its conventions.

According to informal sources, some 200,000 workers, regarded at the level of Serbia and surrounding countries, are working through agency employment, with a tendency toward further growth.

The ILO Convention No. 181 on private employment agencies, according to the currently available data, has a modest number of ratifications (33), among the countries in the region, the implementation was enacted by Serbia in 2015, Bosnia and Herzegovina in 2010, and Macedonia in 2012. Montenegro and Croatia have not ratified the aforementioned convention, with Croatia harmonizing its labor legislation with the 2008/104 Directive. In Serbia, this matter is regulated by the Law on Employment and Insurance in Case of Unemployment, specifically its part which concerns the legal status of private employment agencies, their establishment, work permits, the activities that agencies can perform, cooperation with the National Employment Service and others. Regarding the Law on Labor, although it was expected that the amendments from 2014 would include the issue of work through temporary employment agencies, this did not occur, and therefore the current regulations are insufficient and contain a number of loopholes which are being used to the detriment of workers.

However, works are under way on drafting a separate law that would adequately regulate this area and provide better protection of workers engaged through private agencies in accordance with international standards while at the same time respecting the legitimate interests of trade union representatives and representatives of private employment agencies.

With their existing Law on Labor, Croatia covered the issue of work for a limited time (especially with regard to seasonal work). Conditions for the transfer of workers between related employers are also stipulated, as well as the limitation of work for workers engaged through the temporary employment agency with the same service user company. Work through temporary employment agencies is done according to the work contract for temporary work, and the law prescribes the obligatory content of such contracts.

Bosnia and Herzegovina has no special regulation on temporary agency work, but certain issues are handled by existing regulations. It is interesting that, according to the Constitution.

Bosnia and Herzegovina, the entities are exclusively competent to autonomously regulate the field of work and employment, although certain jurisdictions in this field belong to cantons in the Federation of Bosnia and Herzegovina. Each entity has its own legislation in this field and institutions which perform employment functions.

Montenegro has envisaged a special part of the Labor Law containing provisions that refer to specific types of labor contracts.
Macedonia has enacted a special law dealing with the content of contracts for temporary agency employment, permitted forms of work, maximum duration of temporary work, the issue of establishing and operating agencies, precisely regulated and equal treatment of agency workers with workers regularly employed by the user's enterprise is guaranteed. (Kalamatiev, Ristovski, 2013, 86)

CONCLUSION

International and regional standards play a key role in regulating work through private employment agencies, since they are given general guidelines within which national legislation should be moving. The desire to improve the position of workers in this sphere as well, both at the global and the regional level, was expressed by the ILO Convention No. 181, as well as the Directive 2008/104 at the level of the European Union, by promoting the principle of equal treatment.
However, in spite of existing international standards, it is necessary to regulate in more detail the content of the legal relationship on the relation: employee client of the agency - the agency - the user enterprise, i.e. more precisely, determine the rights and responsibilities of all three subjects, since every ambiguity usually means a worse position for the employee.
It is not uncommon for flexible working forms to conceal permanent employment, which results in less profits than those that a worker would have for the same work done through a classical job contract. Temporary employment agencies have a significant role in employment, but only through good and proper regulation can its role be achieved in a satisfactory way.
The quality of the rights that workers should have, in particular the basic ones, should not be formed exclusively by the interests of capital.
From the gradual abolition of these agencies, we are now witnessing their re-actualization, especially in the last few decades, which speaks not only of the new reality as a consequence of global, economic and social circumstances, but also of the objective need for their work, as it has been shown that easier engagement of workforce, even temporarily, can have positive effects on the economy of a state.

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THE REACH AND CHALLENGES OF THE EUROPEAN UNION

Hatidža Beriša[58]
Nikola Vidović[59]
Milenko Dželetović[60]

Abstract
In previous years, the EU has been facing multiple changes that are reflected both in the institutional field, in the development of EU capacities and in the aspirations of member states to overcome national obstacles to cooperation and to shape the EU as a global player. At the same time, the global environment is changing rapidly, ranging from the instability of the Middle East and North Africa areas, refugee crises and terrorist threats, to the development of new economic powers in Asia and the creation of a multipolar world. In parallel, the EU faces major challenges within the Union itself, such as the crisis of confidence among its citizens, euroscepticism, the lack of unity and solidarity among EU member states, and leaving of one of the member states, and more warnings of the countries to leave the EU.
However, this is not the first time that the EU is facing challenges and a crisis. In the past, there were some periods of crisis that the European Union was facing. In every crisis, EU reformed, changed and adapted to the situation. Currently, Europe is at the turning point and adapts to the new situation, believing that this situation will not limit the future of Europe. Nevertheless, despite all the problems the EU is attractive to many other countries, and in this regard, the challenges facing the EU at the same time are challenges for candidate countries and potential EU candidates.

Key words: affirmation, reach, challenges, crisis, instruments, European Union, changes, mechanisms.

INTRODUCTION

The idea of European unification is not from the new date and it would be wrong to tie it only to the second half of the twentieth century. The desire to create a united Europe was born much before 1945 even in the works of medieval writers, philosophers and politicians. However, until the mid-20th century, such tendencies were unachievable and it was precisely the wars that led to the turning point and the need for new integration and the formation of international relations.
The reasons for the creation of a united Europe were of a different nature, for example, economic, historical, security, and others. After the end of the First World War, the idea of European unification became much more emphasized and got a new dimension. Namely, Europe, destroyed by the long-lasting and exhausting First

[58] University of defence, Military academy – Belgrade, Republic of Serbia, email: berisa.hatidza@gmail.com
[59] University of defence, Military academy - Belgrade, Republic of Serbia, email: vidovicnikola.finance@gmail.com
[60] University of Belgrade, Faculty of security studies – Belgrade, Republic of Serbia, email: milenkodz@telekom.rs

World War, was seeking a way to secure peace for a longer period, with the idea of forming a European peacekeeping organization for the first time. Europe, still burdened with the devastating effects of the war on the one hand, and because of the fear of repeating the destruction of the First World War, on the other hand, creates the League of Nations (founded on January 25th , 1919) as a military pact (Slovic, Zarkovic, 2016 : 247-264).

Europe, under the impression of great warfare and strong national tensions, still was not able to grasp the essence of the idea of European communion. Nevertheless, there was a tendency to approach in a new way the study of the conflict causes and the conditions for establishing peace. Observed as a whole, the idea of a European unified result is the great destruction that occurred during the Second World War, the idea of creating and preserving peace and unification of European states.

EUROPEAN UNION REACH - AFIRMATION OF THE COMMUNITY

The efforts of countries of Western Europe to define certain forms of common interest and co-operation have been multi-motivated. First, after major war destruction, economic reconstruction was necessary and it was considered that as many countries should be involved in this reconstruction process. Secondly, it was necessary to consolidate political, economic and security interests. Of course, economic reconstruction was most needed, and most efforts were made by countries that advocated the idea of European unification.

It took several decades after the Second World War for Europe to begin to consolidate in the security and defense terms. This was influenced by the dynamics of creating more intensive political cooperation, which involved defining a common foreign security and later defense policy. It is known that this process went slowly through economic, and later, political integration. (Dzeletovic, Berisa, 2018: 209-230).

Necessity of economic reconstruction of the countries has been imposed as a priority. The fact that the destruction in some parts of Europe was so huge that the costs exceeded the capacity of the institutions responsible for the financial reconstruction of the ruined countries represented a serious problem. It is interesting to note that the International Monetary Fund (IMF) and the World Bank (WB) that were established before the Second World War ended, were the institutions responsible for the financial reconstruction of the dismantled countries and could not respond to this request. In this regard, there was a need to establish a special program for the reconstruction of Europe. For this reason, in 1947, the "Marshall Plan" was launched with the idea of being a framework for economic reform adopted by West European countries.

New steps have been made towards economic integration, which involved the unification of national economies, the creation of a common market and the development of joint institutions. Then for the first time it happens that sovereign states have voluntarily transferred part of their sovereignty, for example, foreign policies and unified markets to a supranational level. The stronger interconnection for the common overcoming of economic and security threats becomes necessary.

An important step was signing the "Brussels Agreement[61]", which represents the first officially established form of collective defense of West European countries.

GLOBAL INSTABILITY AND CRISIS IDENTITY CRISIS

The fact that EU members move at different speeds in the integration process leads to the conclusion that there are oscillations and inequalities in the accession process. How otherwise can we interpret this fact when we now have the situation of a different and non unitary approach of the leading EU countries towards individual candidate countries and potential candidates in their aspiration and desire to become part of the EU.

Due to development of the financial crisis, serious tensions within the European Union have arisen as well as the danger of breaking the normal functioning of the financial market. Also, due to the strong financial integration of the EU and the easy transfer of the crisis from one country to the other, it was necessary to build a system for ensuring financial stability in the EU and responding with adequate policies. Therefore, it was necessary to establish a special financing mechanism to address these problems. In the context of this, "the European Union and the IMF responded to the crisis by providing a saving aid package for vulnerable countries, so called "umbrella savings'' of 750 billion euros" (Kilibarda, Nikčević, 2011: 19). The package was created with the aim of providing sources of cheaper financing to endangered European Union countries.

In the context of the 2008 global crisis, "Germany is using its economic power to decide on the extent and time limits of painful reforms in the over-indebted member states of the Union." (Zečević, 2016: 34) Leading these experiences the leading EU countries are forced to apply comprehensive measures for overcoming the problem. It was therefore necessary to find new methods by which countries would "be disciplined" in the use of European funds.

Overcoming the economic and financial crisis in the EU implied taking both EU-level measures and measures at Member State level. Characteristically, Member States have intervened to eliminate the effects of the crisis primarily by using internal economic and fiscal policy mechanisms. This meant, inter alia, massive state intervention in order to raise funds for intervention. Hence, the states have issued a large volume of sovereign debt bonds, which has led some Member States to enter the Union with over-indebtedness. Therefore, the resolution of the crisis included both economic policy measures and institutional reforms.

The EU countries have adopted measures of fiscal discipline to reduce debts and deficits, thereby avoiding the repetition of the Greek debt crisis and regaining confidence in the market. In order to be able to understand the financial crisis and properly analyze the implemented reforms, it is important to note that "in the European Union, the gross product in 2009 recorded a decline of 4.2%, and the unemployment rate was 6.9%, in 2007, grow to 9.6% in 2010" (Radosavljević, Vasiljević, 2014: 202). However, "institutional reforms in the European Union and the Eurozone in order to overcome the crisis and eliminate the crisis potential of

[61] *Signed on March 17th, 1948 by five countries: Belgium, France, Luxembourg, the Netherlands, the United Kingdom, with the addition of the Federal Republic of Germany and Italy.*

integration have not changed the existing contradictions of integration." (Samardžić, 2016: 74)

After Brexit and disagreements among EU members around Brexit, there was a crisis in politics within the EU. At the same time, it came to the conclusion that the EU needs to define a further course of action in the field of foreign, economic and security policy. The political and economic effects of UK exit from the EU are felt and are largely negative, both for the EU and for the United Kingdom. The concequences of Brexit is reflected in the fact that EU countries will receive less financial assistance, trade relations and investments are endangered. The EU loses a financially and militarily significant partner that has provided significant funding to European funds and has provided the forces and means to realize the idea of joint EU defense forces to increase security on the European soil and the world. It is estimated that "by 2019, the United Kingdom's annual payment of the Union budget will be 8.5 and 9.5 billion pounds, which is about 0.5-0.6% of GDP"[62].

Alongside economic issues, the rise of migrants in the UK also affects the British public and significantly contributes to the idea of leaving the EU. It was considered that the Brexit will allow greater control over the flow of migrants to Great Britain from other European Union countries.

Another factor that adversely affects is uncertainty in terms of access to the EU. In line with this, it is rightly stated that "the uncertainty regarding the date of accession of the EU leaves room for internal political calculations and creates a sense of disappointment and impetus for constant conditioning in the public, thus increasing the support of citizens for EU accession." (Božović and authors, 2010: 4)

It is also important to note that the EU adopts the EU Enlargement Strategy in the Western Balkans, which defines that EU enlargement policy must be part of a broader strategy for strengthening the EU focused on the specific challenges facing the Western Balkans, especially the need for fundamental reforms and good neighborly relations. The EU enlargement is in line with the aforementioned strategy and includes Montenegro, Serbia, Macedonia, Albania, Bosnia and Herzegovina and Kosovo. On the other hand, Kovacevic points out that "European enlargement policy has gone astray in the sphere of geopolitics and has turned into an instrument of achieving US foreign policy goals, that deciding on the most sensitive issues for citizens has become completely separated from their wishes and demands." (Kovačević, 2016: 13).

In connection with this, a question arises, for example, about the "Constitution of Europe" (Kovačević, 2016: 13) whose proposal was drafted, but never established. Instead of the constitution, in 2009, the European Union got a Lisbon Treaty on the EU. Complex foreign policy and security challenges increasingly affect faith in the ability of the EU to pursue the goals and basic values of the European integration project. Likewise, Europe faces the problems of terrorism, cyber terrorism, the migration crisis, the emergence of Great Britain from the EU, which have a significant impact on both the internal and external policies of the European Union.

[62] BREXIT: *the impact on the UK and the EU*. Global Counsel, June 2015 last visisted 21.04.2018

Transnational threats on the global level could cause instability and conflicts in national states. In such a complex international reality, it is obvious that the security policy of each state in the EU is interdependent. On the other hand, in order to play a more important role in international relations, the European Union seeks to develop, in addition to its already existing economic power, its security function and to promote security identity. At the same time, the EU is aware of its constraints that are reflected in the absence of incoherence, conditionality with multilateralism and complex procedures in decision-making, dependence on internal opportunities and national policies, as well as from the influence of external factors among which the most pronounced, on the one hand, security policy with the USA and NATO, and on the other, energy policy with the Russian Federation.

Changes in the world, which took place at the end of the last and the beginning of this century, were marked by the mass movements of people that significantly influenced the emergence of new challenges in the EU to be addressed. Considering this aspect, the European Union had to find an effective way to resolve the issue of migrants. In an effort to curb and control the enormous influx of migrants into the countries of the European Union, many of its members, due to the lack of a general attitude, have begun to take different measures. The undertaken measures on this plan often not only did not have the desired effect, but also contributed to changing the picture of the democratic status of these countries and pointed to numerous shortcomings of European Union regulations.

The countries of Southeast Europe were trying to speed up the migration of migrants, and any attempt to limit this process was welcomed by strong diplomatic reactions from neighboring countries. This had the effect that relations, in particular between Croatia and Serbia, as well as Croatia and Hungary, were on the edge in the migration of migrants across borders. In this connection, it can be concluded that the refugee crisis has revealed significant shortcomings within the EU. Waves of refugees were a test of the unity of the EU. It show different reactions of the European countries during the migration crisis, and, for example, Hungary inhumanly operated. Whether the migration crisis looks at this point, it is noticed that the European Union's response was very slow, and that the European Union has shown itself not capable of reaching agreement on important issues such as a common migration policy (Dzeletovic, Berisa, 2018).

The refugee crisis was a major challenge for the EU, which is why it is necessary to define a clear EU position. The EU's global strategy foresees "it is necessary to support transit countries through improving reception and asylum capacities"[63]. The EU is seeking a unique approach to tackling refugee issues by directing and other members to tackle the problem by a common strategy. Speaking of European identity and crisis, "for the time being, the only alternative for recognizing the European spirit is to empower the continental identity, which consists of Germany, France, Italy and Spain." (Živković, 2016) To this and many other issues the EU will have to find an adequate response.

[63] Global Strategy for Foreign and Security Policy of the European Union, Ministry of Foreign Affairs of the Republic of Serbia, Belgrade, 2016, p.33.

LONG-TERM VISION AND LACK OF STABILITY

The situation on the international scene is likely to continue to be complicated and unstable in the future, which is why the need for international cooperation is greater than ever. The crisis in Syria, the international refugee crisis, the destabilization of eastern Ukraine by Russia, are just some of the challenges Europe has been facing. In addition, faced with new security challenges and risks such as terrorism, human trafficking, cyber threats or energy dependency, the EU is now facing many responsible tasks.

The geopolitical interests of NATO and EU member states continue to make it difficult to reach an agreement on joint defense and the creation of joint capacities, despite the fact that there are some progress on this issue. There is no doubt that at a time when the United States is increasingly turning to Asia and the Pacific, European countries will have to take more responsibility in ensuring European security. It is certain that in the years ahead, Europe is likely to change its role on the global security agenda. Therefore, the EU builds the institutional capacity to play a greater role in global security issues, which will require the enhancement of military and civilian crisis management capabilities.

Given that the shift in NATO defense policy will significantly affect Euro-Atlantic relations, it is questionable as to how the new NATO allies will adapt to the EU. In any case, the question arises as to whether the joint operations of European allies of NATO will reflect on the security and defense policy of the EU. In addition, there are no guarantees that American and European interests will always coincide. However, "the United States gave a key contribution to the emergence, development and preservation of European integration. Without American military forces, it is likely that no integration would be possible after World War II. "(Proroković, 2013)

In this regard, in order for the EU defense and security policy to be strong and effective, it is necessary to take advantage of the technology and resources of the member states. However, the new factors of instability and security problems, as well as their interactive action, indicate the states on mutual cooperation. The requirement to successfully counter contemporary security challenges and threats calls for the redefinition of the European Union's Common Security and Defense Policy. Of course, this approach to modern challenges and threats implies a significant contribution to the increase of international security. On the other hand, contemporary challenges and threats call for a new role of the European Union's Common Security Defense Policy to be considered.

When it comes to the EU-US security alliance, the fact is that a longer period of time has been set. With the end of the Cold War, a new phase in the development of mutual relations entered into, where a common platform for ensuring international peace and security had to be harmonized. At the same time, "especially in recent history, from the Second World War to the victory in the Cold War, the United States played an indispensable role in preserving European security." (Savić, 2013: 356) It took a longer period of time, experience with crises and armed conflicts the EU would be more determined to create a security and defense policy.

As the only global power, the United States is increasingly acting independently on the foreign policy plan. In such a situation, to a certain extent, EU member states were able to fully follow the United States, however, disagreements were very

rapid. For example, in 1999, all European NATO members supported the initiative to intervene militarily against FR Yugoslavia, while in 2003, when the United States military intervention in Iraq began, only Great Britain and Poland took part in it from European countries. Nevertheless, in shaping European integration, "stable security, economic and military consolidation of Western Europe was also of American interest." (Savić, 2013: 63) It was considered that in this way the United States would determine its position as a world power, while at the same time preventing the creation of another a greater force that could jeopardize its position.

Along with the reduction of security threats to European security in the early 1990s, the issue of a European endeavor for greater autonomy from NATO was accelerated. Guided by this idea, the European Union is making new efforts for a European isolation in the field of defense and security. For example, by signing the Treaty of the Maastricht Treaty on the European Union, there has been an opportunity for a more efficient operation of Europe in the field of foreign and security policy.

One of the key European projects in the field of security and defense is the Common Security and Defence Policy CSDP, which declared a European endeavor for greater autonomy from NATO. This project envisions that the EU should continue to develop capacity for autonomous action to respond to international crises, in order to become independent in relation to NATO. The CSDP leads to certain dilemmas, and even suspicions to NATO, for which the US has requested an analysis of European intentions. The EUSGS clearly articulated the desire to establish military capabilities at its disposal and greater autonomy in European and global security. However, it is difficult to expect that the EU can grow into solid political integration and a military alliance, thus becoming an independent geopolitical player in global terms.

On the other hand, the United States did not fully support the development of the European Security and Defense Policy. The main reason for this was their lack of confidence that is present even today because it was considered that the European Security and Defense Policy would undermine the significance and unity of NATO.

It is evident that the European dilemma between two opinions has been in the relations between NATO and the EU for a long time. On the one hand, it believes that it is necessary to continue cooperation with the United States and that NATO should remain a military force in the European territory. They believe that the EU's Common Foreign and Security Policy should be just a means of strengthening the European role in NATO. On the other hand, the opinion is that it is necessary to build a strong and united Europe, more present and recognizable on the international scene.

This opinion is currently mostly represented by France, Spain, Italy and Belgium. Despite the will to work together and strengthen their own role, the EU has not been able to significantly contribute to greater autonomy. In this regard, Savić rightly observes that "the influence of the WEU on preventing the formation, and later on the regulation of crises in the Balkans (in the former SFRY), at the beginning of the 1990s, was almost negligible." (Savić S., 2013: 103) It is also important to note that in the 1990s, the WEU did not succeed in the conduct of foreign policy when a war started in the Balkans, for example, in 1992, the outbreak of crises in Kosovo and

Metohija and the bombing of the FRY in 1999. In any case, these wars showed profound differences between the United States and its European allies. It is noted that the EU must assume a much greater responsibility for the defense and security of the European continent. Similarly, the European Union must have the capacity for autonomous action, which implies the existence of military forces capable of responding to the challenge and the mechanisms for deciding their use.

One of the more important developments in the modern world is the significant growth of China and EU links. Relations between China and the EU have gained far wider significance than they are economically evolving at such a pace and are at such a level that they become a strategic partnership. Observed from today's angle, "they have already acquired international strategic importance for the 21st century" (David S., 2007: 40) Good relations existed earlier but were not at a level that would allow for meaningful cooperation.

It is noticed that the USA do not support the "strategic partnership" between China and the EU. In the same way, there are different opinions among EU members. One advocates the idea that China needs to develop stronger relations, because China is a political, economic and military force in the world, others are for more moderate co-operation. In any case, relations between China and the EU will develop. On the economic plane, China and the European Union are interested in further development of mutual relations as they are aware of the growth of their geopolitical power. However, there are differences in the interests of the two sides. The main disagreements in their relationship are reflected in the Chinese surplus in trade, the high competitiveness of Chinese products in the EU market, and the increasing presence of China in the Middle East and Africa in the search for energy sources. However, as a whole, the EU is still not ready to move far too far from the United States.

CONCLUSION

At the beginning of the 21st century, the powerful wave of globalization was also affected the armed forces of the most developed countries. The transformation of military units has led not only to significant reductions in military capabilities, but also to a radical change in the role of the armed forces. From the previous orientation to the national defense of its own territory, the armed forces of the leading states are increasingly receiving tasks outside their own space in order to prevent conflicts and crises or stop them. At the same time, the end of the Cold War as well as the collapse of communism in Europe has resulted in the re-examination of the security strategies of most of the powerful powers of the world. This issue was not circumvented by any Member State of the European Union.

In newly emerging international relations, many expected from the EU to fill the interstellar power created by the disintegration of the USSR. In addition, it was considered that the EU could become a new global player in international relations. However, what prevented the EU from playing the role of a significant international player in the early 1990s, and which, to a large extent, is an obstacle even today, is the difference between the expectations and the capacity of the EU. This was best shown in the early 1990s, from the Gulf War to the war in the former Yugoslavia, which the EU could not prevent by diplomatic efforts or military capabilities.

New security challenges and threats also require EU military forces to adapt to these demands. It is noted that the turbulent international scene clearly pointed to the necessary and timely action of the Union in a unique way in order to detect threats and reactions in time. Therefore, despite the long-standing NATO dominance on the international scene, first gradually, and in recent years, considerably stronger, EU member states are beginning to work more intensively on building their own security and defense strategy and policy. Such an EU policy should also lead to the creation of its own respectable and efficient military capabilities that would be able, alone or in alliance with NATO forces, to respond to a series of new security and defense challenges in the modern age. In this context, strategic autonomy is a key issue.

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MORATORIUM AS LEGAL PROHIBITION OF ENFORCEMENT AND SETTLEMENT IN BANKRUPTCY PROCEEDINGS IN LIGHT OF HUMAN RIGHTS

Vanda Božić, PhD, Scientific Associate
Department of Criminal law, Faculty of Law University of Zagreb
vanda.bozic@pravo.hr

Vladimir Kozar, PhD, Associate Professor
Faculty of Law University Business Academy in Novi Sad
kozarv@pravni-fakultet.info

Abstract
Enforcement of payment can occur in two different proceedings. It can occur in both enforcement and bankruptcy proceedings. The distinction between the two proceedings is reflected in the fact whether it is an individual enforcement or a general or complete enforcement. Consequently, such an individual enforcement will be carried out in the enforcement proceedings, while the complete or the general enforcement will be carried out in bankruptcy proceedings. It should be emphasized that one process excludes the other. The enforcement proceedings are terminated by the opening of the bankruptcy proceedings, which for the final and enforcement document has only the consequence of loss of the enforcement power, but not of the validity. By the very start of the bankruptcy proceedings, therefore, from the day of its opening, no enforceable execution can be carried out in order to settle claims for which a writ of execution exists. This is one of the legal consequences of bankruptcy that have been significantly amended and modified by the new Bankruptcy Law of Serbia of 2017, which will be addressed in the paper from a critical point of view. Essentially, the abolition of the moratorium allows the implementation of the enforcement proceedings, which re-establishes the jurisdiction of the public executors for carrying out the execution. A review of the Bankruptcy Law of Croatia will also be given, according to which the very fact that a bankruptcy proceeding has been opened prevents mortgage creditors with separate satisfaction rights from initiating individual enforcement proceedings.

Keywords: *enforcement, bankruptcy, moratorium, prohibition of enforcement and settlement*

LEGAL INSTITUTION OF MORATORIUM IN BANKRUPTCY PROCEEDINGS

Moratorium includes the temporary deferral of debts and constitutes an obstacle to individual enforcement in bankruptcy proceedings. Otherwise, if there is no legal institution of moratorium, compulsory enforcement would only benefit those

creditors with a writ of execution.[64] The moratorium was introduced by the 2004 Bankruptcy Procedure Act,[65] according to which the bankruptcy council can impose protective measures forbidding or provisionally delaying enforcement of the bankruptcy debtor's obligations, including a ban or temporary deferral related to the exercise of the rights of secured creditors - a moratorium.

It is not possible to determine and enforce enforced execution, or any measure of execution, Against the bankruptcy debtor, from the moment of the opening of the bankruptcy procedure.[66] The Institute of the Moratorium means a ban on the execution of individual enforced execution on the assets of a bankruptcy debtor in order to settle an individual debtor. The ban on individual execution in the previous bankruptcy proceedings reduces the possibility of future disputes of legal actions.[67]

It should be emphasized that execution is only possible in relation to bankruptcy estate and costs of bankruptcy proceedings, which is in accordance with the Law on Bankruptcy because all liabilities incurred during the bankruptcy proceedings are the costs of the same procedure, thereby exercising the right of billing priority. Hence, their enforced execution is also possible.

The moratorium protects the bankruptcy debtor in two directions, first giving him the time to consolidate before the debtors begin to collect the receivables, while on the other hand it gives the bankruptcy trustee the opportunity to prepare for the sale of debtor's assets if the proceeding goes in the direction of bankruptcy.[68]

Prohibition of the execution of individual enforced execution on the assets of a bankruptcy debtor may be obligatory and optional. Obligatory prohibition applies by force of law at the day of opening of the bankruptcy proceedings, while an optional prohibition may be determined by the court through a protective measure of the previous bankruptcy proceedings, according to Art. 62, Par. 2, Item 4 of the Law on Bankruptcy.[69]

Moratorium as a term of debt restraint is more related to the temporary prohibition of execution of enforcement on the basis of the protective measure, however in practice it is used for legal prohibition of enforcement. The bankruptcy judge shall, by decision on the initiation of the previous bankruptcy procedure, determine the amount of the protective measure relating to the ban on payment from the bankruptcy debtor's account without the consent of the bankruptcy judge or temporary bankruptcy trustee. Although the rule is that the protective measure is determined simultaneously with the adoption of a decision on the initiation of the previous bankruptcy proceedings, it may be determined by a special settlement after the initiation of the previous bankruptcy proceedings, provided that there are legal

[64] Jovanović Zattila Milena, Čolović Vladimir, *Stečajno pravo*, Beograd, 2007, p. 70-71.
[65] Art. 47. par. 1/4. Law on Bankruptcy, Official Gazette no 84/2004, 85/2005.
[66] Art. 93. par. 1. Law on Bankruptcy, Official Gazette Republic of Serbia no 104/2009, 99/2011, 71/2012, 83/2014, 113/2017, 44/2018, 95/2018.
[67] Kordić J, Zečević Đ, Slović N, Grčić J, *Komentar Zakona o stečaju i nacionalnih standarda*, III, Belgrade, 2013, p. 125.
[68] Dukić Mijatović Marijana, *Vodič kroz stečajni postupak*, Novi Sad, 2010, p. 66.
[69] The bankruptcy judge may prohibit payments from the bankruptcy debtor's account without the consent of the bankruptcy judge or the temporary bankruptcy trustee if, at the time of the decision on the initiation of the previous bankruptcy proceedings, bankruptcy debtor's accounts are not blocked in order to execute the basis and enforced payment orders in the enforced debiting organization.

requirements.[70] Protective measure may be issued by court ex officio or at the request of an applicant for the initiation of bankruptcy proceedings. Protective measure applies until the end of the previous bankruptcy proceedings and the bankruptcy judge can at any time condition them or terminate them.[71] Thus, the protective measure in bankruptcy proceeding introduces a temporary ban on the depositors to exercise their rights in the form of individual enforcement in the enforcement proceedings.

The legal consequences of obligatory and optional prohibition on compulsory enforcement are essentially the same as preventing the execution of individual enforcement on the assets of a bankruptcy debtor in order to settle a claim of an individual creditor.

All nonprivileged creditors of the same order, therefore, creditors whose claims are not secured by the establishment of the institution of the moratorium, were put on an equal footing..[72] In this way, the main purpose of the bankruptcy proceedings has been realized.

OBLIGATORY PROHIBITION OF ENFORCEMENT AND SETTLEMENT IN BANKRUPTCY PROCEEDINGS

Obligatory prohibition of enforcement and settlement in bankruptcy proceedings represents a procedural consequence of the bankruptcy proceedings in order to not disturb the equal settlement of all creditors. In practice, this means that the opening of the bankruptcy proceedings ceases the enforcement procedure, whereby the final and enforceable documents lose their enforceability, while retaining their legal validity.[73] The statutory prohibition of enforcement and settlement includes ordinary bankruptcy creditors, but it also applies to the exercise of rights of secured and lien creditors.

If we compare the Bankruptcy Law of Croatia with the Law on Bankruptcy of Serbia, there is a distinction in relation to the exercise of the rights of secured mortgage creditors. Secured creditors are persons who have a secured right or right to settlement or rights that are entered in a public book and have the right to separate settlement to that item or the right to redemption.

Obligatory prohibition of enforcement in the bankruptcy proceedings, under the Bankruptcy Law of the Republic of Croatia, also appears for secured creditors with the opening of the bankruptcy proceedings, since they are no longer authorized to initiate the enforcement procedure, and the ongoing enforcement procedures that are in progress are interrupted on the day of the opening of the bankruptcy proceedings.[74] The court conducting the bankruptcy proceedings will continue the enforcement proceedings by applying the rules on the redemption of items where there is a secured right. After redeeming items or the right on which there is a secured right entered in the public book, the court will use the amount realized by sale to settle the

[70]Obućina Jasminka, *Odnos prethodnog stečajnog postupka i postupka sprovođenja izvršenja radi namirenja novčanog potraživanja na nepokretnostima*, Pravo i privreda, no 1-3/2017, p. 41-42.

[71] Art. 62. par. 8. Law on Bankruptcy, Republic of Serbia Official Gazette no 104/2009, 99/2011, 71/2012, 83/2014, 113/2017, 44/2018, 95/2018.

[72] Mićović Miodrag, *Privredno pravo*, Kragujevac, 2010, p.138.

[73] See more: Kozar Vladimir, *Komentar stečajnih zakona*, Belgrade, 2010, p. 74.

[74] Art. 169. Law on Bankruptcy, Republic of Croatia Official Gazette no 71/15, 104/17.

following: in the first place, the costs of redemption, in the second place claims of secured creditors in the order that is imposed by the enforcement procedure, while the amount that remains is handed over to the bankruptcy administrator for settlement of bankruptcy creditors.

The amendments to the Law on Bankruptcy of 2017 removed certain errors and ambiguities related to the enforcement. Namely, on the day of the opening of bankruptcy, the existing enforcement proceedings in progress are terminated *ex lege*, while by the conclusion of the bankruptcy proceedings the enforcement proceedings are suspended.[75] The public enforcement officer suspends the enforcement procedure ex officio by a decision if a party, which is a legal entity, ceases to exist, and has no legal successor, and for other legal reasons.[76]

PROTECTIVE MEASURE IN PREVIOUS BANKRUPTCY PROCEEDINGS

Protective measure determined in the previous bankruptcy proceedings is stated in the decision on the initiation of the previous bankruptcy proceedings, which, ex officio or at the request of the applicant for initiation of bankruptcy proceedings, can be ordered by the court.[77] Protective measure, which includes the prohibition of enforcing individual forced enforcement on the property of the bankruptcy debtor, is issued in order to prevent the change of the bankruptcy debtor's assets, the destruction of business documents, and in the event that there is a risk that the bankruptcy debtor will dispose of property and/or destroy business documentation until the opening of the bankruptcy proceedings.[78] If, at the time of issuing a decision on the initiation of a previous bankruptcy proceeding, the bankruptcy debtor's business accounts are not blocked due to the enforcement by the organization that implements the forced collection procedure, the bankruptcy judge may determine the measure of the prohibition of payment from the debtor's account. In this way, a prohibition of payment is prescribed, not a ban on disbursement, provided that the accounts of the debtor are not blocked at the time of the protective measure.

The amendments from 2017 allowed an appeal against the protective measure, which respects the principle of two-sidedness in decision-making because filing legal remedies is permitted. An appeal to the Economic Appellate Court may be filed against the decision through the first-instance court within eight days of the date of publication or delivery of the decision, with the reminder that the appeal does not withhold the execution of the decision.[79]

The Bankruptcy Law of Croatia stipulates that the protective measure, prohibition or temporary deferral of execution may be determined by a decision on the initiation of a preliminary procedure or subsequent settlement. If there are legitimate reasons, the court may also make such a decision before making the decision to initiate the

[75] Art. 93. par. 3. Law on Enforcement and Security Interest, Republic of Serbia Official Gazette no 106/2015, 106/2016, 113/2017.
[76] Art. 129. par. 1. *Ibid.*
[77] Art. 62. p.1. Law on Bankruptcy RS
[78] *Ibid*.
[79] Art. 46. par. 3. *Ibid*.

previous procedure.[80] The court may prohibit the disposition of the debtor's assets, determine that the debtor dispose of the property only with the prior consent of the court or the temporary bankruptcy trustee, it may prohibit or temporarily postpone the determination and/or execution of enforcement or insurance against the debtor and forbid disbursement from the debtor's account. The court may determine the protective measure ex officio, at the proposal of the creditor and at the proposal of the temporary bankruptcy trustee, against debtors and persons who are responsible for the debts of the debtor, but also against the debtor's debtors, provided that there is reason to secure the assets of the bankruptcy debtor.[81]

When it comes to revoking or modifying the protective measures under the Bankruptcy Law of Serbia, at the proposal of secured and lien creditors, apply the conditions and procedures prescribed for revoking or conditioning of legal prohibition of enforcement and settlement, which occurs by the force of law as a result of the opening of bankruptcy proceedings. On the other hand, the Bankruptcy Law of Croatia contains a smaller number of provisions pertaining to the obligation to publish a decision to revoke the protective measure and on the obligations of the temporary bankruptcy trustee who has taken over the bankruptcy debtor.

REVOKING THE PROHIBITION OF ENFORCEMENT AND SETTLEMENT IN BANKRUPTCY PROCEEDINGS

Revocation of the prohibition of enforcement and settlement in bankruptcy proceedings is enabled by the provisions of the Law on Bankruptcy, which provides for three situations. Given that the Law on Bankruptcy does not state in what form a request for termination of a moratorium can be submitted, it can be assumed that it can also be given orally.

One of the reasons for revoking the moratorium is the omission of adequate protection or the reduction in the value of assets, which is the subject of the protective measure.[82] Bankruptcy debtor, or bankruptcy trustee, must ensure adequate property protection so that its value and condition remain unchanged.[83] After the aforementioned has been proven at the proposal of the bankruptcy trustee, secured or lien creditor, the bankruptcy judge shall make a decision to revoke the measure of prohibition of enforcement and settlement in relation to the property that is the subject of protection.

Secured or lien creditors must demonstrate the maturity of the secured claim (partly or wholly) only when submitting the proposal for revoking the prohibition or temporary prohibition of enforcement. It should be noted that it is not necessary to demonstrate the maturity for the revocation of the statutory prohibition of enforcement and settlement since on the day of the opening of bankruptcy proceedings, all creditors' claims against the debtor that have not matured are considered mature.[84]

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[80] From the case law of the Supreme Court, see: Andrija Eraković, *Učinci stečaja na parnični i ovršni postupak likvidacije trgovačkog društva,* p.16.

[81] Art.118.par.5. Law on Bankruptcy

[82] Art 93a. Law on Bankruptcy RS

[83] Art. 93a par. 1. *Ibid.*

[84] Art. 81. par. 1. *Ibid.*

In the basic text of the law, there was no time limitation on the moratorium, but amendments to the law have introduced a nine month deadline ranging from the date of the announcement of the termination of the protective mesure or prohibition of enforcement.[85] By the above mentioned time, the measure of prohibiting the enforcement and settlement in relation to this property will again be established. The adopted amendment gives secured and lien creditors the right to pursue a court or non-judicial procedure for settling their claims from the property under protection, under legal conditions preventing misuse.[86]

The bankruptcy judge may decide on the adequate protection of property that is the subject of a secured right or lien, rather than a decision to revoke the protective measure or the prohibition of enforcement and settlement. The decision can be made by determining one or several measures.[87] Individually specified are the measure of regular cash compensation payments to a creditor with separate satisfaction right, the amount of which is equal to the amount for which the asset value or compensation for actual or foreseeable losses is reduced, the measure of replacement of assents or determining additional assets that will be the subject of the secured right or a lien, in such a way as to compensate a reduction in the value or loss,. measure to pay a part of the income obtained by the use of the assets that are the subject of the secured right or lien to the secured or lien creditor, up to the amount of its secured claim or surrender of funds received by the disposal of these assets, if the assets were misappropriated by the debtor, before or during the previous bankruptcy proceedings, measure of reparation, maintenance, insurance or measures of special property security and other safeguards or other types of compensation for which the bankruptcy judge considers that they may protect the value of the property of a specific secured creditor.[88]

In the interest of preventing abuse, the law has allowed the bankruptcy judge to determine these measures ex officio, provided that a pre-proposal for revoking of the moratorium was previously submitted by authorized persons, secured creditor, lien creditor or a bankruptcy trustee.[89]

The decision on the revoking of the protective measure or prohibition of enforcement or settlement in relation to the property that is the subject of protection for a period of nine months may be made under three conditions: first, that the claim of the secured or lien creditor has matured partly or in full; if the value of the property in question is less than the amount of the secured claim and third, it can only be made in respect of those assets which are not of crucial importance for the reorganization or sale of the bankruptcy debtor as a legal entity.[90] Secured or lien

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[85] Art. 93a par. 2. *Ibid.*

[86] See more: Božić Vanda, Kozar Vladimir, *Ukidanje moratorijuma na predlog obezbeđenog poverioca*, Zbornik radova XXI Međunarodnog naučnog skupa „Naknada štete i osiguranje“ Valjevo 2018, Institut za uporedno pravo, Udruženje za odštetno pravo i Pravosudna akademija iz Beograda, p. 55-79.

[87] See more: Božić Vanda, Kozar Vladimir, *Neovlašteno otuđenje imovine u stečajnom postupku s aspekta krivičnopravne i građanskopravne odgovornosti*, Collection of Papers, Faculty of Law for Commerce and Judiciary, Novi Sad, 2017, p. 249-260.

[88] Art. 93.a. par.3. Law on Bankruptcy

[89] Amendments suggestion to the Law on Bankruptcy - III available at: http://www.parlament.gov.rsavailable at: *http://www.parlament.gov.rs*, (04.02.2019.), p. 35.

[90] Art.93.b. Op.cit. in note 25.
see also op.cit. in note 28., p. 35.

creditors must prove that their claim, which is secured by a secured right, has matured either partially or in full and must enclose an appraisal of the value of the property that is the subject of the secured or lien right. Proving the maturity of claims is not necessary for revoking of legal prohibition of enforcement and settlement since the maturity of the outstanding claims against the bankruptcy debtor is a legal consequence of opening of bankruptcy proceedings on the claims.
If the bankruptcy trustee proves that the property in question is of crucial importance for the reorganization or sale of the bankruptcy debtor as a legal person, the bankruptcy judge can not decide on revoking of the protective measure or the prohibition of enforcement and settlement.[91] This provision is subject to criticism in terms of *modus operandi* proving by the bankruptcy trustee that the assets in question are of key importance for the reorganization or sale of the bankruptcy debtor as a legal person, from the angle that the bankruptcy trustee's interest is entirely contrary to the interest of the secured creditor. Therefore, proposed was a legal amendment to prove the aforementioned circumstance on the basis of an expert's assessment.[92]
The amendments to the Law on Bankruptcy of 2017 enabled the secured and lien creditor to realize their claims through enforcement proceedings under two conditions, first, that the value of the property is less than the amount of the secured claim and second, that the property in question is not essential to reorganization or sale of the bankruptcy debtor as a legal entity.
The bankruptcy judge decides on revoking of the moratorium within 15 days from the date of receipt of the proposal.[93] The same paragraph of the Law on Bankruptcy regulates the procedure upon receipt of a proposal to revoke the moratorium. If the judge terminates the protective measures or prohibits enforcement and settlement, a notice of revocation is published. The costs are borne by the proposer and must be paid after court's decision, otherwise the proposal is rejected. An appeal against the proposal to revoke the moratorium may be filed by the bankruptcy trustee, the board of creditors and the secured and lien creditor. The bankruptcy trustee shall not have the right, in any way, to dispose of the property that is the subject of the settlement, including leasing and burdening the property.

REESTABLISHING THE PROHIBITION OF ENFORCEMENT AND SETTLEMENT IN BANKRUPTCY PROCEEDINGS

Reestablishing the prohibition of enforcement and settlement, as well as the legal consequences of failure to liquidate assets by the secured and/or lien creditor within the prescribed period, was introduced by the amendments to the bankruptcy legislation in 2017. The bankruptcy judge is obliged to declare ex officio that the measure of prohibition of enforcement and settlement in relation to the property which is the subject of a decision to revoke the protective measure, i.e. the prohibition of

[91] Art. 93.b. par. 2. Op.cit. in note 25.
[92] Comments and suggestions on Amendments proposal to the Law on Bankruptcy available at: https://www.amcham.rs/upload/Zakon%20o%20stecaju%20-%20AmCham%20komentari%20(final).pdf (10.01.2019.)
[93] Art. 93.v. Op.cit. in note 25.

enforcement and settlement, which the secured or lien creditor has failed to monetize, is reestablished *ex lege*.[94] This solution is of a declarative nature.
The bankruptcy judge shall, at the proposal of the secured or lien creditor, if it is submitted before the expiration of a period of nine months, extend the deadline for the liquidation of assets once for a duration of three months. It is required that the secured or lien creditor provides evidence that within the framework of the liquidation procedure a notice was published for the sale of property that is subject of the decision to revoke the protective measures, i.e. prohibition of enforcement and settlement.[95] When the decision becomes final, the bankruptcy trustee acquires the right to sell and dispose of the property. Within 8 days from the date of the publication of the decision to reestablish the prohibition of enforcement and settlement on the notice board of the court or from the date of delivery of the decision to the participants in the proceedings, an appeal to the Economic Appellate Court is permitted through the first instance court.
The bankruptcy judge issues an ex officio decision which finds that a measure prohibiting the enforcement and settlement is reestablished, if the secured or lien creditor fails, within nine months of the final judgment, to liquidate assets that are subject to the decision on the revocation of the said measures.
The law only prescribes the reestablishment of a measure of prohibition of enforcement and settlement (protective measure from previous bankruptcy proceedings). If a secured or lien creditor proves that the settlement procedure from the secured property has begun, the period may be extended for an additional three months. Published sales adverts are considered as a valid proof. By the above mentioned procedure, the bankruptcy proceedings were significantly relieved and the costs of bankruptcy proceedings were thus reduced.
The bankruptcy trustee, after nine or twelve months, continues to monetize the property to which the decision to revoke the protective measure or the legal prohibition of enforcement and settlement has been applied, thus preserving the principle of urgency of the bankruptcy proceedings. By opening the bankruptcy procedure, the secured creditors maintain the right of priority settlement from the secured assets, which is in accordance with EU Directive 1346/2000 of 29 May 2000 on bankruptcy proceedings.[96] The said Directive recognizes the right of secured creditors to separate settlement from the value of the secured property.[97]

LIQUIDATION OF ASSETS THAT HAVE A SECURED RIGHT ACCORDING TO THE BANKRUPTCY LAW OF REPUBLIC OF CROATIA

According to the Bankruptcy Law of Croatia,[98] the sale of real estate and movables where there is a secured right is governed by the rules of enforcement procedure (execution procedure) if the bankruptcy trustee at the reporting hearing did not otherwise determine the manner and condition for selling the assets of the bankruptcy debtor. The rules of the suspension do not apply.

[94] Art. 93.v. *Ibid.*
[95] Par.2. *Ibid.*
[96] Council Regulation (EC) No 1346/2000 of 29 May 2000 on insolvency proceedings
[97] Op.cit. in note 25. p. 36.
[98] Art. 247. i 249. Law on Bankruptcy, Republic of Croatia Official Gazette no 71/15, 104/17.

The following apply cumulatively to the implementation of the sale by electronic public auction: Execution[99] and Bankruptcy Law, the Ordinance on the Manner and Procedure for the Implementation of the sale of Real Estate and Movable Property in the Enforcement Procedure, the Ordinance on Amendments to the Ordinance on the Content and Manner of Keeping a Record of Real Estate and Movable Property Sold in the Enforcement Proceedings, Ordinance on the Types and Amount of Fees for the Execution of Real Estate and Movable Property Sales in Enforcement Proceedings.[100]

The Bankruptcy law of Croatia has a certain similarity with the Bankruptcy Law of Serbia, but in certain cases there is a distinct distinction in the process of exercising the rights of secured creditors regarding the prohibition of enforcement and settlement as a legal consequence of opening bankruptcy proceedings.

According to the bankruptcy law, enforcement proceedings are continued by the bankruptcy court according to the rules on liquidation of items where there is a secured right in bankruptcy proceedings. Secured creditors exercise their right to separate settlement in bankruptcy proceedings, in accordance with legal provisions.

Real estate for which there is a secured right is sold in a bankruptcy proceeding, at the suggestion of a bankruptcy trustee or a secured creditor, by applying the rules of enforceability of the execution of the property.[101] The Court decides on the sale of the real estate by a resolution against which the bankruptcy trustee and secured creditors have a right of appeal, while the conclusion on the sale determines the value of the property, the sale method and the conditions of sale.

It should be pointed out to the content of the conclusion that is not quite clear enough. Namely, the party in the proceedings is not even aware of the fact that their real estate is sold, they are not acquainted with the manner in which it is being sold, do not know who bought the property and are not informed about the deadline in which, after purchase, the real estate needs to be vacated. Note of the real estate sale decision is entered in the land register.

By law, instead of the court, the financial agency (FINA) sells real estate through a public auction, electronically. It should be emphasized that FINA is not authorized to determine the value of the property that is the subject of sale, so it raises the question which institution may set its price on its behalf.

Also, the question arises whether FINA has the authority to sell the property through a public auction, because in fact, FINA as an institution does not exist in EU countries.

The bankruptcy law regulates the protection of creditors from delays with liquidation, in such a way that the creditor is entitled to interest on the bankruptcy estate, which runs from the reporting hearing.[102] This provision shall not apply if, according to the amount of the claim and the value of other charges for the item, the creditor could not be settled from the proceeds. The interest rates begin to run no later than three months after the measure is ordered, if the situation arises that the

[99] Execution Act, Republic of Croatia Official Gazette no 112/12, 25/13, 93/14, 55/16, 73/17.
[100] Ordinance on the Types and Amount of Fees for the Execution of Real Estate and Movable Property Sales in Enforcement Proceedings, Official Gazette no 156/2014.
[101] Art.247. p.1. Op.cit. in note 35.
[102] Art.252. *Ibid.*

creditor may be prevented from liquidating the item before the opening of bankruptcy proceedings. The bankruptcy trustee may liquidate a movable property in its possession if there is a secured right on it, by applying the rule of enforceability or by free settlement.[103]

INSTEAD OF CONCLUSION

The legal institute of "moratorium" in bankruptcy proceedings is a prohibition of enforcement of individual forced enforcement on the assets of a bankruptcy debtor in order to settle claims of an individual creditor. Revoking of the moratorium allows the implementation of the execution procedure, and again reestablishes the jurisdiction of a public enforcement officer for enforcement of execution. The moratorium can occur in two situations. One of them is mandatory, while the other is optional. On the day of opening of bankruptcy proceedings, as a procedural legal result, obligatory *ex lege* prohibition sets in, while the optional prohibition applies when the court in the previous bankruptcy proceedings ordered a protective measure that contains such a prohibition.

It should be emphasized that the *term moratorium* is more properly used to designate a temporary ban on execution based on the protective measure, although the legal consequences of the protective measure and the legal prohibition of compulsory execution are the same because it also prevents the execution of individual enforcement on the assets of the bankruptcy debtor, with the aim of settlement of individual creditor's claims. As a result of the protective measure, the *debts remain dormant* until the proposal for opening a bankruptcy proceeding is decided.

The amendments of the Law on Bankruptcy of Serbia of 2017 (Articles 93a, 93b, 93b, 93g) introduce a completely new model under which secured debtors are entitled to independently execute the process of individual settlement of their receivables from the pledged property. The individual settlement of secured debtors is allowed within nine months after the moratorium has been lifted. However, if they do not utilize this right, they may submit a proposal for extending the deadline, otherwise their individual dispensation will be denied.

According to the Croatian Bankruptcy Law, secured mortgage creditors can not initiate an individual executive procedure since the opening of the bankruptcy proceedings.

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THE RELATIONSHIP OF FOREIGN POLICY OF THE ADMINISTRATION OF DONALD TRAMP TOWARDS THE EUROPEAN UNION

Sasajkovski Slavejko
PhD in Social Sciences, scientific adviser and full professor at the Institute for Sociological, Political and Juridical Research, Ss. Cyril and Methodius University in Skopje, The Republic of Macedonia,
bilbilef@isppi.ukim.edu.mk
-
Micanovska Ljubica
Graduated sociologist, micanovskaljubica@gmail.com

Abstract
The most general and essential essay must be very strongly underlined that the foreign policy of Donald Trump's presidential administration is firmly placed on the premise of sovereignty, just as it is defined in the framework of the Westphalian international order. Subjects of international order (legal, political, economic and any other) are the states, the Westphalian states-nations with their Westphalian sovereignty. In this sense, it is not allowed to establish and impose any supra-states and supra-sovereign entities with their original competences and functions as subjects of the international order, set up and functionalized in a certain parallel with the states-nations and their sovereignty. However, Trump's foreign policy accepts the existence and mandate of the UN given in the UN Charter, but as long as they do not confront with the US state and national interest, just as that interest is defined by US foreign policy. Trump's foreign policy, as a rule, does not want to develop any relationship with the EU institutions, although after a long time the United States appointed its ambassador to the EU, but as a rule wants to establish and develop relations on a strictly bilateral basis with EU member states, relationship that will fully accept and respect the American state and national interest.

Key words: Donald Trump; Identity of the European Union; US foreign policy; Sovereignty; Global international order; Doctrines of George Kennan and Paul Wolfowitz; Aachen Treaty and Piketty manifesto.

INTRODUCTION

Until President Trump's election as US President in professional, expert and scientific researches on US-EU relations, and in particular in relation to the place and role of the EU in US foreign policy, the central place at institutional and political level produced serious problems was the question on the institutional and political build-up and completion of the EU. Kissinger very strongly demonstrated this problem with the rhetorical question about the EU's foreign policy telephone

number. Who is the number to be telephoned to discuss with EU foreign policy holders and reach an agreement on some important issues and challenges from the framework of international relations. This conclusion is basically valid both for the Democratic and Republican presidential administrations and for their foreign policies. Of course, the fundamental point of US foreign policy throughout the post-World War II period in relation to Europe and the European unification through all phases it has been through is the geostrategic necessity to establish a highly efficient and effective control over the region of Europe that was part of "The free world". In any case, from its very beginning, the EU had a very important place and role in the multilateral dimension of US foreign policy, of course, as much as the multilateral dimension of foreign policy was important and relevant to the particular foreign policy concept of a presidential administration. With Trump's selection, a significant turning point occurred. The lines that follow in this text focus precisely on this a turn in US foreign policy.

MULTIPOLARITY

The most relevant characteristic of global international relations and their structure and constellation of total social power (political, military, economic, technical-technological, cultural, informational-propaganda) must be established. The global world order is not more unipolar, like the one proclaimed by J.H.W. Bush in September 11,1990, with the United States and their exclusive state and national interests as the only thorough axis of founding and building a global order of power. In this place, surely, the most credible scientific and expert references are the two coryphaeus of the American foreign policy thought-Kissinger (2014) and Brzezinski (2011).

They were antipodes in almost every way-thought, theoretical, ideological, political... Kissinger is a prominent realist and pragmatist who, as a national security adviser and as a state secretary, created and implemented a concept of foreign policy at the time of presidential administrations of the R. Nixon and J. Ford (in the period 1969-1977) placed strictly precisely on the principles and premise of realism and pragmatism and whit decisive deflation of all ideological determinants as limits of skill and ingenuity to creative solve the most difficult problems that US foreign policy faced as a major challenge. Essentially, in contrast to Kissinger, Brzezinski was a prominent ideologue, who on the basics of political, economic and cultural liberalism, as a national security adviser in the presidential administration of J. Carter (1977-1981), essentially influenced the setting and implementation of american foreign policy on the basis of the principles and premises of a liberal ideology, primarily on basis of the liberal, that is, the american concept of human rights. That concept then became the standard, criterion and measure of US foreign policy. It was the concept of a certain introduction of ethical principles as the basis for the creation and implementation of US foreign policy. Certainly, these were concrete ethical principles through which, in reality, in the most obvious way, the overall complex of conceptual perception and understanding of the concept, essentially defined as the values of American society, as well as its corresponding ideological matrix was manifested, reflected and diffused globally.

All this elaboration is really needed to reinforce precisely the scientific, expert, ideological and political credibility of the point that is being followed. Namely, both Kissinger and Brzezinski, independently of one another, each other, so, two such antipodes as previously described, came to a single conclusion. That conclusion, as its core, has the conclusion that contemporary international relations, the contemporary structure and the constellation of global power, are not unipolar, but are multipolar. Multipolar structure and constellation of power, which is essentially shaped by the global power triangle US-China-Russia. Kissinger and Brzezinski agree that The United States is still the only global superpower, that China and Russia are global powers, with the Chinese overall social potential to become a global superpower and with insufficient social potential of Russia to become a global superpower, primarily because of the clear structural weaknesses of its economy. The multipolarity of contemporary global internationally relations is primarily and essentially contained and manifested through the fact that the United States on the basis and within the framework of the global structure and constellation of power is no longer able to establish long-term stable and sustainable global and regional geopolitical and geoeconomic orders of social power laid on the foundations of their exclusive state and national interests, that is, by denying or marginalizing some other state and national interests (for example, Chinese and Russian). Of course, this multipolar global order of power means that other global powers (primarily China and Russia), most realisticly seen, are unable to, have no power to establish exclusive their global and regional geopolitical and geoeconomic orders of social power, i.e. orders that will not respect American state and national interests. This is the general international framework of social power, which is noted by Kissinger and Brzezinski, who, by virtue of its immanence, should firmly determine the future necessary political moves of American foreign policy. In this sense both Kissinger and Brzezinski come to the position of Kissinger's and Nixon's doctrine concerning the US's policy towards China and Russia. Namely, just as at the beginning of 1970, America succeeded in establishing a strategic agreement with China to isolate the then USSR and to prevent an alliance of China and the USSR against the United States, so now the United States must make an appropriate strategic agreement with Russia to prevent forming a union of China and Russia against US interests. Because China is the real opponent and challenge of the United States and not Russia, Russia has no overall social potential to become a global super power and a global real rival to the United States, such a potential is unique to China. The United States must disable geostrategic axis Beijing-Moscow and then have to prevent that axis from developing into the geostrategic line Beijing-Moscow-New Delhi-Brasilia-Ankara-Tehran. The easiest way to prevent such a geostrategic structure and constellation of power versus the hegemonic global power of America is to reach a geostrategic agreement with Russia, and only then the United States to enter a geostrategic match with China.

GEOSTRATEGIC FOCUS

Trump, in his campaign for the Republican presidential nomination, clearly accentuated his main and strategic foreign political operation and activity precisely in this direction, with this goal, with this vision, with this sense and with this

thorough rationalization-achieving strategic an agreement with Russia and cutting off the line of a possible strategic partnership between China and Russia versus the current position of the United States as the only global super power. Trump's fundamental problem consists in his treatment as an outsider by the Washington establishment, not only from a Democratic, but also from a good part of the Republican. Trump in the pre-election campaign clearly demonstrated his hostility to the Washington establishment. For this establishment, Trump's declared strategic political positions towards Russia are obviously the basis for attacking, limiting and blocking the achievements of the goals of the Trump's presidential administration, with regard to all individual presidential policies. The brutal exploitation of Trump's completely normal and necessary contacts, especially during the pre-election and election campaign with the then Russian ambassador in Washington, has the strategic goal of blocking the achievement of Trump's ideological and political commitments. In the United States today, a huge flame of phobia and hysteria toward Russia has burned, a flame that should help achieve the goals of the Washington establishment in relation to Trump's presidential commitments, including perhaps in relation to his presidential status. But on the other hand, a thesis that goes in the direction of focusing on the possibility of a spiral of depression of US-Russian relations can lead to a dramatic situation when the question of whether there is any rational factor (individual, group, party, corporate ...) in the United States who really wants a direct war with Russia. And then, exactly then, the geostrategic, political and diplomatic point of which will lead only one rational path, the path of reaching a compromise strategic agreement with Russia, will actually be achieved. Only at the moment when this geostrategic, political and diplomatic point is reached it is very likely that the Washington-Moscow bilateral exchanges will be transformed into a Washington-Beijing-Moscow triangle. It is certainly geostrategic, political-diplomatic and political-economic development that does not favor US strategic state and national interests, because of the very likely alliance of Beijing and Moscow in relation to the Washington position of the single superpower. Or, perhaps, in that geostrategic moment China will actually be the second superpower, whose strategic state and national interest will be the key determinant of the global structure and constellation of power (Sasajkovski 2018).

At this point, it is necessary to briefly recall and elaboration two doctrines from the history of the American foreign policy-the doctrine of George Kennan and the doctrine of Paul Wolfowitz. This should be done because there is a very strong and direct connection with the current determinations and tendencies of US foreign policy, both in terms of policies towards Russia and in terms of the commitments of unilateralism.

George Kennan was an ambassador to the former USSR, quite shortly in the time of President Truman, that is the period May-September 1952, later during President Kennedy's was ambassador in the former SFRY, in the period May 1961-July, 1963, but most importantly Kennan with his work unequivocally earned the membership of the Wise Men of American foreign policy-primarily based on his work at the Institute for Advanced Study from 1956 until his death in 2005 at the age of 101. Kennan with his text "Long Telegram" in 1946 and then in 1947 with the text "The Sources of Soviet Conduct" in reality defines and establishes the basic

postulates of Truman’s Doctrine. In these two texts, Kennan stands firmly on the point of view of the expansive nature of the USSR and therefore the United States should contained this expansionism, including ideological expansionism, not to spill over into the geopolitical spaces that are vital to US state and national interests. But, at the same time, this is very important and this is the reason for Kennan's abandonment of the State Department (first, President Truman gave up the use of Kennan's advice, just as the future President Eisenhower did not respect his opinion), was returned to the State Department by President Kennedy, Kennan insisted that no offensive measures be imposed on the USSR as long as he respects the bloc's division and spheres of interests between the western and eastern bloc. Even more than that, Kennan clearly insisted on an inevitable dialogue with the USSR in order to preserve the bipolar global order of power, to preserve the existing spheres of interests of the two blocs, not to ideologize the existing global order, not to lead ideologized international policy and not to undertake offensive actions for changing the social system, social order, political system and ruling ideology of the USSR and the Eastern bloc. Kennan considered that with the USSR, regardless of ideological exclusivity, based on a real international policy of the United States, it is possible to create and establish policies of interstate relations with the USSR and the eastern bloc aimed at maintaining the then existing bipolar order of global power, order who will accept and respect the vital interests of the United States and the USSR. This is the fundamental and essential point of convergence of Kennan's position with the position of Kissinger-ideological differences must not limit the reach of actual international policies. In this regard, Kennan's consistent standpoint regarding the policies of the United States towards Russia after the fall of the bipolar order must be emphasized. Kennan then insisted on the need for the United States not to demonstrate triumphalism, to see that Russia is not an ideological opponent of the United States as it was previously the USSR, and the United States to reach an agreement with Russia that respects its fundamental interests, just like the fundamental interests of the United States, which will be stable, sustainable and peaceful. That's why Kennan was an opponent of NATO enlargement, arguing that there is no geostrategic necessity for this, and that this expansion will turn the new Russia into a wounded bear why will soon wake up from the winter dream, accumulates strength, energy and resources, strongly through a set of diverse policies will move towards the re-establishment of a bipolar or multi-polar global order of power. Kennan thought it was a great achievement that the new Russia, in the time of Gorbachev, allowed the unification of Germany. In any case, according to Kennan, the United States must respect the dignity and honor of Russia, because this, ultimately, is the interest of the United States, an interest emanated through the establishment of a peaceful and stable order of global power.

Paul Wolfowitz's doctrine essentially emphasizes the power of the United States as the only global superpower and focuses and defines the determinations and orientations of US foreign policy directly placed on the basis of such a global position of the United States as the only superpower in a world of unipolar structure and constellation of power. Wolfowitz was in reality the main neo-conservative ideologue of US foreign policy during the first presidential term of G. W. Bush

(2001-2005), then when the enormous factual power in the United States had a double Richard Cheney (practically unanimous are the opinions and estimates that he was the most powerful vice president of the United States)-Donald Rumsfeld (as a radical and militant "hawk" of the position of Defense secretary). The main parts of this doctrine are the status of the United States as a super power, the primacy of the United States, unilateralism, preventive interventions, Russian danger, and problems in the Middle East and Southwest Asia. However, in the scientific and political public, as well as in the wider public, two key determinants of this doctrine that most strongly marked US foreign policy in that period are the determination of unilateralism and preventive interventions (military, as a rule and by definition). These two issues are emanated by underlining the need for the United States not to accept the position and role of a world policeman and not to take responsibility for resolving any international security problem. But, at the same time, the United States must not allow their key state and national interests to depend exclusively on international mechanisms that can be blocked by countries with completely different interests from US interests. On those geopolitical positions and when the interests of the American allies are directly affected, the United States must take an appropriate part of responsibility, and in some cases to play a leading role. In any case, the United States must, in accordance with its own state and national interests, strictly to select international problems where it will intervene (Paterson 2018).

The presentation of these two doctrines is for the sole purpose of a very obvious way to elaborate two extremely relevant and influential fundamental verticals of American foreign policy thought. These two fundamental verticals in a certain way many images demonstrate the professional, expert and scientific framework in which the most vital discussions and reflections on US foreign policy take place, a framework in which the issue of the structure and nature of the foreign policy of the presidential administration of Donald Trump is placed.

THE CONCEPT OF TRUMP'S SOVEREIGNTY AND THE ATTITUDE TOWARDS EU

Talking *Inmedias res*: Trump is a fiery and the position of the concept of sovereignty generally shaped through the Westphalian international order. The Trump's concept is most closely related to the subject of this text-the relation of its foreign policy towards the EU. Trump accepts the concept of international relations and the global order of power whose subjects are states/states-nations, of course together with their sovereignty, as defined by the Westphalian international order. According to Trump, subjects of international order and relations within that international order are not international organizations as supra-state/supra-sovereignty entities that have their original jurisdiction independent of the sovereign rights and jurisdictions of the states/states-nations. According to Trump, international organizations have their own jurisdiction exclusively only on the basis of interstate multilateral agreements completely voluntarily concluded by sovereign states-nations, they work exclusively in favor of the states-nation that created them, they are responsible to their founders, that is, the states-nations, and ultimately exist as long as they are benefical states-nations that have formed them. By referring to this concept, Trump conceived the US to leave UNESCO, such as the UN

affiliation, to come out of the UN Human Rights Committee, and this concept is also a reference to the US relationship with the International Criminal Court–the US denies its responsibilities when their application is not in their favor (Curran 2018).
So, it is quite clear why for Trump it is unacceptable the existence of the EU as a Union (union *sui generis*) with a developed organizational-institutional, ideological, political and administrative-bureaucratic structure that pretends to have original sovereign jurisdiction (European treaties with constitutional and legal power over constitutional and legal orders of the member states) and to be the subject of international legal, political, economic and any other sort of order.
At the same time, the EU, at least declaratively, is a strong идеологицал union, with an ideological matrix (ultraliberal), which pretends to be even a system of values, and which is contrary to the ideological determination and the Trump's system of values (Shapiro 2017).
The seriousness of the EU problem, that is, building and implementing relations with it, is that the EU has not formed its precise, clear and consistent organizational-institutional and political, including foreign political, identity. It is in reality a union only through its monetary union and in a certain sense through the common agricultural policy. Regarding other policies, genuine political and ideological wars are permanently leading between the blocs of member states or individual member states with the political and administrative bureaucratic structures in Brussels (Ritter 2006).
In this context, it can be noted that in the last couple of months two interesting documents appeared that aim at a certain precision of the future organizational-institutional and political setup of the EU-Aachen Treaty between Germany and France (as a continuation and upgrade of the Elysee Treaty from 1963) and the Thomas Piketty Manifesto.
The Aachen Treaty, emphasizes the role that Germany and France have in raising the level and quality of the EU's total capacities, and at the same time, this determination is specified in a certain way by defining the basic tasks of the two Member States of the Union in relation to the axiological, the ideological, political and military structure of the Union: reaffirmation and consolidation of liberal values and liberal ideology, the Union as a relevant global security, political and diplomatic factor, forming a military component of the Union/European Army, pointing out that it will not be an alternative to NATO. Also, the Treaty states that a German-French economic zone will be formed. But it this place it must emphasized that the establishment of this zone is only possible if the neo-liberal/market-fundamentalist reforms of Macron succeed.
As for the Piketty Manifesto, it should be emphasized that in reality Piketty (the author of the spectacular and capital economic, economic-sociological and economic-historical work "Capital in the 21st Century") was the leader of a larger team of academic authorities, primarily from France, as a rule (expressed) leftists and Keynesians, a team created this manifesto with the final title "The Manifesto for the Democratization of Europe". The essence of the manifest is contained in defining its role and its goal as a concrete plan for the democratization of European institutions and policies in the direction of greater fiscal and social justice and in the direction of productive resolution of the urgent environmental and migration

problems of Europe. As a paradigmatic determination and goal of the manifest, the determination to form a budget for long-term investment in public goods can be emphasized in order to overcome social inequalities in the Union and ensure continuous implementation of the authentic political model for social, just and sustainable development of Europe.

So, in the global thematic framework of this text, as the foreign policy of Trump's presidential administration is defined as above, in any case as a priority, if it must already face a multi-polar global order of power and accept him as a reality, then, on the other hand, must provide a unipolar order of power in, as a paraphrase of Hattington, the Western Hemisphere, Western civilization, of course with the United States and their state and national interests as the only pole on structure and constellation of total social power. In this sense, US foreign policy must not allow the EU, or Germany, or France, or any Berlin-Paris axis to be established as a pole of power within the Western Hemisphere, thus destroying the US unipolar hegemony in this geostrategic, geopolitical, and geostrategic space. Also in relation to this area of Europe, that is, the EU, the US foreign policy must not allow: the successful realization of the Eurasia project, the successful realization of the De Gaulle project Europe from Atlantic to the Urals, the successful implementation of the geostrategic, geopolitical and geoeconomic understanding of the de Gaulle-Adenauer tandem, possibly now reaffirmed and revitalized through their successors, successful reaffirmation and revitalization of the Molotov-Ribbentrop pact through a new German-Russian pact (Wright 2017). Regarding German-Russian relations, one must not forget the explicit statement by Bismarck that Germany must find a geostrategic, geopolitical and geoeconomic basis and an appropriate way of agreeing with Russia, and that Germany never at any price should not go to war with Russia. Germany must not make war against Russia not only because of the power of concrete determinants and factors of mutual constellation of military capacity and potential, but even more because of the real compatibility of their state and national interests against the same interests of their European rivals (Dumont 2013). And precisely because of this fact, the project of European unification has begun, a project that today is specifically legal, ideologically, politically and economically materialized through the EU as it really exists at the moment.

CONCLUSION

The foreign policy of Donald Trump's presidential administration towards the EU is fundamentally and essential defined by the global structure and constellation of total power that are no longer unipolar but multipolar. The US really are still the only global superpower, but are in a downturn cycle. The PR China has realistic overall social predispositions to be a new global superpower, while Russia is not in such a position, primarily due to the structural weaknesses of its economy. In such global geostrategic, geopolitical and geoeconomic circumstances, the United States must preserve the unipolar structure and constellation of power within the Western world, the western hemisphere, the Western civilization. This inevitability of US geostrategic, geopolitical and geoeconomic foreign policy determinants is the foundation on which US foreign policy is being built and implemented towards the EU. In any case, the current multi-polar structure and constellation of power

inevitably directs US foreign policy towards the position of creating conflicts across the whole of international relations, in order to create some sort of chaos in international relations, a chaos that must be controlled chaos in the period while the United States is superpower, and as such it will inevitably have to be overcome by direct involvement of the United States and by respecting their state and national interests. Just like the Russian and Chinese state and national interests, as well as the state and national interests of individual regional geopolitical and geoeconomic entities and factors. But not in the geostrategic, geopolitical and geoeconomic western hemisphere, which must remain with an American unipolar structure and constellation of power. The hopes of US foreign policy are necessarily aimed at the possibility of resolving global chaos to gain more than it now possesses in the current global order of power. Theoretical, but and real, the US can get something they do not own right now, but also the US can lose something that they possess at this present moment of structure and constellation of the global order of power.

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THE ROLE OF THE MULTI-DIMENSIONAL APPROACH IN JUVENILE JUSTICE SYSTEMS

Associate professor Marija Kotevska Dimovska, PhD
Goce Markoski, PhD

Abstract
The juvenile delinquency is a worrying phenomenon that leads to a need for a multi-dimensional approach in order to ensure a balance of the general principles of juvenile justice: a welfare model focused on the child's needs for diagnosis and treatment, versus the "justice" model that emphasizes the responsibility and punishment. This paper describes potential contributions of the psychology in the law, with an emphasis on psychological assessments, advisory and psycho-therapeutic approaches, and other psychological services for young people in the juvenile justice that can lead to more effective decisions for young people. In the developed countries in the world where a philosophy of well-being involving legal and psychological therapeutic interventions is adopted, the approach has proved superior and significantly associated with reducing the recidivism of juvenile delinquency, compared to punitive approaches in other countries with inadequate legal frameworks and a lack of specialized workforce. The role of psychological knowledge and approaches can help bring the juvenile justice which is for childrens well being and provides a more effective solution to this social phenomenon.

Keywords: *law, psychology, juvenile delinquency, recidivism.*

INTRODUCTION

Juvenile delinquency is a bothering phenomenon that leads to the need for a multi-dimensional approach, in order to provide a balance between the basic principles for a minor justice and to make a good model of goodwill. This model focuses on the needs of young person to detect the psychological diagnosis and giving a treatment, to overcome the model of "justice" which emphasizes responsibility and punishment. This paper describes potential contributions to psychology in the law, with emphasis on psychological theories, as well as appropriate and psychotherapeutic approach and other psychological services based on these scientific theories, which can lead to high-quality decisions for young people.

In developed countries where a philosophical philosophy has been adopted for a good state of affairs, which encapsulates legal and psychological therapeutic interventions, the approach is superior and significantly breed with the recidivism of juvenile delinquency, in comparison with criminal appeals in other countries with imprecise legal frames . The role of the psychological knowledge and attitudes can help to get closer to the juvenile justice that is a good-neighbor of children , and it gives a high level of response to this social phenomenon.

DEFINITION OF THE PHENOMENON JUVENILE DELIQUENCY

Under the juvenile delinquency various reluctances are made to a minor from ill-adapted to criminal. Different terms are used for this phenomenon, such as: education negligence, asociality, social disadvantage, juvenile delinquency. The delinquency is a legal term for those who would be bothered by the criminal offense they would be cared for, as well as reluctance to bribe the children, but not in maturity - abuse of alcohol, escaping from home, etc .The delinquency is a whole matter with which the legal norms defining how to bargain parts are violated: counterfeiters, economically and disciplinary criminals. The term of delinquency is used to denote the forms in which the offender, who is summoned by himself, is not punished, but who represents a certain form of antisocial repentance.1

Generally speaking, this whole human repentance is endangering basic general social norms and values. Delinquency encodes a variety of forms of deviant and non-conformational attitudes to juvenile and caregivers that transcend some of the moral, misdemeanor and criminal norms.It is the primary concern for a minor who is in contradiction with norms and statutory regulations to provide a partial analysis of the personality as well as the desire to deceive himself for his or her sake.

JUVENILE DELINQUENCY - LAW, PSYCHOLOGY, PHENOMENOLOGY AND ETHICS

Juvenile deliquency as a general phenomenon is a subject of interest to many scientific disciplines: law, psychology, social work, sociology, criminology. which is conditioned by the complexity, make the formations on the appearance of the phenomenon, as well as from the general reactions and preventive measures. This effort is designed to investigate the psychological aspects of the causes and consequences and the variety of criminal activity on the juvenile delinquents, with the aim of designing an adequate preventive approach. The work has theoretical nature, with insight into numerous scientific exploration methods for delinquency and success in the struggle with this phenomenon.

The success in the struggle against the clandestine mass media depend on an adequate approach to the general context of this particular security issue. The other words, the proper model for combating this global problem, exemplifies not only the reaction of the competent authorities, the beat and the prevention of criminal offenses, as the offenders are children. The last year shows a continuous public and academic interest in the antisocial involvement of children and adolescents, focusing on criminality and mental health. The problem of juvenile delinquency provokes controversial responses from the governments and the media to the sacred world, with the craving for rehabilitation and support for juvenile delinquents who are in collision with the pledge to increase criminal charges.

THEORIES FOR JUVENILE DELINQUENCY

Serious debates for juvenile delinquency, youth transgression, treatment and resocialization are almost unimportant without mentioning the etiology of such anxiety. Therefore, although the subject of this effort is not the provision for juvenile delinquency, it is imperative that this phenomenon is not present at all. Whom the assembly chooses to do for juvenile delinquency, there are different

theories, shifts, explanations and many often prejudiced. Much often exists to increase the story that is primarily conditioned by psychological factors on the development of a young man, as well as social factors in the sense of unsubstantial education or reception. Juvenile delinquents from caregivers are distinguished by degrees of physical and psychological development and emotional maturity. Their criminal activity is not a result of the strong will and the mature thinking. According to Bujanovic (2007), the most recent and most recent discussion of the impending failure of the young people is the distribution of endogenous, extraterrestrial or subjective-psychological and exogenous, superficial or socio-cultural reasons.
The endogenous reasons is overwhelmed with juvenile delinquency, the hardships and the problems in its affliction undermine unscrupulous life skills, lack of self-control, lack of self-confidence and self-indulgence, emotional problems and antisocial deception, such as fake, aggression, dictation, Known genes of genetics, endocrine, biochemical factors characterize certain characteristics of the personality such as: aggression and violence, impulsiveness, ruthlessness, weaknesses of kinship, apathy, insufficiently developed accountability to itn. Severing delinquent repetition predisposes the desire to compensate for low value consciousness. Younger offenders often face conflicts with the lifestyle, law and the police, which poses additional overwhelming attention to uncertainty and insecurity.The exogenous stories of juvenile delinquency include socio-natural factors, climate and geography, military and disaster, economic viability, poverty, inhumanity, migration, parenthood, education, leisure and medium-term use.
Most internal and external causes of delinquent behavior in scientific literature are explained in the context of different theoretical teachings, which can be classified into three basic theories (Bujanovic, 2007) 8: biological theories, psychological theories and sociological theories.

Biological theories for juvenile delinction
Biological theories in criminology are scientific guidelines based on their beliefs that they are biological pre-disposed - congenital, hereditary, organic, physiological, basic criminogenic factors. Thus, several biological theories have been developed to study the cause of delinquent behavior: anthropological theory, theory heritage, endocrinology theory, racial theory and so on.

Sociological theories for juvenile delinquency
Sociological theories in criminology make scientific concepts that have emerged as a critique of biological and psychological theories of criminality. They are based on accepting the biological and psychological characteristics of a person, but they also take into account the various social causes that influence its formation. Most sociological theories do not neglect the full impact of psychic factors, but 8 Bujanovic, T. (2007). There are certain sociological theories that distinguish their approaches to studying the phenomenon of criminality. One starts from the phenomenon of linking criminality to social structures and institutions and this is the approach to delinquency as social phenomenon emerges. Other theories treat this problem as an individual problem.
Psychological theories for juvenile delinction

Psychological theories emerged from social medicine as a response to biological approaches. They first of all explain the behavior is a psychological cause. Psychological theories are based on the psychological characteristics that determine the behavior of a person, linking the psychic personality traits and the tendency of deviant behavior, so that two global perspectives can be distinguished. According to the first paragraph, the behavior of a person can be perceived on the basis of psychological factors, while respecting the social or social circumstances in which one person lives.

The second paragraph is based exclusively on psychological factors that cause delinquent behavior (intelligence, emotions, motivation). In this way, the issue of delinquent behavior falls to the level of individual phenomena. Thus, a psychological theory for the study of the cause of delinquent behavior has been developed: psychoanalytic theory, intelligence theory, theory of inadequacy, theory of frustration and so on.

Psychological crime theories have a long history and most often involve the connection between personality, intelligence learning, and criminal behavior. A foreboder of modern-day theorists, who believes that people learn from one another through an imitation process is Gabriel Tarde (Tarde, 1904), whose ideas are similar to modern social theory theorists that interpersonal relationships and observed behaviors can influence crime. Since the pioneering work of this author, psychologists and psychiatrists as well as other mental health professionals have long played an active role in formulating the theories of the origin of criminal behavior.

Some experts see the cause of delinquency as an essential psychological problem. Most behaviors that are labeled as delinquent, such as: violence, theft, sexual abuse. appear to be the symptoms of some basic psychological problems. Psychologists point out that many delinquent young people have inadequate family relationships, destructive social relationships with peers, teachers, and conflicts with power in general. These relationships seem to indicate an impaired personality structure. In addition, numerous studies indicate that the figures of young delinquents are marked by negative, antisocial behavioral characteristics. And because delinquent behavior occurs among young people in every ethnic, racial and socio-economic group, they see psychologists as a function of emotional and mental disorders, rather than a purely result of social factors such as poverty and social conflicts. Psychologists in their research quest to understand and treat all kinds of abnormal mental conditions, treat people whose behavior falls within the categories of society labeled as criminal, deviant, violent and antisocial. Psychology as a complex discipline, offers more psychological perspectives and theories of criminal behavior.Three significant psychological perspectives of delinquency are psychodynamic, behavioral, and cognitive.Psychoanalytic or psychodynamic perspective: focuses on early childhood experience and effect on personality. According to psychodynamic theory, the basis of which is the pioneering work of Austrian physician Sigmund Freud (1856-1939), the assumption is that human behavior is controlled by unconscious mental processes developed in early childhood. According to Freud, those who have lost control of their impulses can be marked in their behavior by inadequate answers. The most serious types of violence

and associative behavior can be motivated by psychosis. Less serious nature are different moods and behavioral disorders that make people depressed, antisocial or narcissistic 8. By contrast, the behavioral approach emphasizes social learning and modeling behavior as crucial to crime. Cognitive theory analyzes human perception and how it affects behavior.

CHARACTERISTICS OF PERSONALITY AND DELINQUENCY

The tendency and habit of the juvenile are special psychological traits that are created depending on the influence of the social environment in which they live. If a young person has long been influenced by certain circumstances, they leave a special mark in his psyche. If the juvenile in the formation process does not develop under a positive influence, in the spirit of healthy and creative conditions, if he is not involved in useful social activity, he can not be formed into a positive person.

A particularly important sphere of spiritual life, which demonstrates its characteristics in all aspects of behavior is intelligence, which is an important factor for the formation and development of a person. Intelligence has great importance in delinquency, so it can be said that the meaning of intelligence in criminal behavior is great and is manifested in different ways.Criminal behavior is also associated with emotions. Emotional instability is one of the essential characteristics of the juvenile who is a transgressor, and it can be concluded that there is a connection between certain emotional characteristics of the perpetrators and their criminal behavior. It is about emotional instability, irritability and anxiety that arise as a consequence of rejection, neglect, jealousy, and other similar conditions, followed by appropriate feelings and behaviors. In explaining the phenomenon of asocial and delinquent behavior, generally called socially unacceptable, special attention, in addition to social, cultural factors and circumstances, is a character or personality traits. Environmental factors can not fully explain all personality-specific behaviors. Many studies have shown evidence of connection or conditionality of behaviors and features such as emotional stability, frustration tolerance, persistence and other personality traits in a narrow sense that represent a relatively stable organization of individual motivational tendencies, as a result of interactions of biological characteristics and social and the physical environment. The tendency and habit of the juvenile are special psychological traits that are created depending on the influence of the social environment in which they live t. If a young person has long been influenced by certain circumstances, they leave a special mark in his psyche.

CONCLUSION

Deviant behavior of a person is a very significant and complex social problem. To prevent it, it must be coordinated with a clear definition of obligations and tasks, all factors of socialization of a person. These are primarily family, educational institutions, social centers, police and judicial and work that helps to bring potential delinquents in the social life together with removing the causes that led to delinquent behavior.The juvenile delinquency is a worrying phenomenon that leads to a need for a multi-dimensional approach in order to ensure a balance of the general principles of juvenile justice: a welfare model focused on the child's needs for diagnosis and treatment, versus the "justice" model that emphasizes the

responsibility and punishment. This paper describes potential contributions of the psychology in the law, with an emphasis on psychological assessments, advisory and psycho-therapeutic approaches, and other psychological services for young people in the juvenile justice that can lead to more effective decisions for young people. In the developed countries in the world where a philosophy of well-being involving legal and psychological therapeutic interventions is adopted, the approach has proved superior and significantly associated with reducing the recidivism of juvenile delinquency, compared to punitive approaches in other countries with inadequate legal frameworks and a lack of specialized workforce. The role of psychological knowledge and approaches can help bring the juvenile justice which is for childrens well being and provides a more effective solution to this social phenomenon.

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WHISTLE-BLOWERS AS FACILITATORS OF DECENT WORK

Sanja Stojković Zlatanović, PhD, Research Associate
Institute of Social Science Belgrade, e-mail: sanjazlatanovic1@gmail.com

Marta Sjeničić, PhD, Senior Research Associate
Institute of Social Science Belgrade, e-mail: marta.sjenicic@gmail.com

Abstract
Labour law protection of whistleblowers has recently been avocated across European countries. A number of European Union member states have adopted special laws regarding whistleblowers` protection, but this protection still stays incomplete and fragmented in scope. Last year the European Commission proposed a new law in order to strengthen whistleblowing - the Whistleblowing Directive. This paper aims to determine the key elements of whistleblowers` protection at the workplace, taking into account European Union principles and the concept of decent work. The concept of decent work has been clearly expressed as a core objective of the International Labour Organization (2008). Dignity is associated with the principles of self-respect, autonomy and freedom that are the core values of the contemporary whistleblowers protection framework. This paper deals with theoretical issues of dignity, particularly the autonomy of individuals reporting wrongdoings at work, in terms of whistleblowers` protection standards, thereby addressing the link between the dignity of individuals and the duty of loyalty to employers *versus* the duty of loyalty to the society.

Keywords: *whistleblower protection, dignity at work, the principle of autonomy, EU standards, duty of loyalty.*

INTRODUCTION

In recent years, a number of countries across the European Union have adopted a special law regarding whistle-blowers` protection. Still, their protection stays incomplete and fragmented in scope. The main issue was the unclearness how to balance between two confronted interests: the interest of protecting employers` right to privacy of property information and employees` right to freedom of expression. In essence, the problem could be considered on the basis of protection of the individual moral duty to loyalty to the employer and the duty of loyalty to society.
This article is meant to be a brief sketch to the Europen Union policy and legislation in whistle-blowing protection at the workplace. Introducing the European Union legal framework regarding whistle-blowing, probably the most intriguing issue concerns theoretical views of justification of the duty to loyalty to society. In what follows, first the notion of the whistle-blowers will be introduced, followed by European Union policies in the realm of whistle-blowing. The main focus will be to highlight the theoretical and political grounding of the whistle-blowing in regregard

of the concept of decent work. The concept of whistle-blowers` protection will be addressed as part of a wider, "decent work agenda" and in the context of sustainable development.

THE NOTION OF WHISTLE-BLOWING

The legal concept of whistle-blowing protection is closely associated with ethical and political values of the society. The legal protection of the whistle-blowers is based on the idea of protection of ethical principles of individuals where the principle of universality of social interests stays above the principle of the particularity. Ethical dilemmas of universality and particularity are confronted when we address issues of whistle-blowers` legal protections.

The use of the notion is relatively new. Historically, the term has been used to point to criminal activities where police officers blow in their whistles to alert their colleagues and citizens when they saw a crime (Bolsin at al 2011, 278). Now the whistle-blower can be any person who reports a crime or other illegal activities to the public putting the broader public interest above any particular interest of individuals. There are many definitions of the whistle-blowing and whistle-blowers depending on the fact whether the wider or narrower approach is being considered. Schultz and Harutyunyan (2015) describe whistle-blowing as an act of an individual who within of the organization discloses information and corrects corruption. Miceli et al. (2008) defined whistle-blowing as "reporting by an employee the illegal, immoral or illegitimate practices that are under the control of the employer to the person or organization that may be able to effect action." However, in modern legal theory, legislation and case-law there are several views of whistle-blowing. According to the jurisprudence of the European Court of Human Rights, whistle-blowing is considered through the right to freedom of expression, but in jurisprudence and case-law of the United States of America, whistle-blowing is viewed as an instrument to fight corruption (Vuković, Kovačević, Radović 2018, 110).In practice, whistle-blowing is closely linked with the professional malpractice and represents a mechanism for solving issues in the workplace (Vuković, Kovačević, Radović 2018, 110).

The prevailing theoretical concept of whistle-blowing is based on the following characteristics: 1. an act of an individual, often the member of a labour organization, i.e. an employee; 2.the object of the action is information that has to do with some serious wrongdoings noticed in the organization; 3.the aim is to report or reduce corruption and fraud and to prevent mistakes leading to disasters as well as to prevent or report human rights violations; 4. the intent of the person who reports wrongdoings could not be financial gain or benefit or intended in order to discredit some person in the organization. It means that WB should be conducted according to the legal doctrine of good faith. For instance, France recently adopted the Sapin II Act on transparency, tackling corruption and modernization of business life, which regulates whistleblowing programs aiming at ensuring whistleblowers` protection. The Sapin II Act defines whistleblowers as individuals disclosing or reporting, *in good faith*, a crime, an offense, a violation of an international commitment, a law or regulation infringement, a threat or an important prejudice to the general interest he or she became aware of. Good faith in this context should be

considered as an "injection of moral principles into the relationship between parties" rather than the relationship where the parties are aware of the economic elements of the contract needed to have reasonable expectations (Feinman 2014, 528). But there is a significant difference in terms of the application of good faith doctrine in the concept of whistle-blowing, rising by the fact that the morality of an action has been measured on the individual level of the person involved not as a part of mutual interaction between parties engaged in the obligation.

However, on the one side, injection of moral principles into the concept of whistle-blowing could be addressed through the good faith doctrine but, on the other, as a part of the concept of human dignity, particularly through the expression of the principles of self-respect, autonomy, and freedom. In the Oxford Encyclopedic English Dictionary, dignity is defined as "the state of being worthy of honor or respect." Andorno (2014) emphasizes the difference between inherent human dignity and moral dignity. The former has been considered as the foundational value for exercising basic human rights where „rights derive from human dignity," and the latter is related to the behavior of the person which is changeable (Andorno 2014, 45). Inherent human dignity is linked to the principle of equity and non-discrimination in human rights discourse, but in legal theory, it has a broader meaning. Dignity is also discussed in the context of individual autonomy and self-determination (O'Mahony 2012, 565). Hence, the dignity of human beings includes the right to autonomy and self-determination, i.e.all human beings are capable and entitled to make their own choices, make decisions and create a future by themselves. However, personal autonomy is not unlimited and is subject to restrictions and limitations. Hence, the constitutions of modern states often limited personal autonomy to protect the dignity of other human beings or to protect a greater good.

The right to protection of whistle-blowers appears to be an expression of human dignity, particularly the autonomy of the individual. The right is derived from the right to freedom of expression that is the prevailing view in European case-law. It is limited by setting the conditions for whistle-blowers` protection in terms of individual intention that ought to be in good faith giving the preference to public interest among the particular interest of an employer. The main goal is to fight against corruption and other illegal activities in the workplace. Disclosing information about wrongdoings at the workplace could be internal to the employer or external to the state administrative body or directly to the public.

EUROPEAN LEGAL FRAMEWORK OF WHISTLE-BLOWERS PROTECTION

Whistle-blowing is an important anti-corruption instrument. A lack of effective protection of whistle-blowers raises concern across the European countries in terms of its negative impact on exercising the right to freedom of expression. Article 10 of the European Convention on Human Rights (1950) says that „Everyone has the right to freedom of expression." This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers". The mechanism for European whistle-blowers` protection that has dominantly been used is Article 10 of the European

Convention on Human Rights where the European Court of Human Rights plays a crucial role in recognizing the protection for those who disclose wrongdoings in labour organization.

The case that has been extensively cited regarding the whistle-blower's protection under Article 10 of the European Convention on Human Rights (1950) is *Heinisch v. Germany*. Mrs. Heinisch had been dismissed as a nurse in Germany after disclosing mistreatment of elderly patients in a state-operated nursing home (Guyer and Peterson 2013, 11). She spent seven years exhausting the German legal system—where she found no relief from retaliation (Guyer and Peterson 2013, 11). The European Court of Human Rights unanimously concluded that there had been a violation of Article 10. The Court considered the necessity of balance between the need to protect the employer's reputation and rights, on the one hand, and the need to protect the applicant's right to freedom of expression, on the other. The Court ruled that Mrs. Heinisch`s right to freedom of expression has been violated and that her right to report wrongdoings at work is a matter of general interest.

Nevertheless, the development of whistle-blowers protection legislation in Europe is a relatively slow process. The reason is the difference in the regime of employment termination in Europe compared with the regime in the United States of America (Guyer and Peterson 2013, 7). In European countries, if an employer wants to terminate the employment contract, he must have a real and serious cause applying to all dismissal procedures defined by the law. Conversely, in the United States of America, the contract could be terminated for any reason or without any reason. Hence, in European countries, special laws regarding the whistle-blower's protection have not been adopted until recently when the situation has been changed. The main reason was the view that disclosing information about wrongdoings at the workplace could not be a good cause for the termination of the employment contract defined by labour legislation. However, this is a correct conclusion if we speak about internal whistle-blowing, but there are some issues needed to be addressed about external whistle-blowing. Whistleblowing requires the whistleblower to provide evidence supporting his allegations, but under the laws of many European countries, an employee is obligated to never externally disclose such information(Guyer and Peterson 2013, 8). Unauthorized disclosure of the employer's proprietary information has been considered as serious misconduct and represents a good cause to terminate the employment contract (Guyer and Peterson 2013, 8). This had a vast influence on the stakeholders in the European counties to slowly move forward in protecting whistle-blowers. Also, unions and civil society organizations have an important role in advocating the whistle-blower's protection changing the perception in the society about people who dare to report illegal or immoral activities in the organization.

During the last couple of years, several European Union member states adopted special laws about whistle-blowing in the workplace protecting the person who in good faith reports wrongdoings. Nevertheless, the protection still stays incomplete and fragmented in scope where according to the Report of Transparency International, Luxembourg, Romania, Slovenia, and the United Kingdom were the only European Union members that have created comprehensive or almost comprehensive whistleblower protection (Popescu 2015, 138). For instance, in

Germany where the issue regarding whistle-blowing protection has been raised in case *Heinisch v. Germany*, the adoption of a special law of whistle-blowing has been rejected several times. Whistleblowers could only be protected by some provisions of the Employment Protection Act from unfair dismissal on the grounds of „social injustice." (BluePrint for Free Speach 2018, 1). But when the labour courts decide about reporting the wrongdoings at the workplace, they have ruled against whistleblowers favoring the duty of loyalty to the employer protecting the right to privacy instead of employees right to freedom of expression (BluePrint for Free Speach 2018, 1). In France under the Sapin II Act (2016, entered into force in 2017), an anti-corruption law modeled on the US Foreign Corrupt Practices (1977) and the UK Bribery Act (2010), there are some protection provisions for the whistleblowers but with limitations. The notion of the whistleblower is defined by law as „a natural person who reports or reveals, without personal interest and in good faith, a crime or offence, a serious and clear violation of an international commitment, a law or a regulation, or a threat or a serious harm to the public interest, of which the individual has personally gained knowledge". A person is not protected as a whistleblower if they do not meet the legal conditions mentioned in the Sapin II Act (2016): 1. the National security; 2. medical confidentiality; and/or 3. lawyer-client privilege. The information about wrongdoings needs to report first internally to the employer or a person designated by the employer. If it has been unsuccessful, the information could be addressed to a law enforcement authority, administrative authority or professional association (OECD 2017, 8). Only in case of imminent danger or where there is a risk of irreversible damage, the disclosure can be made directly to these organizations (OECD 2017, 8). As a last resort, and failing a response by the above-mentioned organizations within three months, the report may be made public (OECD 2017, 8).

An important step forward in the European Union law has been made by the Draft of the European Union Whistle-blowers Directive, i.e. The Directive on the protection of persons reporting on breaches of Union law that was introduced to the public in April 2018. It was justified by the lack of effective whistle-blowers` protection across the Europe Union member states where the right to freedom of expression and freedom of the media, enshrined in Article 11 of the EU Charter of Fundamental Right has been seriously endangered. Moreover, the lack of effective whistleblower protection also impaired the enforcement of EU law (The Draft of the European Union Whistle-blowers Directive 2018). The ultimate reason for the proposal was the prevention of corruption, malpractice or negligence in both public and private organizations. The Draft lays down common minimum standards for the protection of persons reporting breaches of the European Union law. It applies to all workers, engaged in all forms of labour relations, standard and non-standard employment, self-employed workers, volunteers, and unpaid trainees as well (The Draft of the European Union Whistle-blowers Directive 2018, article 2). A whistle-blower is a person who reports the branches,i.e.actual or potential unlawful activities or abuse of law relating to the Union acts. The branches could be qualified as actual unlawful activities or reasonable suspicions about potential activities which have not yet materialized. Member States are obligated to establish internal channels and procedures for reporting branches. Also, Member States need to

establish the external reporting channels and designate the authorities competent to receive and handle reports. The Draft introduces three-stages of disclosure, i.e. internal, external to the competent administrative authority and disclosure directly to the public. The Draft favors the (mandatory) internal disclosure as a first stage of reporting the branches that is the subject of longstanding scholarly debate about the legal concept of whistle-blowing. It could be morally and legally justified on the grounds of applying to the concept of loyalty to the employer and protection of his economic interests, as well as keeping his reputation safe. Balancing the confronted principles, loyalty to the employer, on the one side, and loyalty to the society, on the other side, is the basis of the Europe Union whistle-blowers protection framework. The protection of confidentiality of personal data and protection from any form of retaliation conducted by the employer are core standards of the Proposal.

THE DUTY OF LOYALTY TO EMPLOYER *VERSUS* THE DUTY OF LOYALTY TO SOCIETY IN TERMS OF DECENT WORK

The moral basis of the standard relation between employee and employer is the duty of loyalty to the employer protecting his economic interests and his property. Disclosing confidential information about property or business in most European countries has been considered as a violation of employment contract and good cause for the dismissal. The adoption of the whistle-blowing protection standards protects the duty of loyalty to society and morality of principle of the individual (Ejaz and Jawad 2016, 2994) neglecting the duty of loyalty to the employer in order to protect the greater good: the welfare of the state and society. Considering the fact that whistle-blowing, as an anti-corruption instrument, is closely linked with the professional malpractice and represents a mechanism for solving issues in the workplace (Vuković, Kovačević, Radović 2018, 110), it could be addressed theoretically in the context of the concept of decent work.

Decent work is a notion originally advocated by the International Labour Organization in a report published in 1999. The term has been used to emphasize the importance of not only the economic goals of the world development expressed in the obligation of „creation of jobs“ but also as construction that ought to include a social component of world development expressed in the “creation of jobs of acceptable quality“. According to the International Labour Organization, the decent work involves “opportunities for work that is productive and delivers a fair income, security in the workplace and social protection for families, better prospects for personal development and social integration, *freedom for people to express their concerns*, organize and participate in the decisions that affect their lives and equality of opportunity and treatment for all women and men.“The notion of decent work is based on four components: employment, social security, workers rights, and social dialogue. The first two refer to opportunities, remuneration, and work conditions while last two point out the social relations of workers, particularly freedom of association, non-discrimination at work and the importance of exercising the right to express their opinions regarding work-related issues (Ghai 2008, 114).

Applying the standards regarding decent work in a context of strengthening the social dimension of globalization, the European Commission adopted in 2006 an

Act entitled „*Promoting decent work for all*" as the European Union contribution to the implementation of the decent work agenda in the world. The Act stresses the promotion of job creation as a clear economic activity but through improved governance and social dialogue, and by identifying decent work deficits with better cooperation between stakeholders and by reducing the corruption. A few years later, in 2011, the Commission adopted an act entitled „*Increasing the impact of EU development policy: an agenda for change*" stressing the fight against poverty in the context of sustainable development with reference to human rights and democracy in terms of inclusive and sustainable growth. Inclusive and sustainable development presupposes the promotion of decent work and corporate social responsibility at national and international level avoiding the violation of basic human rights. According to this document, the European Union plays a key role in helping member states and candidates to achieve the standard of good governance. The European Union action in this field is fighting against corruption as well. So, the document stresses that „the EU should help its partner countries tackle corruption through governance programmes that support advocacy, awareness-raising and reporting corruption."

The decent work agenda introduced by the International Labour Organization and followed by the European Union activities represents a framework for whistle-blowers` protection. The core objectives of the concept are the promotion of basic social rights of employees in terms of economic competitiveness in order to achieve social justice for all. The duty of loyalty to society is a key component of the concept of whistle-blowers` protection. It begins with respect to the individual principles, i.e. to the person who discloses wrongdoings at work and finishes with respect for principles of more universal, social. But there are also certain universal values, such as solidarity and justice that trump particular economic interests of employer and economic interests of the world. So, preventing and reporting wrongdoings in order to fight against corruption and other illegal activities is in interests of both sides, employee, and employer and in the interest of the world and human development as well. However, in order to achieve the standard of decent work in the era of globalization, employers started to adopt strategies and programmes that included social goals in their management plans. They became part of a new concept of corporate social responsibility. In that sense, employers are responsible not only to their individual interests in order to make a profit but also to universal interests of the whole society. The society`s interests are reflected in the protection of public health, environmental protection, and the fight against corruption, as well as in the interest to perform business activities respecting basic human rights and freedoms. In addition, universally accepted values such as social justice and dignity of human beings are incorporated in the concept of social corporate responsibility.

The concept of decent work that includes social corporal responsibility promotes whistle-blowing at the workplace aiming to fight corruption and other illegal activities. Accepting to implement policy principles of a decent work agenda, employers simultaneously agree to respect the employee's moral obligations to society. The moral duty of loyalty to society gets its legal form in whistle-blowing protection standards. It could be considered as a part of employer policy of social

corporate responsibility accepting to internally implement whistle-blowing provisions regarding wrongdoings in order to report corruption and other illegal activities that seriously endangered the work process.

CONCLUSION

Whistle-blowing is widely recognized as an important anti-corruption instrument. The comprehensive legislation of whistle-blowers` protection at the workplace is adopted in the United States of America as a part of a legal culture that has its root in an accepted model of employment termination, that is dismissal without a good cause. In opposition to the United States, in European countries, the employer can terminate employment only with a legally defined cause. For a very long time, it was the main reason for not adopting special provisions of whistle-blowers` protection. Nevertheless, in most European countries, disclosing information about employers` property to the public has been considered as a serious violation of employment contracts and a good cause for dismissal. It had a great influence on European policymakers to change their views regarding whistle-blowers` protection and to slowly move forward to the adoption of legislation in this field.

An important milestone was when the European Union introduced the Draft of Whistle-blowers Directive. The Draft recognizes three-stages of whistle-blowing: internal, external to the competent authority and whistle-blowing directly to the public. The employee first has an obligation to internally report wrongdoings. It could be inferred that the Draft accepting mandatory internal whistle-blowing protects the duty to loyalty to the employer successfully balancing between confronted interests of parties. But if internal reporting is not successful, the issue can be addressed to the public. The moral duty of loyalty to the society will be protected through exercising the right of freedom of expression. From the standpoint of legal theory pertaining to labor relations, favoring the duty of loyalty to society instead of the duty of loyalty to the employer can be justified by the application of the concept of decent work and corporate social responsibility.

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LANGUAGE IN POLITICAL SPEECHES

Silvana Neshkovska, PhD

Faculty of Education – Bitola, St. Kliment Ohrdiski University - Bitola
silvana.neshkovska@uklo.mk.edu

Abstract
The persuasive power of political discourse almost entirely rests on the skillful usage of language. Only politicians equipped with a plethora of linguistic tools manage to truly lay claims on political power and authority.
This study seeks to analyze the linguistic strategies Macedonian politicians utilize in their political speeches, in order to construct their and their opponents' roles in the political arena, and to present a reality which simultaneously legitimizes their ideology and undermines the ideology of their adversaries.
Based on Critical Discourse Analysis, this study is qualitative in nature and its aim is to investigate how politicians in a very concrete socio-political context with their choice of lexis, syntactic structures, and figures of speech, make an attempt to successfully present themselves and, at the same time, mar their opponents' repute. The study shows that, apart from the evident similarities, yet certain differences appear in the use of the linguistic strategies between the politician who currently holds the political control and the one who is aspiring to come to power.

Key words: political speeches, linguistic strategies, Macedonian politicians

INTRODUCTION

Politics is concerned with acquiring, maintaining and sustaining power (Charteris-Black 2011). In democratic societies, political power is gained and preserved primarily by means of skillful and persuasive language usage. To put it differently, the language of politicians also known as political discourse has become "the lifeblood of politics", as it assists politicians to construe a positive and acceptable self-representation or public image, and, thus, "to convince followers that their policies can be trusted" (Charteris-Black 2011).
Research reveals that political discourse is marked by a profound usage of "a wide range of linguistic and rhetorical features", which make it persuasive without "alerting the audience to the fact that they are being persuaded" (Charteris-Black 2011). *Repetition* of words or entire grammatical patterns is one such attested strategy in political discourse which communicates a sense of conviction (Jones & Wareing 1999; Beard 2000). *Antithesis* is another strategy that is used to present a contrast between certain negative and positive entities and is either explicit or implied (Kulo 2009). Political discourse is also marked by the frequent usage of various figures of speech such as *rhetorical questions, sarcasm, irony*, and *metaphor,* all of which implicitly communicate the attitude of the speaker towards a

topic, and, at the same time, arouse and retain the audience's interest in that topic (Charteris-Black 2011; Isaiah, Goodluck & Blessing 2018). The use of *pronouns* has been recognized as another particularly important strategy, since it reveals how much responsibility a politician wants to assume for a particular idea (Kulo 2009)[104].

The study of political discourse has been around for as long as politics itself, but viewing political discourse in purely linguistic terms started in the second half of the 20th century with the introduction of Critical Discourse Analysis (CDA). CDA investigates not just the formal structure of discourse, i.e. the lexical choice and syntactic structure employed in a particular discourse, but also the power relations and conflicts of the groups involved in the discourse as well as the historical, political or social context in which that discourse occurred (Chouliaraki & Fairclough 1999; van Dijk 1998; Mcclay 2017).

The paper at hand utilizes CDA in analyzing a specific type of political discourse – political speeches. The analysis focuses on how politicians in their speeches work, in parallel, on two opposing planes - creating a positive and persuasive self-representation of themselves, along with marring the opponent's image and repute in the eyes of the general public. For the purposes of this research, speeches of prominent Macedonian political figures are analysed. The selected speeches tackle an extremely serious and sensitive political issue that occupies the entire Macedonian society and the political milieu, in particular – the Prespa Agreement and the name change. In conducting the analysis, a special accent is put on the linguistic strategies (negative and positive lexis, syntactic structures, and figures of speech) employed by politicians in their attempt to present themselves in the best and their opponents in the worst possible light. Eventually, a comparison of the findings is made in order to ascertain whether those who are in power and those who represent the political opposition utilize similar or dissimilar linguistic strategies to achieve their respective goals, namely, staying in power in the case of the former and coming to power, in the case of the latter.

In the first section of the paper, the research methodology employed in this study is explicated. The subsequent sections depict the results and insights gained from the research at hand, and, finally, the last section presents the conclusions drawn on the basis of this research.

RESEARCH METHODOLOGY

For the purposes of this study, two speeches were subjected to a detailed and thorough analysis. The first speech was delivered by the current Macedonian opposition leader, Hristijan Mickovski, at the Annual Conference of the greatest political party in opposition, VMRO DPMNE[105], held on 23 October 2018. The second speech was delivered by Zoran Zaev, the Prime Minister and the leader of

[104] The first person singular pronoun *I*, for instance, clearly declares who is responsible, while the first person plural pronoun *we* makes the status of responsibility unclear (Jones & Wareing 1999). Also, the first person plural pronoun in the introduction of a speech makes an appeal to the sharing of interests between the speaker and the audience (Charteris- Black 2011).

[105] VMRO DPMNE stands for Internal Macedonian Revolutionary Organization of Democratic Party for Macedonian National Unity.

the ruling party, SDSM, in Parliament, on 9 January 2019 – immediately before the endorsement of the name change in the Macedonian Parliament.

Both speeches, having been conveniently downloaded from YouTube[106], were carefully orthographically transcribed. The duration of Mickovski's speech was somewhat more than half an hour; whereas Zaev's speech was considerably shorter and lasted about quarter of an hour. The uneven time span of the selected speeches does not to diminish the quality of the research, since the analysis is primarily qualitatively oriented, not quantitatively. What was considered of greater importance in this research was finding speeches that will be comparable in terms of the general theme (the name change) and the specific topics (e.g. the effects of the name change decision; the conduct of the 8 MP from the opposition who supported the government over the name change etc.) covered in them. In any case, generally speaking, the entire corpus that was subjected to analysis consisted of about one hour of transcribed speech.

Given that Mickovski and Zaev represent and defend their respective party's ideologies, which are for the most part mutually exclusive, they both set out to accomplish completely distinct goals with their speeches. The Prime Minister's goal is to convince the public of the rightfulness and the historic salience of the decision made with the Prespa Agreement. His underlying premise is that making this decision was absolutely necessary in order to realize Macedonia's long-awaited NATO membership and EU integration, and to terminate the country's long-term deadlock. The opposition leader, on the other hand, strongly disagreeing with the Prime Minister, in his speech warns the public of the harmful consequences of the Prespa Agreement and the name change, qualifying them as extremely detrimental to the country's national interests.

The primary aim of this research is to analyze the political speeches in light of the linguistic strategies politicians employ to depict themselves and their roles positively and their opponents and their roles negatively ('us' versus 'them' (Sevasti 2014)). In other words, the aim is to determine how the use of language can produce the effects of authority of 'us'; give legitimacy to 'our' ideology, and ensure electorate's consensus for and endorsement of 'our' policies, doing, at the same time, the complete opposite for those at the other end of the political scale ('them').

The linguistic strategies that are placed in the focus of the study include vocabulary (positive and negative lexis); syntactic structure of sentences (short and simple vs. long and complex sentences; declarative versus interrogative, exclamative and imperative sentences); and figures of speech (metaphors, antithesis, irony etc.).

Eventually, the findings gained from the analysis of both speeches are compared in order to pin down similarities and differences in terms of the usage of the aforementioned linguistic strategies in relation to the respective 'power' position of the speakers.

[106] Mickovski's speech was retrieved at https://www.youtube.com/watch?v=9QpXhK-QU0A; whereas, Zaev's speech at https://www.youtube.com/watch?v=w3TZWDPn_Yo.

ANALYSIS OF THE RESULTS

A) Hristijan Mickovski's speech

The leader of the opposition, Hristijan Mickovski, in his speech is clearly targeting several major addressees – the party members; the eight MPs excluded from the party for their cooperation with the government over the Prespa Agreement; his political opponents - the government, and the electorate (the people of Macedonia) in general.

Mickovski touches upon several major topics all of which are closely related to the general theme – the Prespa Agreement and the name change. More specifically, he talks about the 'betrayal' of his former party members; the irrational decisions of the ruling coalition; the values his party stands for, which are in stark contrast to the ones of the government, and, finally, the support that the 'reformed' VMRO DPMNE needs from the Macedonian citizens to reverse the decision and get the country back on track.

A thorough analysis of this speech reveals a careful selection of linguistic strategies with which the speaker creates a setting, reminiscent, in many respects, of the one in the medieval English romances. Namely, just like in the romances where there is a villain, i.e. an evil spirit, a victim – a damsel in distress, and a hero – a noble knight ready to save the victim, in his speech, Mickovski also presents three main characters with similar features. First, the ruling coalition, Zoran Zaev's government, along with the former renegade VMRO DPMNE's MPs are attributed the role of antagonists – evil spirits and their sidekicks, who, led by personal interest, seriously jeopardize the country's existence. The politician's motherland – Macedonia, which according to him is at the verge of being destroyed, is depicted as a helpless damsel in distress who urgently needs help. Finally, Mickovski himself assumes the role of a brave knight who is bound by honor and duty to undertake a difficult quest to save the damsel (the country).

Mickovski invests in the persuasive power of his speech by carefully selecting the lexis with which he describes the main features of these "characters". Thus, in portraying the image of his opponents, not surprisingly, he uses predominantly negative vocabulary associated with evil, weakness, darkness, corruption, lies, etc. Thus, for instance, he calls his opponents *ill-intentioned and lazy politicians* ("злонамерни и мрзеливи политичари")[107], comparing them with *gamblers* who gamble with principles ("се коцкаат со принципи"); *liars* whose statements and promises are nothing but lies ("се што кажаа, се што ветија беше лага"); *vulchers* whose favourite pray is the country ("нивниот најпосакуван плен"); *trespassers* who slowly but surely take control of the country ("го запоседнуваат нашиот дом/куќа") etc.

His bitterness towards his opponents is clearly seen in the fact that in most of his speech he even refrains from making any explicit reference to them. He only alludes to them by using the pronouns: *they* ("***They*** sink, turning our country into a political swamp."/ "***Тие*** тонат создавајќи од нашата земја политичко мочуриште"); *somebody else* ("People feel like they have been put aside, and ***somebody else*** behaves like the country's owner and proprietor."/ "Народот се чувствува како

[107] The translation of all of the instances extracted from the analysed speeches was done by the author of the paper.

тргнат на страна, а ***некој друг*** како нејзин сопственик, нејзин стопан"); *somebody* ("I find it hard to accept ***somebody***'s messing around with principles."/ "Тешко ми паѓа кога ***некој*** се коцка со принципи."). In most of the statements, he is not even using pronouns to refer to his opponents; the grammatical category of person is indicated morphologically by attaching a suffix to the verb form ("They said that they were democrats, and now they are the godfathers of the greatest media censorship."/ "Вел**еа** дека биле демократи, а кумув**аат** со најголемата цензура на медиумите."). With this linguistic strategy the speaker is only hinting that he does not consider his opponents worthy of even being mentioned by name.

Nevertheless, in some of the statements he changes the strategy and refers to his opponents only by using their last name, or their full name, thus, deliberately skewing the appropriate and expected mode of address. For instance, the speaker refers to the Prime Minister without mentioning his title ("We cannot afford to tolerate ***Zoran Zaev***'s incompetence and shame."/ "Не смееме да си ја дозволиме некомпетентноста и срамот на Зоран Заев"; "The sad truth is that Macedonia has hit the rock bottom with Zoran Zaev."/ "Тажната вистина е дека Македонија го допре дното со Зоран Заев.").

In portraying the negative image of his political opponents more convincingly, Mickovski skillfully uses several attested rhetorical devices, commonly found in political speeches – *Biblical allusions, metaphors* and *rhetorical questions*. For example, in one of his utterances he uses a Biblical allusion (the government represents the evil, i.e. the devil) combined with a war metaphor (the government must be *defeated*) ("This evil must be defeated and will be defeated."/ "Ова зло мора да биде поразено и ќе биде поразено"). In another utterance, he combines a Biblical allusion ('spooky shadows' which stands for something evil) with a metaphoric expression (the Prime Minister and his collaborators are compared to *refuse* which must be disposed of) ("The politicians like Zoran Zaev are the last residues of the gloomy transition, spooky shadows that stand between us and the sun."/ "Политичарите како Зоран Заев се последни остатоци од мрачната транзиција, морничави сенки кои стојат меѓу нас и нашето место под сонцето").

The speaker makes a similar choice of linguistic strategies when he 'constructs' the image of the eight VMRO DPMNE parliamentarians who decide to support the government over the Prespa Agreement. The underlying qualification that he uses in portraying them is associated with 'treachery' ("...the treachery that you commited of the country that have raised you…"/ "…предавството кое го направивте кон татковината која ве одгледала"). Additionally, he uses a host of rhetorical questions with which he only consolidates the image of 'traitors' that he previously created for them ("Why did you give up?"/ "Зошто не издржавте?"; "Didn't you see that he (Zaev) was finished, that he was running away from the prospect of election as the devil runs away from the cross?"/ "Па нели сфативте дека беше готов (Заев), дека бегаше од избори како ѓавол од крст?"). He also tarnishes their political repute by using an abundance of negative lexis to present them as: *people moved only by their personal vested interest* ("They only followed their personal interest."/ "Го следеа својот личен интерес."); *servants of the government* ("They only finished the dirty work of the government."/ "Ја

одработија валканата работа на власта."), and *deceitful and untrustworthy individuals* ("You only wish to deceive the public."/ "Ја замајувате јавноста."; "You only wish to cover the whole thing."/ "Сакате да ја заташкате работата.").
The usage of metaphors in this context cannot escape unnoticed as well. One of the more creative metaphors draws on the domains of medicine and sport as it compares the support that Zaev got from the eight MPs to an *injection* (medicine given to a patient to help him recover his health) and *doping* (used in sport to enhance the sportsman's performance) ("You have only prolonged Zaev's political career for a short while. "Your injection, your doping, will not last him long."/ "Вие само кратко ми ја продолживте политичката кариера на Заев. Вашата инекција, вашиот допинг, кратко ќе му потрае."). Another rather innovative metaphor is when he refers to the ratification of the Prespa agreement in the Macedonian Parliament as 'Black Friday' not only because it happened on Friday but also because the phrase 'Black Friday' is normally used to refer to a terrible day filled with great tragedies and horror ("The Black Friday happened to us."/ "Ни се случи црниот петок.").
From the point of syntax, the analysis reveals that, this speaker mainly uses *short and syntactically simple sentences* which are rather easy to follow and memorize. Long and complex sentences are virtually non-existent in this speech. Also, most of the sentences of the declarative type with which he states his opinions and his assessment of the newly arisen situation in the country. There is a frequent usage of questions (particularly when addressing the 8 MPs, demanding an explanation for their unexpected course of action) as well as imperative sentences when he encourages people to be active and confront the government's decision ("Don't sit with your arms folded!"/ "Немојте да седите со скрстени раце!"). Moreover, the structure of the sentences is further marked by an intense *repetition of words and phrases*, in an obvious attempt to increase the negative sentiment towards the government and the eight MPs ("***You have failed*** your country. ***You have failed*** me. ***You have failed*** each and every member of VMRO."/ "Ја изневеривте вашата татковина. Ме изневеривте мене. Го изневеривте ВМРО. Го изневеривте секој член на ВМРО.").
The speaker, tries to build his own image, understandably, in a most positive and favorable light. In fact, first he presents himself as a sufferer, a sensitive and compassionate human being, who is deeply hurt by the injustice done to his country ("My heart was breaking, hellish pain is that."/ "Срцето ми се кинеше, пеколна болка е тоа."). Then, he presents himself as a fighter, a noble knight, who will defend his country and his people ("We have a country, we have a wonderful motherland, which we love, which we are proud of, and which we have no intention to lose."/ "Имаме земја, имаме прекрасна татковина која треба да ја сакаме, на која сме горди, и која немаме намера да ја изгубиме."). The image of a capable knight is further intensified with the heavy use of *war metaphors* whose sole purpose is to encourage people to raise their voice against the current government ("Let us join our strengths, let us act together, in a principled and firm manner."/ "Да ги збиеме силите, заеднички, принципиелно и силно!"). In this call for resistance, Mickovski resorts to using *terms of endearment* too ("My dear brothers

and sisters, nobody will break your spirit."/ "Драги браќа и сестри, никој нема да ви го скрши духот.").
Finally, in depicting his party, Mickovski uses only positive vocabulary, describing it as reformed, refreshed and rejuvenated with the right sort of people who can lead and govern the country ("We are done with our reform and reformation. We are ready. We are focused."/ "Ние завршивме со нашата реформа и преродба. Подготвени сме. Фокусирани сме."). The speaker employs *personification* in reference to his party, VMRO, ascribing human-like qualities and skills to it and presenting it as a *faithful and trustworthy ally of the Macedonian people* ("VMRO is the greatest, the strongest ally of the Macedonian people."/ "ВМРО ќе биде најголемиот, најсилниот сојузник на македонскиот народ.").

B) Zoran Zaev's speech

The Prime Minister's speech was delivered in Parliament on 9 January 2019 and its purpose was, for the very last time, to encourage the Parliamentarians to vote in favor of the name change. Apart from discussing the central issue - the historical importance of the decision regarding the name change and the bright future that awaits the country, the Prime Minster also in his speech touches upon his successful endeavors in positioning the country as an equal and respected partner in both the immediate neighborhood and in the world; then, he expresses his gratitude to all those who supported him and worked hard to get this process underway. His addressees are manifestly, the present Parliamentarians, the general public, the eight former members of VMRO DPMNE and the opposition.
What is noteworthy in his speech is that he depicts himself as a progressive and liberal leader, who has got both courage and determination to make radical changes in order to improve the country's position. In other words, he attempts to present himself as a visionary who is prepared to break all the ties with the past that hold the country from moving forward and as a hero who is willing to take decisive steps to enable his county and people to embrace a prosperous and promising future.
The image of a visionary that the Prime Minister creates for himself is based on carefully made lexical choices. Namely, in discussing the endorsement of the name change, he continuously qualifies the decision with extremely positive lexis describing it as *historic*, *patriotic*, *grand*, ("историска, татковинска, голема"); a decision with which our country writes history ("одлука со која пишуваме историја)"; a decision with which we turn a new page of our bright future ("отвараме нови бели страници на нашата иднина"); a decision with which we build our state ("одлука да ја градиме нашата земја"); a decision which guarantees a secure and peaceful future ("одлука за безбедна и спокојна иднина"); a decision which enables the young people of our country to stand on an equal footing with their European peers ("одлука што им дава сила на нашите млади генерации да излезат рамо до рамо со нивните европки врсници"), and a decision with which our country will become a NATO and EU member.
Just like his political rival from the opposition, from a syntactic point of view, it was notable that the Prime Minister was also prone to using relatively *short and simple declarative sentence*. In his speech there were practically no instances of long complex sentences, and, instances of interrogative, exclamative and imperative

type of sentences. With the declarative sentences, the Prime Minister was presenting the target audiences with his point of views, reassuring everybody that his political decisions are justified and correct. As in the case of his political opponent, the syntactic structure of his sentences was marked by a frequent *repetition of the same word* in a series of consecutive sentences. Thus, by constantly repeating the term *decision* and attaching positive attributes to it, he not only tries to convince the MPs and the general public of the righteousness of this decision, but also he implicitly imposes an image of himself being a capable leader, a visionary who reaches major decisions that will change Macedonia's otherwise gloomy prospects. The repetition in some sentences is manifested in the form of a string of words of the same part of speech usually *nouns* ("Instead of with ***bitterness*** and ***anger***, starting today we will fill the white pages with ***hope***, ***understanding***, ***unity***, ***solidarity*** and mutual ***joy***."/ "Наместо со горчина и гнев, од денес овие страници да ги испишиме со надеж, со разбирање, со заедништво, со солидарност, и со взаемна радост.") or *adjectives* ("this choice is *generational, historic* and *patriotic"/ "*овој избор е генерациски, историски и патриотски").

The use of the figures of speech was not that pronounced in this speech, i.e. apart from the several instances of metaphoric expressions, there were no other tropes used. This implies that most of his utterances were rather straightforward and did not require making inferences on the part of the audience. The speaker drew his metaphors from the domains of *education* comparing the country's bright future to a book whose pages are yet to be written ("What we have in front of us are the white pages of our future."/ "Пред нас се белите страници на нашата иднина."); the domain of *agriculture* comparing his political efforts to tilling the soil and picking fruits ("We all worked very hard and now is the time to gather the fruits of our work."/ "Работевме напорно сите и сега е време сите заедно да ги собереме плодовите од тој труд."), and the domain of *family and domestic life* comparing our country's future membership in the EU as becoming a member of a well-respected family ("Europe has given us her hand and has called us to join its family."/ "Европа и подаде рака и нè повика во своето семејство."). In all these metaphorical expressions, he indirectly hints at the successful politics of his government, which means that the speaker is simultaneously reinforcing the positive image of both himself and his government. His frequent choice of first person plural pronoun, *we,* implies that he is prone to sharing both the successes but the responsibility as well for the changes he is introducing in the Macedonian society with the other government representatives ("We defeated the fear in order to secure safe and peaceful future" / "Се издигнавме над стравот за да обезбедиме безбедна и спокојна иднина").

The subtle self-praise and the creation of the image of a visionary can be easily tracked down when the Prime Minister talks about his success in establishing good neighboring relations with the countries in the region. Thus, for instance, the Prime Minister attaches a clearly positive label to our southern neighbor, Greece, referring to it as a 'our friend the Republic of Greece' ("нашиот пријател Република Грција"). In that context, he also emphasizes the fact that Macedonia has no longer any open issues with the other neighbors as well ("немаме отворени прашања со ниеден сосед"; "We spread positive energy, we build friendships with all our

neighbors."/ "Ширите таков дух, такво пријателство со сите наши соседи."), implying that thanks to his political dexterity, all of Macedonia's past issues with the neighboring countries have been finally resolved – something that no other politician before him had managed to accomplish. The Prime Minister particularly stresses the improved position of the country in the international community and its newly gained respect among the most influential international powers, again due to his own and his government's hard work and vision ("Our country is now perceived as a role model for settling disputes. Our friends have recognized that and they acknowledge that. We have become a partner with the greatest powers with which we share the same values"/ "На нашата земја гледаат како на пример за решавање на спорови. Тоа нашите пријатели го препознаа и ни оддават признание. Станавме земја партнер со најголемите сили со кои делиме исти вредности.").

Unlike the opposition leader who for the most part of his speech vigorously attacks the ruling party, the Prime Minister only vaguely alludes to the opposition on just several occasions, hinting at their corruptive and irresponsible behavior in the past ("The other choice is to put the personal and party interest of some political actors above the interests of our people and our children and to deliberately obstruct the future of our country."/ "Другиот избор е да ги ставиме партиските и лажните интереси на некои политички актери над интересите на нашиот народ на нашите деца и свесно да ја попречите иднината на нашата земја.").

In his speech he specifically addresses the eight MPs from the opposition who supported the Prespa Agreement, expressing his gratitude to them and presenting them in a very favorable light. Thus, in one of his utterances he uses an antithesis to compare them with the rest of the opposition which he qualifies us 'uncooperative' ("I would like to express my gratitude to the 8 MPs who gave a serious contribution, which is becoming of a constructive opposition, which was not the case with the rest of the opposition from the Macedonian block."/ "Им се заблагодарувам на осумте пратеници кои дадоа сериозен придонес, како што личи на конструктивна опозиција, што не е случај со остатокот од опозицијата од македонскиот блок."). In his final attempt to reassure the eight MPs that they are doing the right thing by supporting the name change, he uses another figure of speech – a *metonymy* with which the countries that are interested in the outcome of the Prespa Agreement such as our neighbors, the EU, the USA, and Russia perhaps, are referred to as the entire world ("The world is watching. The world is watching and expects that you as proud representative of the citizens will show responsibility and vote in favour of the changes"/ Светот гледа. Светот гледа и очекува дека вие како одговорни претставници на граѓаните на нашата земја ќе покажете државничка одговорност.).

CONCLUSION

The critical discourse analysis of the two analyzed political speeches reveals that although political speeches delivered by the representative of the ruling party and the opposition are marked by many commonalities in terms of the linguistic means employed by these two politicians, still, certain differences are bound to arise.

Thus, for instance, as far as the politicians' choice of lexis is concerned, it was not surprising to find out that they both made a careful selection of an abundance of positive lexis to depict their personal and their party's image and role in the concrete political milieu. In contrast, they reserved the negative lexis only to refer to their political opponents and to depect them as undeserving of the power they have or aspire to. Still, the usage of negative lexis was much more pronounced in the speech of the opposition leader. Unlike him, the representative of the government used negative lexis much more tentatively and rarely. In fact, he seemed to have almost completely replaced the negative lexis strategy with another much more subtle tactics, also intended to debase the image of his political adversaries. More specifically, by not mentioning nor addressing the opposition in most of his speech, he is deliberately putting the limelight on himself and his party, and, thus, implicitly imparting the message that because of the opposition's obstructions to the name change and their 'destructive' behavior in general they should be punished, i.e. ignored and forgotten by everybody.

Also, another common tendency in both politicians' speeches was noted in terms of the syntactic structure of the sentences. Namely, both politicians preferred using short and simple sentences, mostly of the declarative type, marked with a frequent repetition of certain words and phrases. This is probably due to the fact that both speeches were previously prepared and well-thought out, and the intention of the speakers was to ensure the clarity of their messages, as well as to make them more effective, persuasive and memorable. As in the case of lexis, here as well certain differences were marked. Namely, while the opposition leader was using interrogative and imperative sentences along with the declaratives, the government representative stuck only to declarative sentences. As mentioned earlier, the choice of the type of sentences was in a close nexus with the speaker's goals. The opposition leader was assessing the situation in his declarative sentences, but also he was demanding answers and explanations from the government and the 8 MPs with his imperative sentences, and he was trying to encourage the general public to take a stance and confront the government with his imperative sentences. The government representative, being vested with power and authority, was only stating his opinions and assessments in the form of declarative sentences.

When it comes to the use of figurative language, the differences were the most striking. The presence of figurative language as a special linguistic strategy was noted in both speeches. Nevertheless, a considerably greater inclination towards using tropes was marked on the part of the representative of the opposition. Not only was he using tropes more frequently, but also he was making use of a greater variety of tropes (metaphors, rhetorical questions, personification and Biblical allusions) than his opponent who used only several instances of metaphors and one instance of metonymy, in his entire speech. One possible explanation for this difference would be that the former felt a stronger need to impress the audience and to appeal to their emotions with some sort of poetic and elevated expressions, in order to persuade them to vote for him when the time comes, so that he and his party can come to power. The latter, being in power already, probably felt much more relaxed and comfortable, and thought that fact-based and non-figurative language was more appropriate to appeal to people's reason, so that they could

understand that he deserves the position he has been entrusted with and that he should keep it in the future as well.

In sum, although a number of different linguistic features of political speech were looked into in this study, this is far from an all-inclusive and comprehensive study. Considering the intricacies of political discourse, further studies should be conducted upon much wider corpora of political speeches in order to reveal as many linguistic delicacies that make political speeches effective and persuasive as possible. Also, what deserves additional investigation is the differences and similarities in the usage of the linguistic strategies on the part of politicians who are in power and those who strive to come to power.

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GOOD GOVERNANCE AND INSTITUTION BUILDING AS A CONDITION OF EU INTEGRATION AND ECONOMIC GROWTH

Ivana Ostojić, Ms Econ Sc, Research Assistant
Institute of Social Sciences, Belgrade, ivanaostojic27@yahoo.com
Predrag Jovanović, PhD, Principal Research Fellow
Institute of Social Sciences, Belgrade, avepedja@gmail.com
Predrag Petrović, PhD, Senior Research Associate
Institute of Social Sciences, Belgrade, ppetrovic@idn.org.rs

Abstract
Institutions represent rules of behavior in a particular society, the limitations that a person has designed to shape interactions between people. Inclusive institutions promote the rule of law, maximize efficiency and social well-being and contribute to the achievement of higher rates of economic growth and represent key economic freedoms. Inclusive institutions provide security of private property, an impartial legal system and public services that provide equality in exchange and contracting, as well as citizens' participation in economic activities. Residents of countries with such type of institutions have access to political institutions, which gives them the opportunity to participate in the democratic process, to elect representatives of the authorities, change them, etc. Extractive institutions, as opposite to inclusive institutions, allow access to political power only to a privileged circle of people. The aim of this institutions is to subtract income and wealth from one social subgroup in favor of the other. The emergence, development and establishment of inclusive institutions is not a short process and it also implies the fulfillment of certain political prerequisites such as: the representation of parliamentary tradition and therefore political culture, compliance with laws and regulations, respecting private property rights, respecting state property rights, strong public opinion etc. Greater representation of inclusive institutions will certainly contribute to EU integration.

Keywords: *inclusive institutions, extractive institutions, integrations, governance, rule of low, growth*

INTRODUCTION

One definition that comprehensively determines the notion of institutions and thus is generally accepted is the one that indicates that the institutions are the rules of behavior in a particular society and the restrictions that a person has designed to shape interactions between people. The aforementioned definition of institutions shows us that the institutions are connections and rules of behavior in the mutual interactions of people. Each individual is familiar with potential benefits that he can achieve if he respects certain "rules of the game", but is also aware of the potential sanctions and costs incurred by non-compliance with the rules. In the recent years,

the use of the term "institution" has been widespread in the social sciences and reflects the growth of the institutional economy (North 1990, 13). This term is also used in other disciplines such as law, philosophy, sociology, politics, geography.
As North points out, institutions are based on formal but also informal behavior rules, as well as mechanisms that allow their implementation. The existence of institutions cannot guarantee us with certainty that each individual will behave in a socially acceptable and desirable way, but the existence of institutions will certainly increase the likelihood of compliance with the rules and regulations. Every individual who violates the rules of behavior must bear certain costs (North 1990, 14-16).
Geoffrey Hodgson points out that all activities in society are based on a specific institutional framework and all social interactions are under the concept of institutions. Also, institutions can be defined as a set of rules and norms that determine patterns of behavior of economic actors in a society (Hodgson 2006, 1-3).
Boland and Newman also deal with the problem of defining institutions, but within neoclassical theory. Institutions represent a certain kind of constraint that can be transparently given or tacitly defined to determine equilibrium positions in a social community (Boland and Newman 1979, 72-74). As authors point out, if one takes into account the aspect of economic policy, institutions can be defined as dynamic, active instruments by which it is possible to postpone or inhibit the occurrence of a particular change, or, on the other hand, to accelerate the development of the change. In this way, the authors point to the dynamic and static nature of institutions which on the one hand can guarantee economic stability, while on the other hand can be the drivers of economic change and thus become a source of economic instability.
North considers that institutions are never static and he pays special attention to formal and informal institutions when defining institutions. According to Raiser, informal institutions can be seen as a set of rules and norms imposed by society and moral values that affect individuals and organizations (or even force them) to strive to achieve their goals (Raiser 1997). The author points out that efficient informal institutions significantly influence economic development by reducing transaction costs and fostering state efficiency.

INSTITUTIONS, RULE OF LAW AND EU INTEGRATIONS

As Fukuyama points out, state building is precisely based on strengthening existing and creating completely new state institutions (Fukuyama 2004, 7). Institutions are precisely those that determine how stable and economically developed countries are and constitute a key development variable. Stability of institutions can actually be viewed as an indicator of the maturity of a society. Institutions are very important not only for the countries in transition, but they are also the preconditions for the development of an economy. The representation of weak institutions in one economy is reflected in the following statements (Šuković 2002, 26):

- The existence of a weak state, unable to enforce laws, collect taxes, oppose pressures from interest groups, etc.,
- Lack of political leadership and credible implementation of political reforms,

- Poor local self-government and poorly defined relations between central and local authorities,
- Widespread corruption resulting from excessive bureaucratic interventions and excessive regulation,
- Inconsistent and weak public procurement procedure based on administrative orders and only partially on market offers (Jovanović 2002, 247-249),
- Poor supervisory and regulatory procedures for the financial sector, etc.

EU Membership requires that the candidate country has achieved stability of institutions guaranteeing democracy, the rule of law, human rights and respect for and protection of minorities, the existence of a functioning market economy as well as the capacity to cope with competitive pressure and market forces within the Union. Membership presupposes the candidate's ability to take on the obligations of membership including adherence to the aims of political, economic and monetary union (European Council 1993).

Serbia, as a new state is expected to prove during the accession process that it is able to apply the legal heritage of the EU in its territory from the date of accession in the same way as the old member states. Serbia must prove all this during the accession period. Therefore, the harmonization of domestic legislation in that period and the construction of institutions that must be able to apply law, as well as the presence of courts overseeing the entire system, are of key importance. We can conclude that the ability to apply EU law in the territory of the Republic of Serbia is a condition for membership, not its consequence (European Commission 2018).

Judicial reform encompasses the necessity of becoming independent, impartial, efficient, responsible and professional. The fight against corruption includes several aspects, including preventive action, repression in terms of prosecuting corruption offenses and an institutional framework, which must be set up to ensure effective resolution of this issue (Međak 2016, 80-81). In order to fulfill the conditions in this chapter (Chapter 23: Judiciary and Fundamental Rights), Serbia needs to implement numerous reforms and activities that have a direct impact on the daily life of citizens. Establishing a reliable judicial system, in which citizens will be able to protect their rights and receive final judgments within the optimum period, is the basic benefit of all activities undertaken in the field of judicial reform. In addition, with an efficient justice system and an effective fight against corruption, Serbia becomes a reliable country with a stable legal system and in this way becomes attractive for investment (Subotić 2016, 7-8).

In support of the foregoing, the conclusion is also that the violation of private property and contractual rights, or their expropriation, inevitably leads to the reduction of the actual and expected returns, which leads to a weakening of incentives for the owners of the production factors to invest them. For what reason, any investor who rationally behaves will invest his own production factors if there is a great danger of expropriation of the yield of this investment. The greater likelihood of a violation of private property rights leads to less probability of investing, which leads to a reduction in the investment rate, which undermines the economic growth rate (Begović 2011, 176).

If we observe the EU requirements that are mentioned above, it is important to note that the representation of the rule of law institutions is important for EU accession. Two very important types of institutions are highlighted: inclusive and extractive institutions. Inclusive institutions contribute to economic activity, productivity growth and, economic progress. Such institutions provide security of private property, an impartial legal system and public services that enable equity in the exchange and contracting policy, as well as citizens' participation in economic activities (Acemoglu 2009, 58-63). We can conclude that greater representation of this type of institution contributes to EU integration, as well as the achievement of higher rates of economic growth.

The basic characteristic of inclusive institutions is that they function on the principles of the rule of law, which implies that laws are applied equally to all citizens. The value of the principle of the rule of law is reflected not only in equality before the law but also in providing opportunities for wider involvement in political processes. In this way, established, inclusive political institutions support inclusive economic institutions that speak of their interconnectedness (Jakšić and Jakšić 2018, 5-10).

Inclusive institutions create inclusive markets, allow individuals to get educated and choose their own profession with complete freedom. They encourage companies to create innovations and invest in state-of-the-art technology. Residents of countries with such type of institutions have access to political institutions, which gives them the opportunity to participate in the democratic process, to elect representatives of the authorities, change them, etc. It should also be emphasized that the security of property rights, legal regulations, public services and the freedom of contracting and exchanging depend primarily on a government that is firmly linked to economic institutions (Acemoglu and Robinson 2012, 87-88).

Extractive institutions are the opposite of inclusive institutions. They aim to seize income and wealth from one social subgroup in favor of the other. These institutions extract wealth from the majority of citizens and redistribute it to the minority by which they received such a name. Such institutions do not have incentives for savings, investments, innovations (Vanino and Lee 2018, 10-13). Extractive institutions allow access to political power only to a privileged circle of people, while inclusive institutions provide a chance for more people to participate in political life or economic process and have access to political power and economic wealth. The classic examples of extractive institutions are high tax rates[108], high fees for starting a business, banning imports or exports, and so on. Extractive institutions enable acquiring big profits and wealth through gaining of power, the appropriation of others' property and the establishment of monopolies (Acemoglu and Robinson 2012, 89-92).

The presence of inclusive institutions in one country facilitates EU accession. The chapter on competition (Chapter 8: Competition) is one of the most demanding and complicated chapters and consists of three parts: competition policy in the narrow

[108] The rate of income tax for citizens which moves within the limits of normal will affect that citizens regularly settle this obligation. However, that rate is extremely high, the only thing we can expect is the avoidance of tax payments by citizens (tax evasion), the rise in the gray economy, a significant decline in the employment rate.

sense (the fight against monopoly and concentration), state aid control policy and liberalization of certain sectors of the economy. These areas include rules and procedures for combating the monopolistic behavior of the companies (such as limiting agreements between companies and abuse of a dominant position), rules for examining the merger of enterprises and rules for preventing the granting of state aid that distorts or may impair competition in the internal market (Međak 2016, 51-53).

The emergence, development, and establishment of inclusive institutions is not a short process and it also implies the fulfillment of certain political prerequisites such as the representation of parliamentary tradition and therefore political culture, compliance with laws and regulations, respecting private property, respecting state property, strong public opinion, etc. One state can certainly not achieve economic progress if the backward industry is not exposed to competition, the economy is subsidized, companies and banks that achieve poor business results are not closed, protection of the property is not represented, the free flow of labor is prevented, innovation and creativity are not encouraged, resources are not in the hands of those who are the most capable, the functioning of market laws according to which should survive only competitive and successful enterprises for whose products there is a demand, is not possible (Acemoglu and Robinson 2010, 17-25).

EU Membership requires that the candidate country present an industry development policy and a restructuring strategy in order to assess whether their industrial policies are in line with EU principles, especially in terms of privatization and restructuring. For example, all state-owned companies in Serbia will have to go through the adjustment process, which implies structural and organizational changes in these companies and their preparation for independent and competitive participation in a market game. Industrial policy is closely linked to competition policy (including state aid). EU industrial policy has the authority to control and limit subsidies and other forms of state aid, both at national and EU level. (Međak 2016, 75).

INSTITUTIONS IN SERBIA

If we look at Serbia during the nineties of the twentieth century, we can see that institutions that promoted the rule of law were not represented. On the contrary, wealth was concentrated in the hands of a small number of members of the political and economic elite. Processes of privatization and restructuring of enterprises have run slowly and have been burdened with many problems and unresolved issues. There were very complicated bureaucratic procedures for starting a business, loss-making companies continued to operate with state subsidies, there was no competition, and consequently, the generation of monopolistic and oligopolistic structures could not be prevented. In addition, no legal regulations were adopted which would define bankruptcy, competition, privatization, investment funds, etc. (Grujić and Uzelac 2011, 115-119).

The numerous studies conducted by the World Bank, the World Economic Forum, and many foundations are focused on measuring the quality of institutions in countries around the world. The aim of the conducted research is to create certain indicators on the basis of which one can draw conclusions about how much an

economy is stable, whether the rule of law is represented, whether society is corrupt, how efficient the judiciary is, what are the limitations of government intervention and power, whether the labor market is free, etc.

Table 1. The ranking of the institutional indicators of Serbia

Institutions	Value	Rank/140
Organized crime 1-7 (best)	4.1	104
Homicide rate /100,000 pop.	1.4	46
Terrorism incidence 0 (very high) -100 (no incidence)	99.9	55
Reliability of police services 1-7 (best)	4.1	89
Social capital 0-100 (high)	n/a	n/a
Budget transparency 0-100 (best)	61.5	49
Judicial independence 1-7 (best)	3.0	107
Efficiency of legal framework in challenging regulations 1-7 (best)	2.9	98
Freedom of the press 0-100 (worst)	29.6	63
Burden of government regulation 1-7 (best)	2.8	113
Efficiency of legal framework in settling disputes 1-7 (best)	2.9	108
E-Participation Index 0-1 (best)	0.81	47
Future orientation of government 1-7 (best)	3.5	81
Incidence of corruption 0-100 (best)	41.0	66
Property rights 1-7 (best)	3.7	115
Intellectual property protection 1-7 (best)	3.6	100
Quality of land administration 0-30 (best)	18.0	52
Strength of auditing and reporting standards 1-7 (best)	4.0	108
Conflict of interest regulation 0-10 (best)	5.0	95
Shareholder governance 0-10 (best)	6.3	45

If we analyze the World Economic Forum data presented in The Global Competitiveness Report 2018, institutions present the first pillar of competitiveness of a total of twelve. The ranking of the twenty institutional indicators of Serbia is presented in Table 1. By analyzing the presented data from this table, it is observed that Serbia ranks 115th out of 140 countries in property rights. This is also the lowest ranked institutional indicator. This is followed by the burden of government regulation with rank 113, then the efficiency of legal framework in settling disputes and the strength of auditing and reporting standards with rank 108 (Schwab 2018).

The 2018 Investment Climate Statement also provides information on property rights in Serbia. It states that Serbia has an adequate body of laws for the protection of property rights, but the procedure of enforcing property rights through the judicial system can run very slow. There are many factors that can complicate the issue of property rights such as requests for restitution, unlicensed and illegal construction, limitation of property rights to rights of use, outright title fraud, and other issues. Investors are cautioned to investigate thoroughly all property title issues on land intended for investment projects (Bureau of Economic and Business Affairs 2018).

According to the Heritage Foundation, the Economic Freedom Index for Serbia is 62.5. According to the value of this index, Serbia is ranked 80th out of 186 countries. The Economic Freedom Index increased by 3.6 percentage points over the previous year. Serbia has advanced 19 places in comparison to the previous year on the Heritage List of Economic Freedom. Serbia is still recovering from years of international economic sanctions and damage from civil war and still making the transition from statism to a market economy. Inflation is under control, and the budget has stabilized. Many large state-owned enterprises in the electricity, communication and natural gas sectors should be reformed. Deeper institutional reforms are also needed to tackle bureaucracy, reduce corruption, and strengthen a judicial system that is vulnerable to political interference (The Heritage Foundation 2018).

CONCLUSION

Based on the previously announced information on the quality of institutions, Serbia should build inclusive institutions that will lead to economic progress and accelerate the EU integration process. The presence of inefficient institutions that do not promote the rule of law reflects the period of the nineties and the beginning of the twenty-first century when a lot of privatization processes failed. Unsuccessful transition and systemic corruption are the main features of a given period. In such circumstances, inadequate institutional infrastructure could not ensure a successful change of the economic system.

During 2018, Serbia maintained macroeconomic stability. The process of fiscal consolidation continued with the faster growth of gross domestic product relative to initial forecasts, but the economic growth strategy based on investment and exports has not yet been fully realized. Therefore, the situation regarding the quality of institutions in Serbia has improved in recent times, but constant work on their improvement is necessary. Some of the important challenges for Serbia are the inefficiency of the judiciary, high corruption, large state-owned loss-making enterprises, informal economy. All these challenges adversely affect economic growth.

EU membership is the foremost strategic foreign policy priority of the Republic of Serbia. Values promoted by EU member states are recognized as values that Serbia wants to further nurture, and the accession process is an opportunity for reforms and strengthening of European standards. In addition, the European Union is the most important trade and investment partner of Serbia and thus one of the most important factors of economic stability of the country.

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THE INNOVATIVE ASPECT OF THE ESTABLISHMENT OF NATIONAL ECONOMIES ON CLUSTERS - POSITIVE AND NEGATIVE SITES-

Goce Markoski, PhD
goce.markoski@uklo.edu.mk

Ass. prof. Marija Dimovska, PhD
marijadimovski@yahoo.com

Abstract
The subject of research on this paper is the clusters and their contribution to the development of the innovation of national economies. They have been identified as one of the pillars for their rapid economic development. The relevance of the research on the innovation aspect of clusters, the development of the national economy both in the Republic of Macedonia and among the EU Member States stems from the role of clusters in overcoming economic problems on the one hand, as well as facilitation of the private initiative, acceleration of economic growth and the improvement of employment opportunities as factors of the economic development of countries on the other.
In conditions of globalization of the world economy, the issue of developing the competitiveness of businesses and their contribution to national economies, is creating conditions for developing the private sector by providing favorable business climate and eliminating administrative and bureaucratic obstacles, is raised.
The survey, conducted through data analysis in EU member states, confirmed the assumptions of the great importance and potential of clusters for the national economies of the EU member states.

Key words: cluster, entrepreneurship, innovation, business, competitiveness

INTRODUCTION

The existence of the cluster as a form of organization of businesses is known long time ago in a different economies as geographical concentration of businesses, but without significant impact on national economies. In fact, the existence of crafts of an geographical area that cooperated in certain areas as part of the laws of nature, is a fact which shows that this form of organization existed across centuries in many regions. This means that the clusters have long been an integral part of national economies, but with significantly limited role. In the economic literature, the term ***cluster*** becomes prominent in the 90s years of last century with the publication of the book "Competitive advantage of the nation" by Michael Porter, professor of Harvard University. From the Porter analysis of the competitiveness of companies, can be concluded that, the leading companies do not operate in isolation from other

businesses, they operate as part of a wider group of complementary companies. This group of related companies is called clusters. So, the concept of cluster association is not new. Some authors started to think for a cluster in the early twentieth century, when arise and corporation which main aims was to increase company productivity. After that, on the cluster began to be seen as an opportunity to introduce innovative thinking for a company or business, and opportunity for the region development. This considerations recently to expand the national and multinational level.

ANALYSIS

Clusters have a major impact on the development of national economies, especially in the EU countries. This conclusion is supported by the fact that, in the formation of clusters in some EU Member States, national institutions also participate through developed clustering programs. Such a policy to support the formation of clusters, has been implemented through agencies under the supervision of certain ministries. Thus, a national policy for the formation of clusters has been developed in the Netherlands, while regional initiatives that emerge in the direction of cluster development are usually implemented as separate programs.

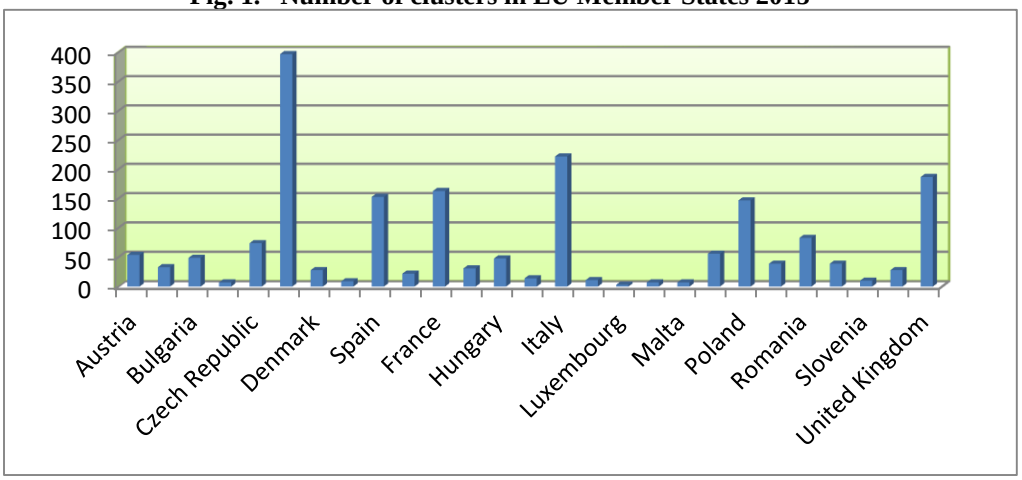
According to the analysis of the data made in different time periods, more precisely in 2008, 2011 and 2015, is concluded that, the number of clusters in the countries of Western Europe has been steadily increasing, both in number and volume, and thus including various activities.

This shows that, clusters are an important part of the European economic reality. Based on the analysis made by the cluster observatory, it can be concluded that in 2015 approximately 38% of EU employees are employed in clustered companies, taking into account that the number of employees in clusters depending on the country are ranging from 14.2% in Malta to just under 50% in Romania.[109]

According to the data obtained from the cluster observatory, which are shown on Fig. 1, is concluded that the largest number of clusters in 2015 was in Germany, followed Italy and the United Kingdom, while the lowest number of clusters, is in Luxembourg.

[109] The data are extracted from the European Cluster Observatory and are based on data that includes cluster information that is statistically identified in 32 countries, as well as the cluster policy developed in these countries at the national or regional leve.

Fig. 1. Number of clusters in EU Member States 2015

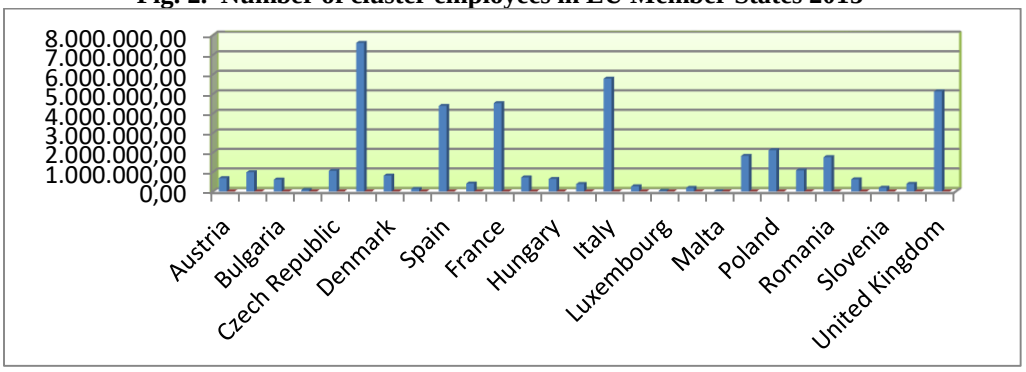


Source: www.cluster observatory.eu (processed data from the author), September, 2017

Using the same source, it can be noted that analogously to the data from Fig. 1, the largest number of employees in clusters in 2015 are in Germany, Italy and the UK, and the smallest in Luxembourg (Fig. 2). Considering that, Germany is a country of about 80 million inhabitants, as well as Italy and the United Kingdom with approximately the same number of population about 61 million inhabitants, it can be concluded that according to the population, the conclusion from Fig. 2 is logical. However, according to an analysis made using data from the cluster observatory, which processed data on cluster workers compared to the total number of employees in the countries that are considered in the processing of data, the remaining ones are Romania.

Depending on the number of population, the number of employees in clusters is shown through Fig. 2.

Fig. 2. Number of cluster employees in EU Member States 2015

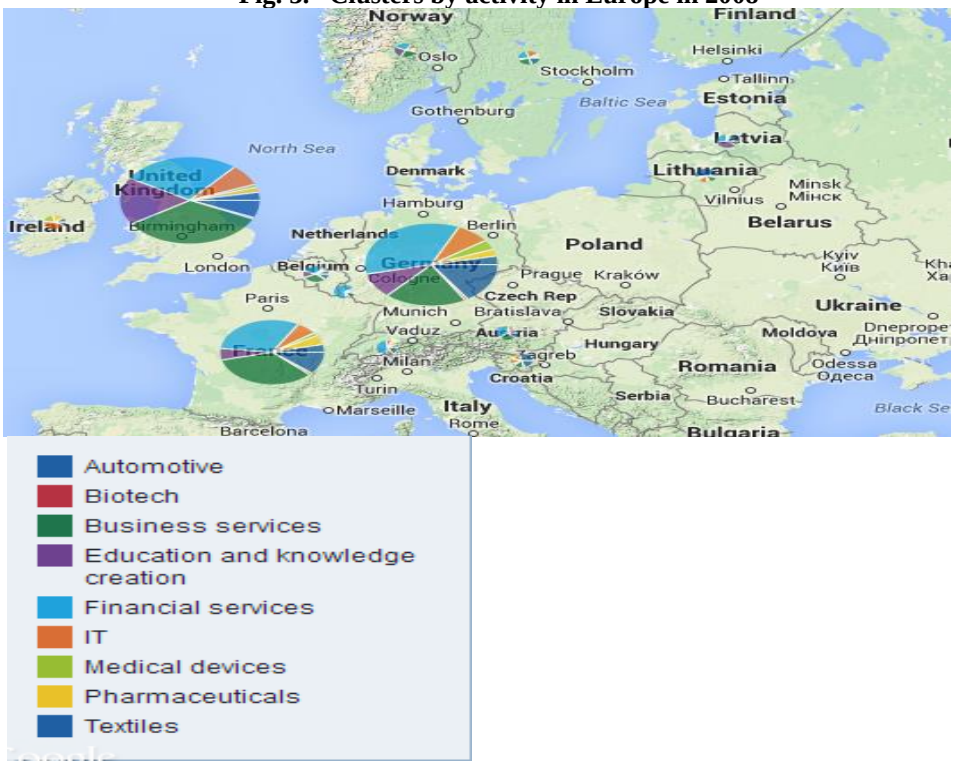


Source: www.cluster observatory.eu (processed data from the author), September, 2017

This analysis points to the fact that clusters are among the most relevant microeconomic factors that influence the level of prosperity of the region. Taking into account, the importance of clusters in labor accumulation, the European Cluster

Observatory focuses its efforts on profiling clusters with a specialized product program, believing that such clusters will be more prosperous and employ more workers. Additionally, a large number of other companies that are indirectly involved in the work of the cluster, will also contribute to the development of the national economy and which according to the increased workload, will profit. From here, the increased scope of work will also trigger the need for new employments.
Since the beginning of the 21st century, significant progress has been made and the spread of clustering throughout the territory of Europe. One of the reasons for this expansion of the formation of clusters is the collapse of the socialist bloc towards the end of the 20th century and the changes that occurred in the economic order of the eastern European countries. According to the analysis, in 2008, the clusters were most prevalent in Western European countries (Fig. 3), for their number to notice significant growth in eastern European countries in 2011 (Fig. 4).
Activities, that are covered by clustering, are mostly retained in all three years of analysis (2008, 2011 and 2015).

Fig. 3. Clusters by activity in Europe in 2008

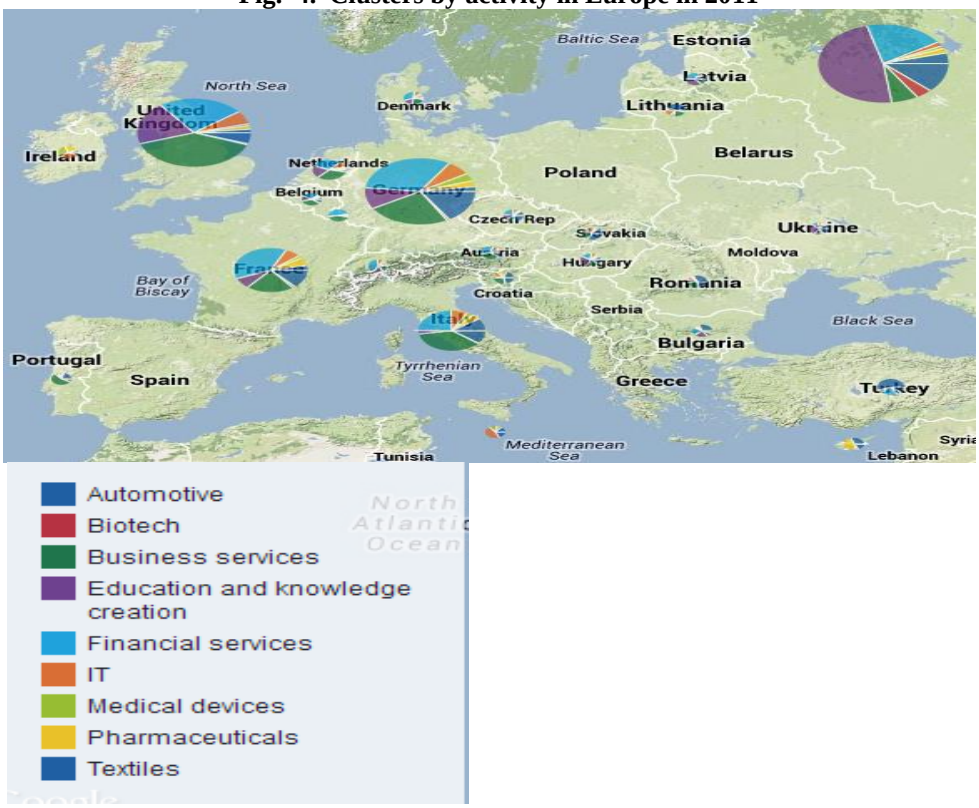


Source: www.cluster observatory.eu, September, 2017

In 2008, clusters were more prevalent in the more developed Western European countries, with the largest number of clusters in the UK, Germany and France. According to the activity, in almost all countries, the largest number of clusters exist in the financial sector, business services, the textile industry, the information technology industry and education (Fig. 3). As a result of the positive effects, that

have been achieved in national economies and the establishment of a growing number of companies, in 2011, the number of clusters increased, significantly and took a growing swing in Central and Eastern Europe, especially in the Russian Federation. The activities in which there is a common interest in cluster, gathering are from the fields of education, financial sector, automobile industry, textile industry (Fig. 4).

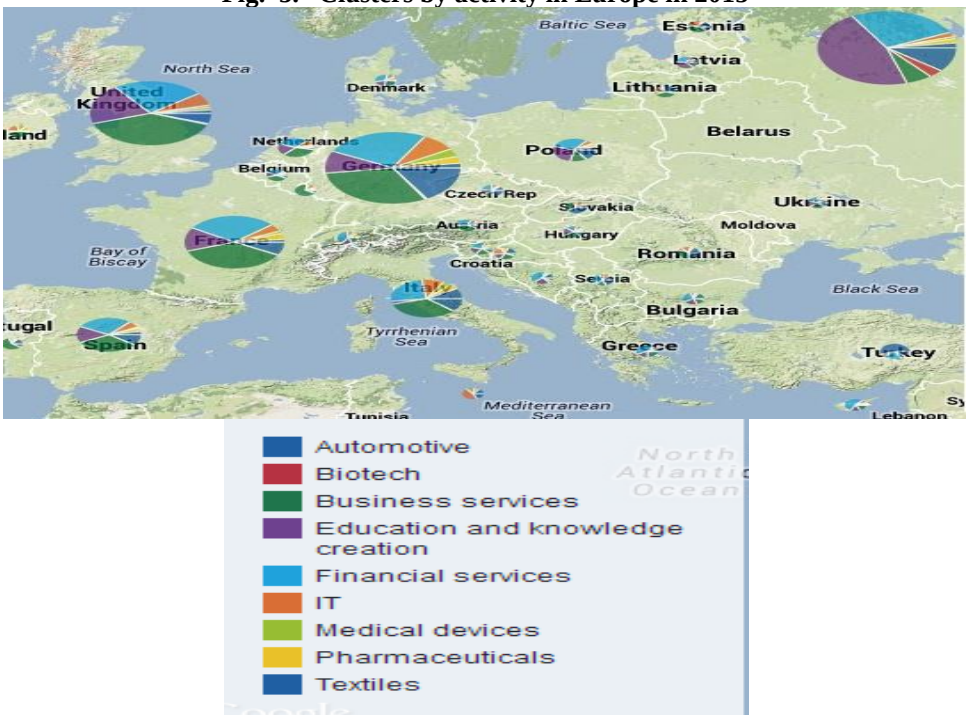
Fig. 4. Clusters by activity in Europe in 2011



Source: www.cluster observatory.eu, September, 2017

According to the analyzed data, the number of clusters is continuously increasing, mostly in the same areas, ie in the same activities as mentioned above. In 2015, clusters in Europe are increasingly spreading (see Figure 5). There is almost no country in Europe where this clustering process has not started. According to the analysis, in 2015, the largest number of clusters were recorded in Great Britain, Germany, France, Italy and the Russian Federation.

Fig. 5. Clusters by activity in Europe in 2015



Source: www.cluster observatory.eu, September, 2017

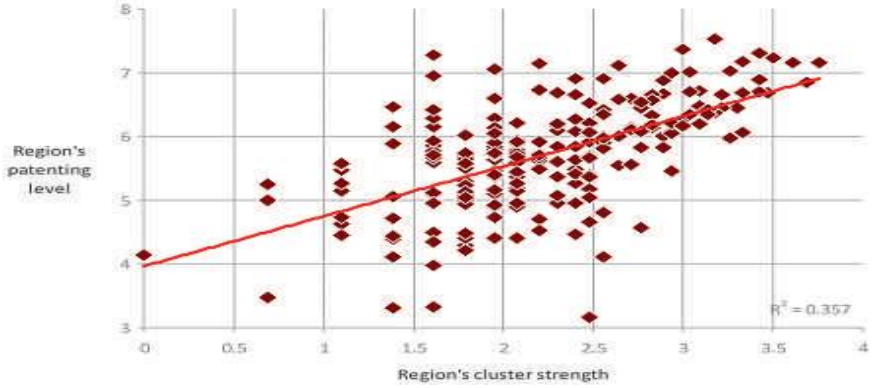
International trade, together with the planning of the national economic development, greatly influences the way of realization of the set strategic goals. Hence, both innovative thinking and the introduction of new more competitive products will affect the creation of positive effects in the operation of clusters.

Thus, according to the results of the Innobarometer survey in 2010 in the 27 member states of the European Union, which includes clustering companies and non-cluster companies, the result is that more innovative are the companies that are part of the cluster, unlike those who are not part of the cluster. Or nearly 78% of innovative clustering companies are introducing new or significantly improved production programs. Similarly, 63% of cluster companies introduce innovative production technology, compared with 56% of non-clustered companies. The results indicate that, clusters encourage innovation and clustering companies are more interested in engaging in research on market needs than doing non-business clusters, 53% versus 33%. Also, from the analysis of Innobarometer, the results obtained suggest that companies that are part of a cluster have a higher percentage of reported inventions compared to other companies.

According to the above, similar results are obtained through data from the European Cluster Observatory (www.cluster observatory.eu) from which it is concluded that, the relationship between the regional specialization ie the degree of clustering and innovative performance measured as the level of patenting new inventions is of great importance. According to Fig. 6, which shows the regions and the representation of clusters in the same with the reported inventions, the regions in

Europe where no clusters are formed, from which it can be noted that in these regions, innovative thinking is at a rather low level confirms with the low number of reported inventions[110]. On the other hand, in regions ranked at the peak of Europe by number of clusters, the frequency of reported inventions is high, which can be seen from Figure 6[111].

Fig. 6. The significance of the cluster and the number of reported inventions in Europe



Source: European Cluster Observatory. ISC/CSC cluster codes 1.0, dataset 20070613

Clusters, as a contemporary economic and organizational form of association and interconnection of various types of entities from the economy, service providers and various institutions of regional and national character as well as higher education and research institutions, are aimed at stimulating the economic growth of a country or region[112]. The experiences of certain countries point to the fact that this type of association contributes to strong economic development and represents a true response to the globalization of the world market. This is confirmed by several case studies made by prominent researchers in this field presented below.

Namely, Porter's 2003 study on clusters in the United States points to the fact that a large percentage of employees are part of cluster companies, using the positive effects of a higher degree of economic development, higher wages, and increased employment[113]. The same result was obtained from a study done on the cluster of biopharmaceuticals in Denmark, which suggests that the greater non-specialization of the region leads to greater economic development and all the benefits of that development[114].

Another study by Wenberg and Lindquist in 2008, which covers 4,000 new entrepreneurial firms in the information sector in Sweden, points to the fact that clustered companies create more jobs, pay higher taxes, pay higher salaries to

[110] O. Solvell, Clusters-Balancing Evolutionary and Constructive Forces, op. cit., p. 34
[111] Solvell, Clusters-Balancing, p. 34
[112] Solvell, Clusters-Balancing p. 33
[113] *EU Commission, "The Concept of Clusters And Cluster Policies And Their Role for Competitiveness and Innovation*", Main Statistical Results And Lessons Learned, EUROPAINNOVA/PRO INNO, *(2008),*Europa Nº 9 p. 29
[114] *EU Commission, The Concept of Clusters, p29*

employees[115] . In addition to this study, the fact is that clusters have a positive effect on the survival of companies. A study made by Brenner and Guildner [116] in 2006, points to the positive relationship between clusters and economic performance. This study confirms the significance of the clusters in the economic development of the region or one country, while stressing that the cluster, and how old it is, still positively affects the national economy, unemployment, incomes and the development of new companies. The only remark is the delay in joining the new technological changes, which leads to the conclusion that it needs to be changed and adapted to the new contexts and challenges.

Summarized together, it can be said that there is strong evidence of generating good economic results through which the positive aspects of clusters' work are determined which [117]:

They contribute to improving production through better communication between companies and suppliers, which ensures lower transaction costs, the rejection of the need for stocks, the avoidance of import costs and the payment from the front. They provide access to specialized information from different areas that can be used locally. Given the involvement of different institutions within the cluster, companies have wide access to public goods and special services, such as training programs, quality control, testing laboratories, and the like.

Contributing to increasing innovation activities by improving the opportunities for recognizing innovation opportunities, while using the benefits of cluster membership, companies perform research at substantially lower prices that reduce and the total cost that is included in the price of the product / service. Also, the established links within the castor will enable companies to access formal sources of funding whose funds will be directed towards innovating new products and services

Encourage new business associations through good practices and positive practices by which companies are given the opportunity to engage in the cluster by offering them the entire network of market information and connecting with related companies. Clusters attract more suppliers in their vicinity because consumers are more concentrated and costs and risks are reduced, with the particular importance of the opportunity given to small and medium-sized companies to achieve economic growth through cluster retention.

Attract foreign direct investments through the opportunities offered to companies as part of the cluster to have operational advantages, further strengthening their position and reliability in attracting investment and providing more information about the local business environment, which certainly contributes to the facilitation of the feature for investment;

Although numerous examples that are mentioned throughout the text indicate the role and significance of clusters in the economic development of an economy, however, it should be borne in mind that clusters in their functioning have certain requirements to be answered, which can be said to represent the negative side of the

[115] *EU Commission, The Concept of Clusters, p29*
[116] *EU Commission, The Concept of Clusters, p29*
[117] www.competitiveness.com, October, 2013

functioning of the clusters. Namely, the members of the cluster are exposed to financial expenses in the form of membership fees in order to cover the costs incurred in the functioning of the cluster. Although companies are structurally and organisationally well organized, it should also be done with the organizational structure of the cluster, for which a management team is needed that will be adequately trained to manage the cluster and its management, which is also necessary and additional financial expenditure. Often the question is raised about the impact and role of larger companies and the imposition of their influence on smaller cluster companies. Not always, the cluster companies are willing to collaborate with each other and share their positive experiences, ideas, technology and knowledge. Therefore, in certain cases, the clusters do not have a tendency of growth and development, additionally this problem is increased if the local administration acts bureaucratically and does not meet the requirements and needs of the cluster. There is a suspicion that cluster companies can be brought into a situation of reduced production of their own ideas, and hence more difficult acceptance of the need for change.

GOOD PRACTICE …

A good indicator of the challenge faced by companies and the possible failure to be part of the cluster, will be presented with the example of the cluster for wood in Croatia. The wood industry in the Republic of Croatia is composed of relatively small family businesses that produce almost the same range of products on the domestic market. The Croatian furniture industry, is fragmented and dispersed throughout the territory, slow to modernization, and low level of competitiveness. It should be borne in mind that the wood mass resources in Croatia are large and of high quality, and this advantage was recognized by the Croatian Competitiveness Initiative. In fact, the wood industry for the Republic of Croatia is a significant industrial branch that covers a large number of small companies and which can grow into a significant economic branch for the state. One of the characteristics of the wood industry in Croatia is the fragmentation of production, that is, 60% of the companies from this branch are with fewer than five employees, and only 6% of the companies with more than 200 employees. Earnings per employee amounted to about 230 thousand kuna, which is only 45% of the Croatian average, while the average monthly paid-up gross salary is 3,400 kuna, which is only 60% of the Croatian average. Therefore, the challenge was to network all these small companies within the cluster model as an opportunity to provide assistance that will serve as a catalyst for attracting qualified and talented workers and creative designers in the timber industry. The Croatian cluster for wood works in the direction of developing the wood industry, by providing guidelines for timber companies and adopting measures. In addition, the goal was to establish a network of all parts of the value chain, that is, suppliers, primary producers, processors, importers, exporters and manufacturers, universities as well as structures from the local and national authorities. These challenges have contributed to the Croatian wood cluster to use its own knowledge and foreign experience to achieve a common community goal - a competitive wood industry focused on strategic development and increased value. The establishment of the cluster for wood in Croatia was

funded by USAID's United States Agency for International Development. The Cluster in May 2003 promoted its strategy with an ambitious program - which included increasing the export of finished products from the Croatian wood industry by 20 times and opening up 40,000 jobs in the wood industry in the next seven years. However, besides achieving the stated goals, a goal was also set that aimed at creating and developing Croatian design as a recognizable world brand.
Despite the development measures undertaken, the proposed strategy for the development of the wood industry in Croatia through the establishment of a cluster did not give the expected result. The reasons for this are the economic crisis that engulfed Croatia and the rest of Europe, as well as the lack of co-operability of the overall program. Thus, the projected goals were not fulfilled, and in relation to the engagement of the workforce, there was a reverse process, ie instead of increasing there was a decrease in the labor force in the wood industry. Today, the Croatian wood cluster exits, but without some specific projects.
However, clustering in Europe takes on a growing swing and support from local and national governments through a series of projects that support cluster associations, providing a range of training programs for all stakeholders. In this direction, a wide range of activities are aimed at strengthening the awareness for supporting clustering and the possibilities for strengthening the innovation potential of the companies.

CONCLUSION

Theoretical research, gives an exceptional clear and concrete picture of the need and possibilities for the formation of clusters in the Republic of Macedonia, as well as their contribution to the development of the businesses. In addition to the benefits of this kind of association, the disadvantages or weaknesses of businesses that are part of the cluster are also highlighted. The theoretical research in the field of clusters and their contribution to the economic development show as that the Clusters are accepted as an opportunity for more dynamic development of many countries, both in Europe and beyond, which involves introducing innovations, increasing the quality of products / services, flexibility in operation, speed in delivering products / services, and it requires accentuated team approach.
Additional, the formation of a cluster will encourage engagement of a large number of small companies through which a common understanding can be developed, and action at a common level. This joint engagement will enable the establishment of a network of companies that will jointly participate in the creation of new products/services of higher quality. That means cluster's success lies in the more dimensional involvement of different stakeholders, primarily the research centers and higher education institutions. It allows the use of common forces and resources, and joint actions require a shared vision, common goals, while enhancing trust will enable faster information flow.
That way, is recommended that the state in particular help intensify the promotion of the connections, cooperation and networking as factors for success in the global economy and promotion of the competition policy and programs for small and medium enterprises. It is recommended that the state continue to support the internationalization of clusters through a variety of promotional activities.

Companies that are part of the cluster have the opportunity to gain greater access to capital from financial institutions. The provision of capital will enable the modernization of the production process, reducing the production costs and obtaining a high quality product. This will allow creating a product with a lower selling price but with a higher quality, which makes the company competitive on the market.

The cooperation between the cluster companies gives the opportunity to use some of the human resources for the needs of some of the cluster companies, especially professional and experienced staff, which additionally reduces the costs of engaging staff and enables more efficient finding of the right people for the right thing. Improving the productivity of businesses is achieved through the availability of the information you need. Namely, a large number of information is accumulated in the cluster, ie in the local firms and institutions, which makes their use cheaper and more accessible. The high level of productivity depends on the presence of skilled labor, high quality scientific and technological institutions, adequate physical infrastructure, transparent and efficient administration and available natural resources, which is certainly a great asset for clusters that unite all these stakeholder.

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TOWARDS THE PERFORMANCE ANALYSIS OF THE MACEDONIAN JUDICIARY SYSTEM

Ilija Hristoski, Ph.D.
Associate Professor at the Faculty of Economics – Prilep
University "St. Kliment Ohridski" – Bitola
Republic of North Macedonia
e-Mail: ilija.hristoski@uklo.edu.mk

Angelina Stanojoska, Ph.D.
Assistant Professor at the Faculty of Law – Kičevo
University "St. Kliment Ohridski" – Bitola
Republic of North Macedonia
e-Mail: angelina.stanojoska@uklo.edu.mk

Mirjana Ristovska, Ph.D.
Assistant Professor at the Faculty of Law – Kičevo
University "St. Kliment Ohridski" – Bitola
Republic of North Macedonia
e-Mail: mirjana.ristovska@uklo.edu.mk

Ile Masalkovski, Ph.D.
Faculty of Law – Kičevo
University "St. Kliment Ohridski" – Bitola
Republic of North Macedonia
e-Mail: ile.masalkovski@gmail.com

Abstract
Improving the efficiency and functioning of the justice system, as well as enabling a better implementation of the international legal instruments, pointed out by the Council of Europe concerning efficiency and fairness of justice at a national level, are the cornerstones of the ongoing process of fundamental reforms that is currently taking place within the judicial system in the Republic of North Macedonia. In that context, the paper focuses on improving the effectiveness of Macedonian courts by proposing a predictive model suitable for performance evaluation, based on the utilization of the class of Deterministic and Stochastic Petri Nets (DSPNs). Grounded on the approach of the normative analysis, the aim of the paper is to propose a modeling framework appropriate for conducting performance analysis of the Macedonian judiciary system vis-à-vis the court cases' life cycle. The proposed framework can be seen also as a methodology for performance analysis of the ACCMIS system, the actual management information system that underpins the functioning of Macedonian courts.

Keywords: judiciary system, court efficiency, ACCMIS, performance modeling, Deterministic and Stochastic Petri Nets, North Macedonia

INTRODUCTION

Making the courts more productive and easily operable, i.e. more efficient is one of the most significant aims of all recent reforms vis-à-vis the judicial system in the Republic of North Macedonia. In addition, the use of performance measures for, or by, the judicial branch to analyze the degree to which courts in the country run efficiently and effectively becomes more and more evident since they are the only means to evaluate the overall progress of the reforms. The fundamental question is "How our courts perform?" In reality, practical advice and/or specific guidance for how to carry out performance evaluation for courts and/or judiciary systems is still very limited today, compared to the voluminous commentary on the myriad obstacles and challenges to its implementation (Hammergren 2014).

According to the Global Measures of Court Performance (2018), which is an integral part of the International Framework for Court Excellence (IFCE), the most compelling performance metrics include (a) Court user satisfaction; (b) Access fees; (c) Case clearance rates; (d) On-time case processing; (e) Duration of pre-trial custody; (f) Court file integrity; (g) Case backlog; (h) Trial date certainty; (i) Court employee engagement; (j) Compliance with court orders; and (k) Cost per case.

The duration of court cases is, without any doubt, a critical performance measure tightly associated with the court effectiveness and the notion of on-time case processing. It depends on a number of objective and subjective factors, including the number of steps of the court procedure, the availability of human and financial resources, the quality of court case management strategies and policies designed to deal with the delay of court cases, the IT support, and alike. If the judicial system cannot handle the number of pending cases, delays occur, and overdue cases imply further delays. The longer the court procedure, the greater the costs incurred, both direct (court costs, attorney fees) and indirect (time spent, loss of income, bribery, and corruption).

This study is an attempt to address court effectiveness and on-time processing from an 'engineering' viewpoint. The basic premise is the fact that the court processing of cases is a purely stochastic process, including a plethora of parameters, related to possible states and timed transitions from one to another state. As such, it can be modeled using some of the existing mathematical formalisms, e.g. the stochastic Petri Nets. The resulting model can provide a powerful semantics for carrying out simulations in order to gain significant insights into the judiciary system dynamics.

The paper is organized as follows. In the next section, we introduce the notions of performance and efficiency and put the focus on these *vis-à-vis* the Macedonian judiciary system. In Section 3, the ACCMIS system is described briefly. The class of Deterministic and Stochastic Petri Nets, used for modeling purposes, is presented briefly in Section 4. Section 5 focuses on the proposed performance model of the Macedonian judiciary system. Section 6 concludes.

PERFORMANCE VS EFFICIENCY

One of the crucial questions worth to be answered vis-à-vis this study is what is the difference between the terms 'performance' and 'efficiency'. 'Performance' is the measurement of the quality of the output, whilst 'efficiency' is related to the effort made in relation to the output attained (Palmer 2017). According to Griepenburg (2017), 'performance' is doing it right, whilst 'efficiency' is doing it fast with a minimum of resources.

The statistical data found in the series of documents issued by the Macedonian Supreme Court, which are based on the assessment of Macedonian courts' annual reports from 2006 to 2017 (SCoRoNM 2019), include the following performance indicators (IHR 2019):

- The number of old court cases that are taken over from the previous year;
- The number of newly accepted court cases during the actual year;
- The number of solved court cases during the actual year;
- The number of unsolved court cases during the actual year;
- The number of 'absolutely efficient courts'[118];
- The number of 'relatively efficient courts'[119];
- The number of 'inefficient courts'[120].

Obviously, the available statistical data do not include explicit information about the actual duration of court case processing, i.e. the average duration per court case. More specifically, there are no relevant data needed to draw a conclusion whether and how the processing of court cases, altogether, approaches to the criterion of 'judging in a reasonable time slot', as a single measure for assessing the court efficiency.

It is also worthy to mention that the results obtained about the judiciary system efficiency are quite obscure, due to the political influence and disrupted independence, which yields in a low level of quality and citizen's distrust in the institutions of the judicial system (MoJ 2017, 4).

According to the 'Draft Strategy for Reforming the Judicial Sector for the Period 2017-2022 with an Action Plan', the strategic goals of the judiciary reformation in the country include (MoJ 2017, 10–32): (1) Independence and impartiality; (2) Quality; (3) Responsibility; (4) Efficiency; (5) Transparency; and (6) Access to justice. Three of these strategic goals are directly related to the performances, or efficiency, of the judiciary system in the country. These include:

(1) *Independence and impartiality*: The impartiality has been seriously jeopardized by the attempts to avoid the usage of the electronic system for automatic scheduling of court cases, which raises the necessity of urgent investigation of the ways of its usage (MoJ (a) 2017, 12); In this context, one of the strategic directives is to provide means for

[118] A court is considered an 'absolutely efficient court' if the court cases remaining from the previous year were solved in a time period up to 3 months.

[119] A court is considered a 'relatively efficient court' if the court cases remaining from the previous year were solved in a time period up to 6 months.

[120] A court is considered an 'inefficient court' if the court cases remaining from the previous year have not been solved in a time period up to 12 months.

scheduling of court cases without any external influences, using the ACCMIS software system; This is considered as being one of the most significant measures for realization of the postulates that are considered as strategic goals of the Reformation (MoJ(a) 2017, 14).

(2) *Efficiency*: Despite the fact that the rate of completely resolved cases in most of the courts in the country is 100%, the overall duration of court cases from their initiation to their closure is critical, especially in a number of old cases (MoJ 2017, 20); One of the strategic directives regarding this aspect is to monitor the judiciary system efficiency through the indicators that are included in the EU Justice Scoreboard (a list of results), proposed by the European Commission for the Efficiency of Justice (CEPEJ), and other relevant international standards (MoJ 2017, 21; EC 2018, 10–16).

(3) *Transparency*: In many relevant international reports an insufficient application of the system for announcing judicial decisions has been pointed out, as well as the absence of searching tools; An obstacle for a consistent implementation of the transparency and inclusion of the public sector in the functioning of the judicial system is the absence of an efficient system for acquisition, processing, and analysis of statistical data about the court functioning; The methodology for obtaining judicial statistics is not applied to practice, because the software to support such activities is non-functioning; There is a need for implementing mechanisms for controlling the application of the software system for managing the flow of court cases, as one of the strategic directives in this aspect (MoJ 2017, 21–23).

Having minded the previously elaborated strategic goals, it is evident that the realization of all of these directives can be achieved solely by an implementation of a dedicated management information system (MIS) that will provide automatization of the processes inherent to the judiciary system functioning. In North Macedonia, such MIS is the ACCMIS system.

THE ACCMIS SYSTEM

The Automated Court Case Management Information System (ACCMIS) has become operational in all 33 courts in North Macedonia back in 2010. It has replaced the manual case processing, thus enabling the courts to become both more efficient and transparent. By focusing entirely on the flow management of court cases and the automation of court administration tasks, ACCMIS has significantly improved the country's judicial system.

ACCMIS is "a robust, full-featured system which automates and tracks all aspects of the case life cycle, from initial filing through disposition and appeal as to each individual party for Criminal, Juvenile, Minor Offenses (Traffic Violations), Civil, Small Claims, etc." (EduSoft 2019). It is a complete software solution for all professionals involved in the judiciary system, ranging from clerks to judges, and everyone in between.

The following are considered the most pertinent features of ACCMIS:

- It is highly scalable, covering all aspects of managing court cases, for all types of courts, encompassing different organizational structures;
- It provides online, real-time services 24/7, during the whole year;
- It provides increased confidentiality, integrity, and security;
- It provides possibilities for generating various kinds of reports;
- It significantly reduces repetitive tasks;
- It greatly enhances the quality of data;
- It provides enhanced statistics and monitoring.

Regarding the specific functionalities, ACCMIS offers full support to the following activities:

- Registering of cases;
- Random assignment of cases;
- Movement of court cases;
- Built-in document management system (judgments, minutes, orders, letters, summons, deliveries of documents);
- Registering of external files;
- Registering of appeals and extraordinary remedies;
- Creating statistical data warehouse for evaluation of judges;
- Registering of external files.

The effect of the ACCMIS on the Macedonian court efficiency is significant, especially on the Primary courts. After the deployment of the ACCMIS in 2010, a dramatic increase in the percentage of solved cases has occurred, and the number of solved cases prevails over the unsolved cases (Fig. 1).

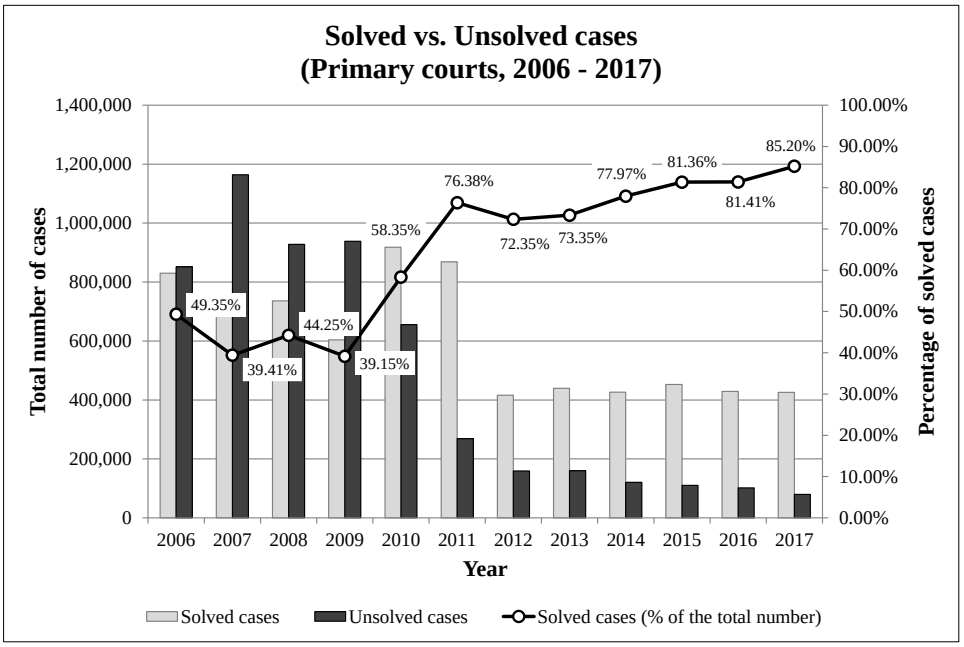

Fig. 1. Solved vs. unsolved cases with Primary courts (2006 - 2017)

As a result, the number of absolutely efficient courts has considerably increased, reducing the number of inefficient courts to zero during recent years (Fig. 2).

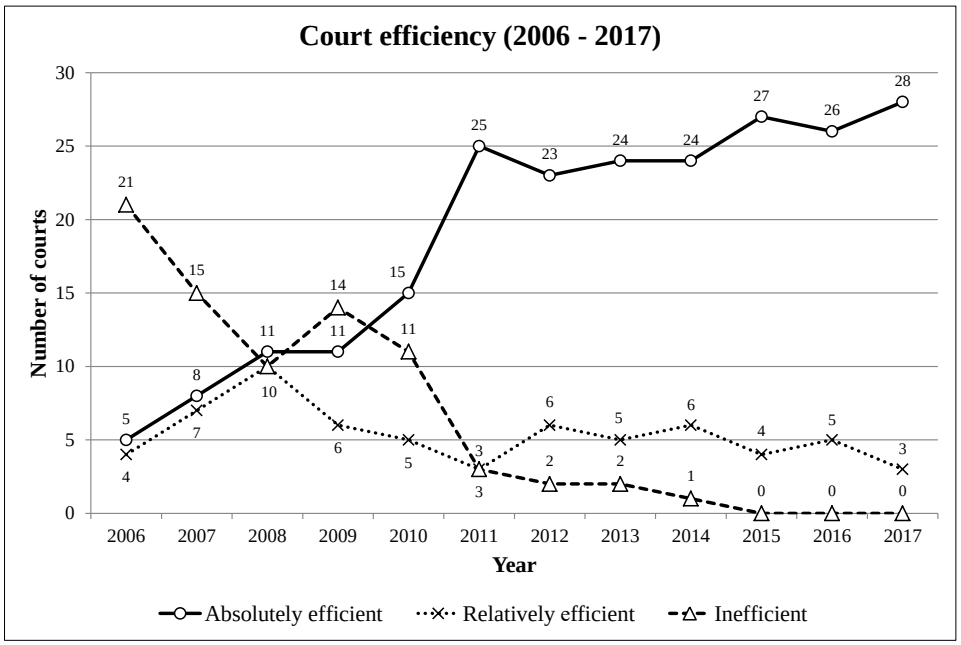

Fig. 2. The number of absolutely efficient, relatively efficient, and inefficient courts (Primary courts and Courts of appeals), from 2006 to 2017

The ACCMIS system is a highly valuable tool that has contributed significantly in the process of implementation of the Strategy for reforming the judiciary system 2017–2022, and also to the fulfillment of the tasks intended to be carried out by the Ministry of Justice and the Judicial Council in terms of establishing EU standards for an independent and efficient judicial system in the country.

THE CLASS OF DETERMINISTIC AND STOCHASTIC PETRI NETS

Deterministic and Stochastic Petri Nets (DSPNs) are recognized as a widely-known tool for performance analysis of distributed systems, which utilizes the graphical notation introduced by ordinary Petri Nets (PNs). They have been introduced as an extension to the class of Generalized Stochastic Petri Nets (GSPNs) (Ajmone Marsan & Chiola 1987). In GSPNs some transitions are timed, whilst others are immediate. Random, exponentially distributed firing delays are associated with timed transitions, whereas the firing of immediate transitions takes place in zero time, with priority over timed transitions. In addition, the selection among several possibly conflicting enabled immediate transitions is made by utilizing their corresponding firing probabilities. In general, immediate transitions are used for modeling instantaneous actions or logical actions (typically choices), whilst timed transitions with an exponentially distributed delays are used for modeling random durations of activities (events) within the GSPN model. DSPNs extend GSPNs by utilizing timed transitions with deterministic (constant) firing delays, which are used

for modeling activities (events) within the DSPN model that last for a given (pre-defined, deterministic) time.
The analysis of a DSPN model can be two-fold: (1) qualitative: performed by studying the structural characteristics of the underlying Petri Net; (2) quantitative: performed by computing the steady-state (stationary) and the transient (time-dependent) probability distributions of the underlying Generalized Semi-Markov Process, equivalent to an actual DSPN model (Ciardo & Lindemann 1994; Lindemann 1998; Lindemann & Thümmler 1999).
In this particular case, the class of DSPNs has been chosen as a modeling formalism, mainly for several reasons: (1) DSPNs are quite often used for modeling and evaluation of systems describing flows of objects (i.e. court cases); (2) In order to keep the model structure as simple as possible, the durations of all events are supposed to be random times, exponentially distributed, i.e. the times between events conform the Poisson process where events occur continuously and independently at constant average rates; (3) Since all legal terms, which are expressed in number of days, represent pre-defined, constant time periods, they are all modeled using deterministic transitions; (4) There are multiple dedicated software packages today, like DSPNexpress® or TimeNET®, offer both modeling and numeric simulation/evaluation of DSPNs.

DSPN MODEL OF THE MACEDONIAN JUDICIARY SYSTEM

The DSPN-based performance model we propose encompasses all important stages of the court cases' life cycle, supported by the ACCMIS system, including: (1) Acceptance/Registration of cases; (2) Assignment of cases to judges; (3) Completeness checking of the lawsuit; (4) Sending the lawsuit to the defendant; (5) Reception of the response to the lawsuit application; (6) Pre-trial activities; (7) Trial activities; and (8) Announcement of the verdict.
What follows is a series of DSPN sub-models that describe the civil procedure, i.e. the processing of a single civil case in an arbitrary Macedonian Basic court.
Figure 3 depicts the DSPN segment that models the process encompassing all the steps from lawsuit preparation (a token in the place *P_lawsuit_prep_start*) until the arrival of the court case in the court registry office (place *P_registry_office*). The lawsuit preparation process takes arbitrary time, exponentially distributed, and specified by the rate λ (exponential transition *T_lawsuit_prep*). After finishing, the lawsuit can be submitted to the court in two ways: either directly (firing of the immediate transition *T_submit_directly*, with a probability p_{DIRECTLY}), or via post office system (firing of the immediate transition *T_submit_via_post*, with a probability $1 - p_{\text{DIRECTLY}}$). If submitted by post, the arrival of the lawsuit to the court's reception office lasts for an arbitrary time, exponentially distributed with a parameter σ (exponential transition *T_post_office*). After arriving at the court reception office, the lawsuit resides there for an exponentially distributed time (exponential transition *T_reception_office*, with a firing rate δ), before it reaches the court registry office.
In the court registry office (a token in the place *P_registry_office*), the court case is being registered in the ACCMIS system within an exponentially distributed time $1/\varphi$ (exponential transition *P_accmis*). The ACCMIS system then automatically

allocates the case to the next judge (a token in the place *P_Jk*, $k = 1, \ldots, M$; M is the total number of judges comprising the Department of Civil Law), according to the Round Robin assignment scheme (Fig. 4).

Once a court case is being allocated to a particular judge, it takes an arbitrary time $1/\varsigma$, exponentially distributed, for a judge to check out the completeness of the lawsuit application (Fig. 5). If it is not complete, and if it was submitted by the plaintiff's lawyer, the lawsuit application is being rejected. However, if it is not complete, but it was submitted by the plaintiff personally, then the lawyer allows three days for the plaintiff to get additional copies, or eight days for it to be corrected and/or completed by supplementing new additions. If the plaintiff doesn't get additional copies within three days, the lawsuit application is being rejected. If the plaintiff doesn't make corrections and/or he/she doesn't complete the lawsuit application with new additions within eight days, it is being considered withdrawn. After all necessary corrections and/or additions are made to the lawsuit application within the legal time slot, the judge checks it out once again within a time $1/\pi$, exponentially distributed. If it is still incomplete, it is being rejected. Otherwise, the court procedure continues.

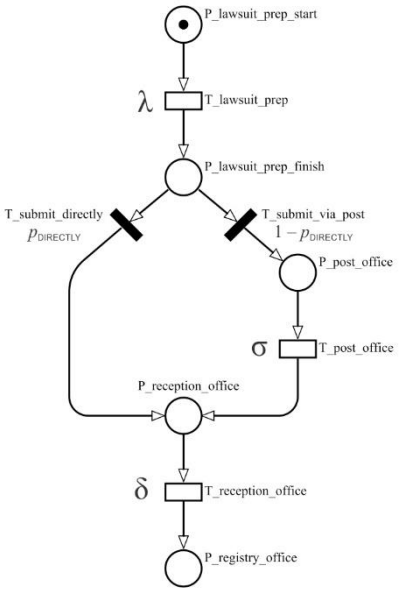

Fig. 3. GSPN sub-model of activities ranging from the lawsuit preparation to the acceptance of the lawsuit by the court reception and court registry offices

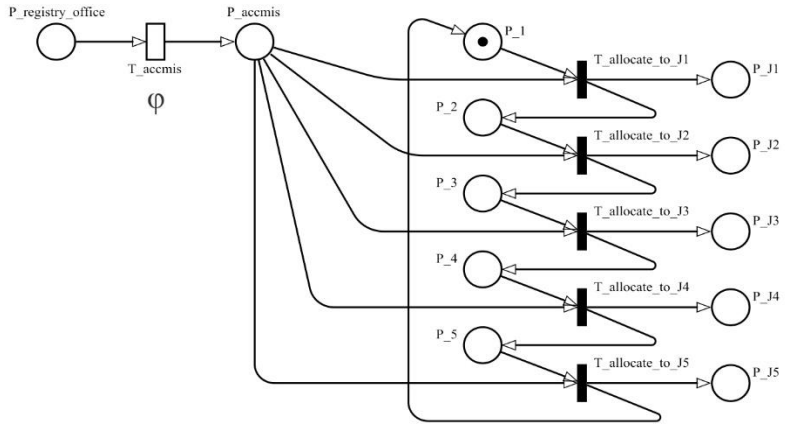

Fig. 4. GSPN sub-model of court activities found within the court registry office, including the automatic assignment of the case to the next judge

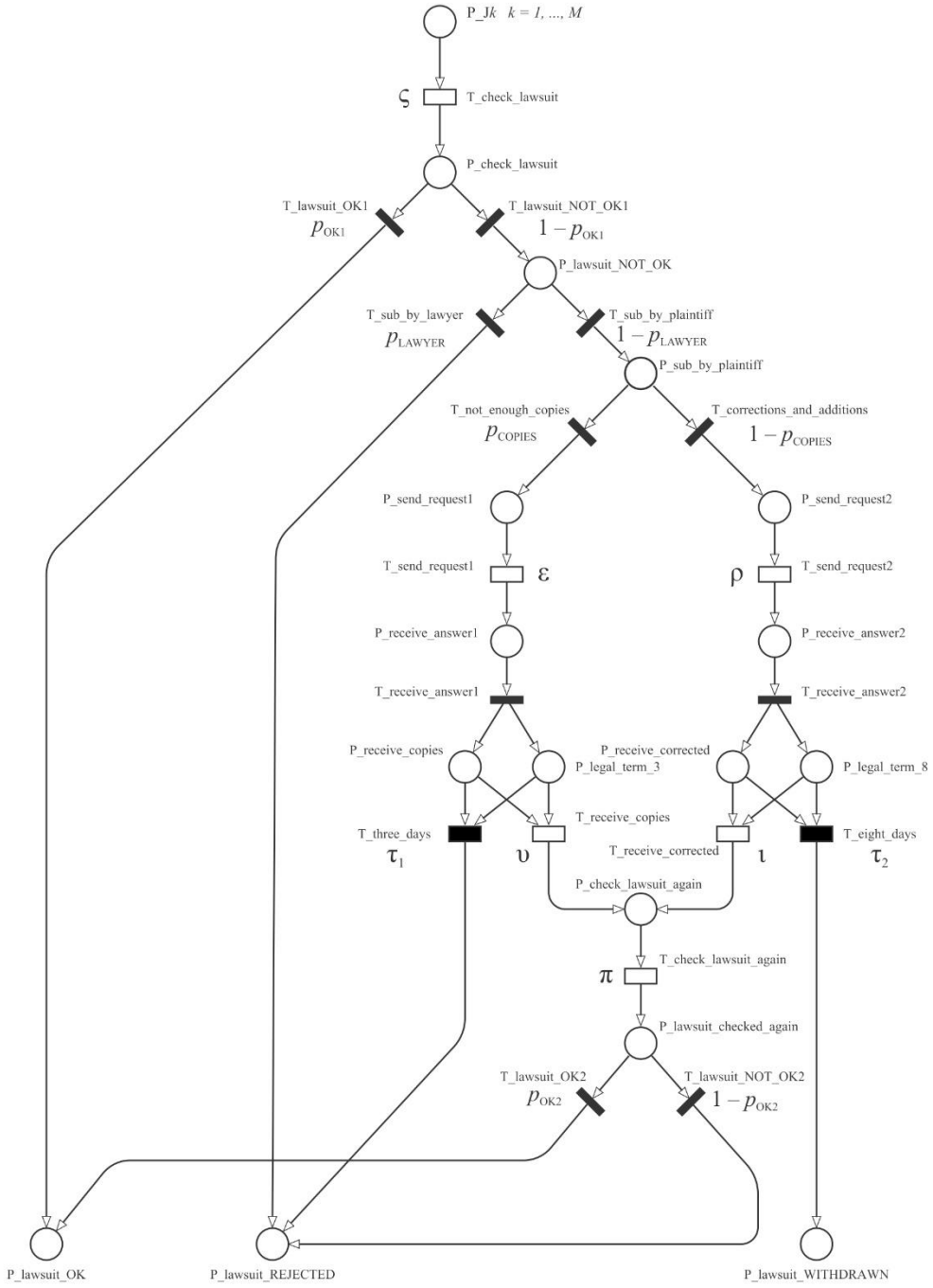

Fig. 5. DSPN sub-model of court activities being undertaken by the judge from the moment of a case assignment, including lawsuit application checking

The valid lawsuit application is then sent to the defendant along with a court summon to respond to it, within a time 1/φ, exponentially distributed (Fig. 6). The

legal terms to wait for a response are either eight days (τ_3), or fifteen days (τ_4), depending on the case.

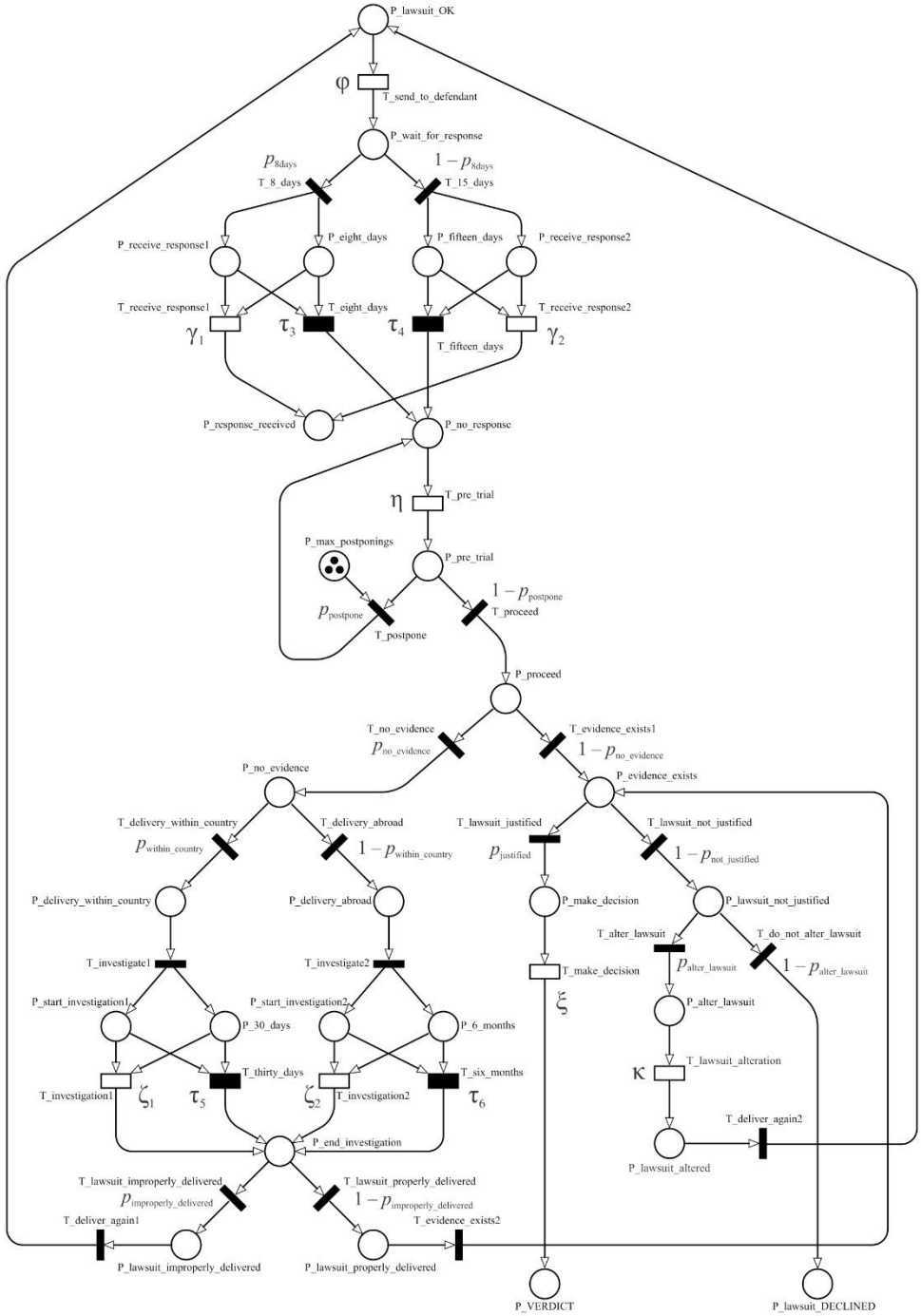

Fig. 6. DSPN sub-model of court activities including sending the lawsuit to the defendant and pre-trial activities when there is no response to the lawsuit application

If there is no response from the defendant, the judge schedules a pre-trial session. If there is no evidence of the lawsuit application delivery, the judge allows additional time for an investigation: up to 30 days if the delivery was in the country (τ_5), or up to six months if the delivery was in a foreign country (τ_6). If the investigation shows that the lawsuit was improperly delivered, it is going to be delivered again. If there is evidence of a properly delivered lawsuit application, the judge will announce a verdict, if the lawsuit application is justified, or he/she will decline it if it was not justified, and the plaintiff doesn't want to alter it. If the lawsuit application is not justified, and the plaintiff wants to alter it, then the altered one is sent again to the defendant. Figure 7 describes the activities when a valid response to the lawsuit application is being received.

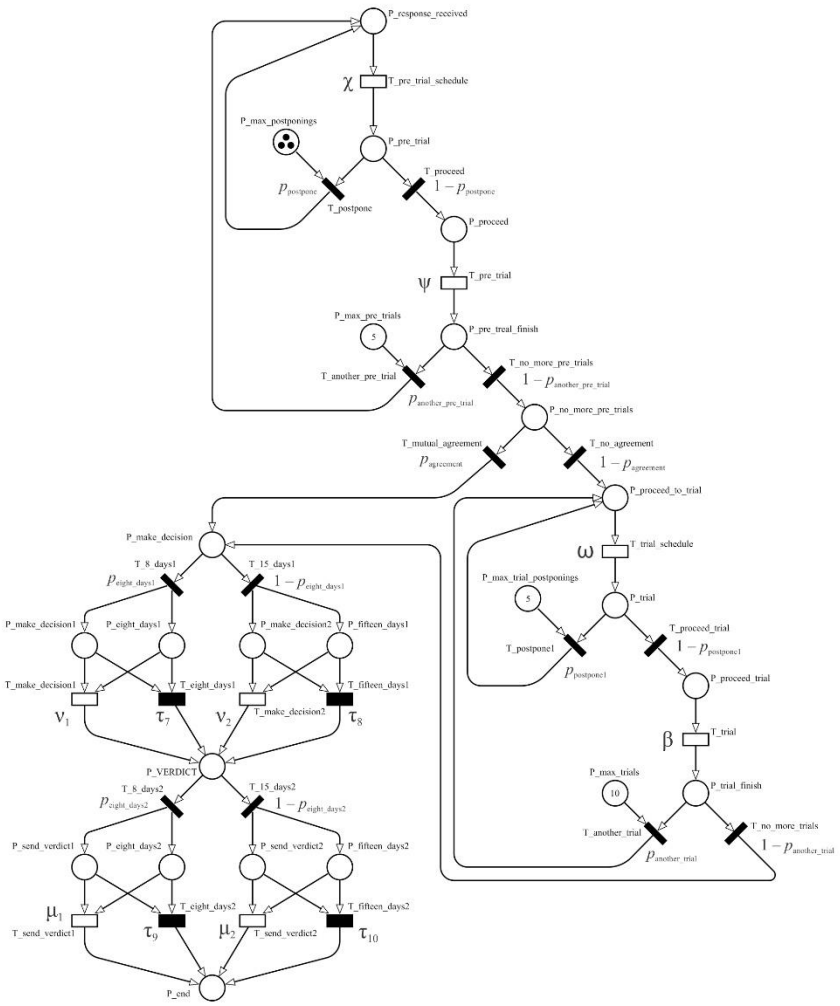

Fig. 7. DSPN sub-model of pre-trial and trial activities following the reception of a response to a lawsuit application

The sub-model showed in Fig. 7 allows scheduling a maximum of five pre-trial sessions (place *P_max_pre_trials*), and a maximum of three pre-trial postponed sessions (place *P_max_postponings*). It also allows scheduling a maximum of 10 trial sessions (place *P_max_trials*), and a maximum of five trial postponed sessions (place *P_max_trial_ postponings*). Once a pre-trial session finishes, if there is a mutual agreement between the plaintiff and the defendant, the judge will announce the verdict within eight (τ_7) or 15 days (τ_8), and will send it to both parties within eight (τ_9) or 15 days (τ_{10}). If there is no mutual agreement after the pre-trial session finishes, then the judge will schedule a trial session within a time period of $1/\omega$ days, exponentially distributed. A single trial session lasts for $1/\beta$ days.

CONCLUSION

The functioning of courts in terms of court cases' flow dynamics is highly complex and unpredictable. The involvement of multiple stochastic processes justifies its treatment as a Discrete-Event Dynamics System (DEDS), characterized by a discrete (countable) state-space and a number of events, each lasting for a random time. The complexity found among various components within the judiciary system, being considered a DEDS, justifies considering the evolution of such a system as a stochastic process that can be used to assess its performance. Moreover, the nature of the underlying stochastic processes can be successfully captured and described by the class of Deterministic and Stochastic Petri Nets (DSPNs).

To the best of authors' knowledge, this is the first and only DSPN-based modeling framework of the civil procedure in the Macedonian judiciary system. As an algorithmic description, it is quite complex, and that was the reason for its partitioning into sub-models by particular phases. The model can be successfully utilized for obtaining numerous performance measures vis-à-vis the court cases' life cycle, including the average number of court cases waiting in the system to be processed, the average number of court cases waiting at reception and registration offices, the average number of court cases being currently processed, the fraction of court cases being withdrawn, rejected, or successfully processed, the average sojourn times of court cases at different stages, the average duration of court cases' processing, the court overall utilization, etc. All of these can be evaluated against different values of input parameters. Besides the performance evaluation, it can be successfully utilized for addressing additional critical issues related to the judiciary system (i.e. ACCMIS system), such as correctness analysis, reliability evaluation, design optimization, scheduling (performance control), monitoring & supervision, court cases' traffic efficiency, implementation, system tuning, bottleneck identification, workload characterization, capacity planning, forecasting the performance at future loads, evaluation of various ACCMIS design alternatives, etc.

The proposed GSPN model is a predictive one, which can be used for evaluating various performance metrics about the actual judiciary system, in order to convey various 'what-if' analyses and test numerous operating scenarios. As such, it can contribute significantly towards the improvement of both court functioning and practice, and can also provide significant insights that can help in increasing the judiciary system efficiency in terms of shortening the duration of court cases' processing as well as decreasing the number of unsolved court cases.

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LEGAL ASPECTS OF GLOBALIZATION AND INTEGRATION OF THE FINANCIAL MARKETS – CASE STUDY OF SERBIA[121]

Ranko Sovilj, PhD
Research Assistant, Institute of Social Sciences, Belgrade
soviljpeca@gmail.com; rsovilj@idn.org.rs

Abstract
In recent years, in the market-oriented economies in the world, carried out powerful transformational processes in the financial markets. The initiators of these processes are given as follows: globalization, liberalization, integration of financial markets, deregulation of financial markets, institutional changes, trade in financial derivatives, increasing competitiveness on the market, concentration and centralization of capital, with the continuous development of information technology and the Internet. Deregulation resulted in the absence of legal regulation and adequate control of financial markets. On the other hand, the globalization of financial markets has contributed to the creation of a new, international financial regulation, and the deletion of clear boundaries between national legal systems. Harmonization promoted by international financial organizations and the EU directive did not give the expected results in terms of financial markets in the region. The experiences of young capital markets in the region, including the Serbian capital market, are aimed at preserving financial stability rather than the competitiveness of the market. Therefore, the paper points out how the implementation of international standards contributes to the enhancement of the stability and security of financial markets in Serbia, through the efficient control of the operation of market participants, increasing the transparency of their business, in the context of the response to the conduct of supervision and mandatory disclosure of business results.

Keywords: *financial markets, capital markets, globalization, integration of financial markets, deregulation*

INTRODUCTION

By the early 20th century, modern regulation of financial markets began in the United States. As a consequence of the Great Depression, the "New Deal" governing promoted a set of laws of the issuance and trading.[122] The "New Deal" represented a break with the approach to the laissez-faire doctrine (interference of the state in the market), and the transition to active state regulation (Sovilj, Stojković-Zlatanović 2017, 144-147). In that manner, US President Franklin Delano

[121] This paper is the result of work on projects No. 179023 financed by the Ministry of Education and Science of the Republic of Serbia.
[122] In the period from 1933 to 1940, six laws were adopted: the Securities Act from 1933, the Securities Exchange Act from 1934, the Public Utility Holding Company Act from 1935, the Portfolio Management Act from 1939, the Investment Company Act of 1940 and the Investment Advisers Act of 1940.

Roosevelt showed the importance of an intense struggle with the crisis, in a systematic and organized way, setting a sound foundation for the regulation and development of capital markets. The laws of capital markets were more fundamental and more durable following the pressure of the economic crisis (Janković 2011, 582).

During the 1980s, the penetration of the liberal conception to the economy has taken place as the starting phase of deregulation of financial markets. It is justified by the need for market institutions, instruments and procedures, which are the product of modern information development, to be free from regulatory restrictions as well as to improve the allocative function of the financial market (Vasiljević, Delić 2009, 471). The result of deregulation as reflected in almost any kind of regulation and control of financial market participants, which is one of the initiators of the current financial crisis. Modern trends of deregulation, internationalization, financial liberalization in the operations of financial entities, the waves of disturbances that have hit Far Eastern countries in the late 1990s, and the current financial crisis are clear signs of high social and economic costs that arise from financial system disorders (Todorović 2013, 214). The growing integration of the global economy over the past twenty years has mostly coincided with the rise of the Anglo-Saxon type of capitalism, led by the idea of the liberal market and the United States as the leader in the deregulation of economic and financial structures (Ognjanović 2009, 503).

DETERMINATION OF FINANCIAL MARKETS – THE ROLE, SIGNIFICANCE AND THEORETICAL CONCEPTS

Financial markets are the most important but also the most vulnerable segment of the economic system of each country. They represent one of the fundamental postulates of the market economy since that financial market enables the linking of supply and demand for various forms of financial activity. Moreover, financial markets allow the allocation of financial resources, from participants who at a given moment have surplus funds, to those participants who at that moment require the funds. Financial markets enable optimal use of social resources of the domestic economy, economic development, financial resources mobility and capital between branches, control of participants' efficiency (Borković 2012, 1333).

In essence, the basic role of financial markets is to connect surplus and deficit sector. The trading of financial instruments achieves the connectivity. The purchase can be organized or disorganized, mass or individual, depending on the aspirations of buyers and sellers (Vasiljević, Vasiljević, Malinić 2008, 6). The financial markets can be seen in a wider and a narrower context. The broader concept of financial markets encompasses all the subjects of social life, which in different ways participate in the financial markets. Participants in the financial market are given as follows: the public sector, the corporate sector, the sector of the population as well as the sector of foreign subjects. Each of these participants can be found both on the supply side and the demand side in the financial markets, depending on whether they have a deficit or surplus of cash (Malešević, 84). In the broadest sense, financial markets exist wherever a financial transaction takes place. In the strict sense, financial markets are a precisely defined place where, in an organized

manner, according to clearly defined rules, the supply and demand are facing, for different forms of financial assets and financial instruments (Borković 2012, 1334). Globally, one of the main goals of state regulation in the financial markets and, consequently, the capital market is to maintain financial stability, given that, in the absence of legal regulations, the financial system suffers from temporary instability (Todorović 2002, 314). An additional goal of legal regulation is to provide adequate protection to investors from fraud and false information.

To support this fact, it is important to mention the key ideas presented by the President of the Financial Services Authority H. Davis, concerning the regulation of financial markets: 1) maintaining confidence in the financial system and financial markets; 2) protection the users of services by providing expertise and financial reliability of the companies, on the grounds that users must bear a certain level of responsibility for their financial decisions; 3) continuous increase in public understanding of the nature of financial products offered to them (the relationship between yield and risk); 4) defined role in monitoring, detection and prevention of financial crimes (Milovanović 2010, 250).

As the main objectives of regulation of financial markets, Whitaker states: 1) protecting investors from fraud; 2) enhancing market integration in terms of the reliability of the price formation process and the lack of market manipulation; 3) protection against systemic risk (Milovanović 2010, 251).

Current trends in the financial markets

As one of the characteristics of the world economy and finance, the globalization has a strong influence on the philosophy and the configuration of the global financial market. The internationalization and globalization of financial markets are the main characteristics of modern financial markets. Namely, globalization is a process of integration of the financial markets of national economies into a large international financial market. It enabled business entities to turn to the global financial market in search of new sources of funding allowing business entities to collect free financial resources not only within the domestic economy but around the world, using different rules, tax relief and other factors affecting the cost reduction (Erić 2003, 105).

Modern financial markets are changing at a drastic pace, from rapid development and reaching boom, to the collapse of the same and the emergence of major international crises caused by cyclical and structural factors. The former concept of internationalization of the market now is replaced by the concept of globalization. According to the scope of globalization, today's financial markets overcome all branches of the real economy. The causes of the emergence of financial crises are the multiple processes taking place in the global financial market: deregulation and liberalization of the financial sector, institutional changes, diversification, securitization, concentration and centralization of capital, financial derivatives, the development of information technology[123], systemic risk, risk management (Janković 2010, 267-273).

[123] Information technologies had a significant impact on the financial markets. The introduction of new technologies once had unexpected effects on the structure of financial markets. An example is the introduction of a telegraph on

The experience of young capital markets in the region, i.e. the markets of the countries in transition, shows that they preferred stability and less competitiveness of the market. The harmonization promoted by the IOSCO and EU directives regulating the capital market, has not yield the expected results. The global economic crisis has contributed to the adoption of protectionist measures. In addition to the economic crisis, the development of financial markets in Serbia, as well as in the countries of the region, has been additionally affected by the political risk (Minović, Erić 2016, 156-159). In such situations, the countries in transition turn to their resources and create a capital market according to their interests, and interests of their main foreign trade partners (Ognjanović 2009, 502-510).

The issue is how the financial markets will look in the future in developed countries. The initial assumption is that the financial markets shortly will differ from country to country, even within a single market like the European Union. In the increasingly fierce competition in the financial sector, there is a high concentration and the formation of a small number of large investment companies, banking holdings, multi-service financial institutions that will dominate the international as well as the domestic financial scene. The main initiators of the reform of financial regulation and the financial system are three world power centers: the United States, the United Kingdom and European Union (Vračarić 2009, 614).

LEGAL REGULATION OF FINANCIAL MARKETS AS A RESPONSE TO MARKET DISTORTIONS

After the first wave of the financial crisis that hit the world in 2007, many countries have initiated legislative reforms to abandon the deregulation as a prevailing principle. The position that the market should rest on its legalities was abandoned by implementing legal reforms. Currently, it is evident that the degree of legal regulation has significantly increased. One of the main objectives of the reform was the establishment of new regulatory bodies and the transfer of supervisory activities to existing market regulators. The market regulators have to be independent in their work. Furthermore, they require to ensure a fair, efficient and transparent functioning of financial markets. An adequate level of market regulator independence can be achieved by preventing any external pressures, including the interests of the political centers of power and lobbying (Ćirović, Janković 2013, 633).

In response to the current financial crisis, many theories that offer potential solutions to emerging from the crisis are cited in the scientific and professional literature. It will be mentioned only some of the theoretical approaches. The first approach is to fill legal gaps in international regulations. Representatives of this approach point out that financial markets are prone to breakdowns, which can be caused by various factors, from inadequate regulation to the failure of supervisory authorities. The next approach points out that reform of international financial

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the New York Stock Exchange and the Philadelphia Stock Exchange. Another historical example is the big boom realized by the London Stock Exchange, when floor trading was replaced by electronic boards, which increased the transparency and market liquidity (Jednak, 60).

control is necessary, and that it is not enough to tighten the existing regulations, but it is necessary to reform the regulations truly(Bunčić 2010, 293). Representatives of the following approach to resolving the financial crisis have been seen in cross-border capital controls. They point out that the current crisis is caused by excessive capital mobility, especially in the United States. By contrast, a particular group of authors provides resistance to new regulations of the financial markets. It is highlighted that the regulatory authorities would never have adequate information to be in readiness for the next crisis. Finally, some authors advocate for the decentralization of international financial market regulation, to accept the diversity of all market participants (Bunčić 2010, 294).

One of the basic principles of modern financial legislation implies that the regulatory structure and the regulatory strategy must be flexible and efficient. Legal regulation must be ready to respond to all challenges brought by continuous technological advances, financial innovations (e.g. securitization (Knežević, Mitrović 2007, 91-98), financial derivatives, etc.). The legislator and the public administration need to feel the real needs of the market, and its participants, thereby contribute to the harmonization of the financial system. Otherwise, it can cause imbalance. The purpose is that the right is reflexive. It means that the legislator in the process of adopting legal norms also takes into account their application and incentives, to enable the financial market participants to harmonize their interests with the public interest (Jovanić 2009, 21).

Robust transformation processes in the financial market are implemented in developed market economies. The trigger factor of these processes is the deregulation of the financial system, increasing competitiveness in the market, globalization and integration of financial markets with the constant development of information technology and the Internet (Janković 2006, 872). For the further development of the financial market, the economic laws of supply and demand are not enough. A complex system of regulatory infrastructure is needed, existing laws and rules, alongside stable institutions and respect for the ethical codex in the conduct of business on the market.

The aim of legal regulation is not the elimination of the market mechanism. The goal is to overcome market failures. The free market competition and regulation should not be interpreted to exclude one another, but to complement these factors. The significance and peculiarities of the financial market, as well as the consequences of possible disturbances in its functioning within the national economy and beyond, justify the existence of prudential requirements and control mechanisms. The interdependence of national financial systems has resulted in the harmonization of regulation, supervision and standards of financial participants at the international level (Jovanić 2009, 21-23).

To follow the definition of International financial law, it is necessary to include rules of both private and public law. The globalization of the financial markets creates a new trend, which is approaching by simultaneously changing the existing division of regulations (Bunčić 2010, 293). Work on the formation of international financial law means creating new points of contact and deletion of clear boundaries among national legal circles. The example of financial globalization (deregulation, liberalization, innovation) is the development of shadow banking (Kulms 2011,

533-552) including investment banks, hedge funds and other financial intermediaries. It has been recognized as a weak regulation, which contributed to the current financial crisis.

A key point in the process of redefinition of the legal regulation of financial markets is knowledge of the fragility of the financial system, as a result of excessive exposure to risks. The financial market crisis, the processes of globalization, deregulation and the internationalization of the market showed that the traditional instruments of market control are insufficient in terms of preserving the stability of the financial system as a whole. The sensitivity of supervisory regulatory authorities to the risk profile of financial institutions has drastically increased, especially in the presence of non-traditional risks (Cesarini 1994, 107). This required the adoption of new supervisory instruments to strengthen control over the capital market participants.[124]

In response to the financial crisis that hit the world in 2007, a number of international regulations were adopted aiming at improving the ability of the financial sector to absorb losses arising from the economic and financial situation. It reduces the risk of spill-over of the crisis from the financial sector into the real economy (Sovilj, Stojković-Zlatanović 2018, 1).

In developed market economies, the financial system is thoroughly and comprehensively regulated. The regulation of this scale arises from the need to build and to constantly maintain the financial participants' confidence in the security and equal treatment of the financial market. In this view, the European Union revises the earlier regulations. Therefore, the European Parliament adopted the Directive on markets in financial instruments in 2014 since the financial crisis has revealed weaknesses in the functioning and transparency of financial markets. The Directive regulates financial markets, including situations where trading in such markets takes place outside the organized market, in order to increase transparency. Moreover, the Directive provides better legal protection for investors, in the context of gaining trust, considering the unregulated areas, providing supervisory authorities with greater powers in the execution of tasks.[125]

Stability and security are the main points of an efficient financial system. Therefore, an efficient financial system is the basis of dynamic and sustainable economic development. The confidence on the financial markets and financial institutions is achieved through the regulation of the financial market accessing control of important information, prudential control of financial institutions as well as control of monetary policy (Vasiljević, Vasiljević, Malinić 2008, 22).

Prudential control of financial institutions has a preventative function in activities that could contribute to the lack of functioning of the financial system. Prudential control can be achieved by several forms: issuing a work permit to financial

[124] The role of supervisory bodies is equally important as well as adoption of new rules, which are best demonstrated by Australia and Canada. Despite the idea that strict surveillance constrains competitiveness, the global economic crisis has shown that financial systems of states with rigorous and consistent supervision are better passed (Caruana 2010, 110).

[125] Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU, *Official Journal of the European Union L* 173/349, 12.6.2014.

institutions, which prevents entry to those who do not meet professional standards and business ethics; disclosure of business information to national regulatory agencies and investment public; restrictions on the operation of financial institutions (Vasiljević, Vasiljević, Malinić 2008, 23). The citizens should have high confidence in financial institutions, that is predictable and with adequate regulatory control, upon the law, rules and morality (Ljutić 2002, 288).

It is important to take into account the mentioned tendencies in the developed countries and in the international financial system in the process of liberalization and development of the financial market in Serbia, so that the legislative bodies can take measures to ensure the efficiency and stability of the domestic financial market, and further development (Vračarić 2009, 614-615).

CHARACTERISTICS OF THE SERBIAN CAPITAL MARKET

As a candidate country for EU membership, the EU's financial market and stability are of the utmost importance in Serbia. Proper functioning of the financial markets provides an opportunity for the national economy to make full use of development resources because this ensures that the investment projects are financed with minimal costs. The following functions of the financial system aimed at overcoming obstacles to the smooth movement of resources: the formation of information on potential investment opportunities and the allocation of capital; conducting investment control; creating conditions for investors and depositors to get their funds on the basis of contracts concluded; enabling trade, diversification and risk management; collecting and grouping of savings and facilitating the exchange of goods and services (Vračarić 2009, 612-613).

As in other transition countries, the securities market in Serbia is relatively new. The re-establishment of the Belgrade Stock Exchange[126] in 1990 provided securities trading. The securities market during 1990s was centralized, all stock trading took place on the stock exchange until the adoption of a series of laws over 2000s (Jeknić 2000, 507).

By regulating the capital market, the domestic legislator has set the basic objectives of protecting investors, reducing systemic risk, providing a fair, efficient and transparent capital market.[127] The idea was to keep pace with the global trend of reforming regulation of the financial markets. Today, there is a characteristic existence of an optimal number of securities markets. The reasons for the dispersion of trade in multiple markets are numerous: the establishment of the competitive stock exchange (regulated markets), multilateral trading platforms, OTC market, systematic internalisers, the development of new technologies, the culture of informal trading, cross-border competition (Milovanović 2007, 943). One of the main reasons is to encourage market competition between professional participants, i.e. investment companies, as well as between stock exchanges. Thereby, it is striving to eliminate the monopoly, which is one of the basic principles of the MiFID Directive (Hudson 2008, 50).

[126] The Belgrade Stock Exchange was created by the transformation of the Yugoslav capital market. Stock Exchange constituted 32 largest bank from the territory of the former Yugoslavia (Dugalić, Štimac 2011, 377).

[127] Zakon o tržištu kapitala, *Službeni glasnik RS*, br. 31/2011, 112/2015 i 108/2016, art. 1.

As a subject of state regulation, the Serbian capital market is characterized by several peculiarities: low liquidity and market volatility, high risk, low demand and simplified structure of the securities, less transparency and effectiveness of the market, high level of insider information, manipulation and speculation on the market, high concentration of ownership (i.e. blocks of shares in the hands of a small number of individuals), lack of competitiveness, significant presence of foreign investors, without adequate reciprocity, inconsistency of policies and measures of different state bodies, pressures on the Securities Commission (Janković 2006, 877).

It is noticeable that the Serbian capital market has significant structural problems. It is illiquid, undeveloped, with insufficient participation of qualified investors focused on long-term investments, as well as other investors (Dedeić, Stanković 2017, 367). International reference list (*Standards and Poor's list, the Dow Jones list, the MSCI list*) ranked our market in the penultimate category (under the so-called *Emerging markets*), together with too small markets (*frontier markets*) (Blanco 2013, 2-7).

An additional problem for the normal development of the Serbian capital market is the permanent withdrawal of good companies from the market, while the new ones do not enter. Attempts for rapid development of the Serbian capital market through the process of mass privatization and the legal obligations of public issuance of securities, as the pressure to enter the market, as well as in most transition countries, was short-lived. To create conditions for the normal functioning of the capital market, it is necessary to have a stable macroeconomic policy, a firm legal and institutional framework that will provide adequate protection to investors. The crucial problem of the Serbian legal system is a gap between the solid legal provisions and the lack of application of the same (Dedeić, Stanković 2017, 369).

CONCLUSION

In modern conditions of business, financial markets are necessary. It brings many benefits which include the following issues: enabling the flow of money; facilitating the collection of surplus capital and its funding for investment projects; providing liquidity, access to capital, preserving its real value; informing participants and the public about investment; linking the national economy with world economies (Mrvić 2002, 397).

Public policymakers and investors are challenged by suggesting and adopting new solutions in the context of capital market development. Hence, there is an opportunity for the development of the Serbian capital market. Among other things, the impact of the world economic crisis was reflected in the drastic fall in interest rates on term deposits of citizens with banks. Low interest rates on term deposits are estimated as a good opportunity for the development of the capital market, in the context of the depositors withdraw funds from bank accounts and invest in the same securities. In order to achieve this, it is necessary for the regulatory bodies to regain confidence in the domestic capital market and to ensure its liquidity. The development of the Serbian capital markets should be accompanied by the improvement of several processes. Most important, it is necessary to build a good

reputation of all market participants: Belgrade Stock Exchange, investment companies, banks, investors, auditors, Securities Commission.

Further development of the Serbian capital markets depends on the utilization of the potential development of small and medium-sized companies. By enabling fast-growing companies (mainly in the sector of information technologies and consulting and marketing services) to access external funding from several sources, is essential in the development of the capital market (Dedeić, Stanković 2017, 374). It is, therefore, necessary to create a good business climate and attract small and medium-sized companies to enter the capital market.

Finally, it is concluded that the revitalization of the Serbian capital market is necessary, which would undoubtedly have a significant impact on the capital markets in the region. It is necessary to encourage good companies to list their securities on the Belgrade Stock Exchange to increase the investment attractiveness of the Serbian capital market. Hence, it is necessary to draw up a plan to encourage such companies to make a public offering. Furthermore, it is necessary to increase the participation of professional investors in the primary market, with the provision of secondary market liquidity.

An important role in strengthening and redefining the securities market has the Securities Commission as a national regulatory authority in the capital market. It is, therefore, necessary for the Securities Commission to implement continuous and proper control processes, accompanied by appropriate sanctioning market participants. Professional development is one of the basic preventive measures in the capital market, where a crucial role plays the Securities Commission, investment companies, banks, stock exchanges and other participants.

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CONDITIONS FOR THE VALIDITY OF AGREEMENTS

Assoc. Prof. Dr.sc. Sasha Dukoski
sasadukoski@hotmail.com

Assoc. Prof. Dr.sc. Svetlana Veljanovska
svetlana.veljanoska@uklo.edu.mk

LL.M. Marija Dukoska
marijadukoska@live.com

Faculty of Law Kichevo
University St. Kliment Ohridski - Bitola

Abstract
The agreement represents the consent of the will of two or more natural or legal persons, aimed at the occurrence, alteration or termination of a particular legal relationship. Contracts appear as legal facts because they have arisen as a consequence of an appropriate consent of the will of the contracting parties.
The main point of a contract under the Obligations Act is: The contract creates rights and obligations for the contracting parties. If this is transferred in another terminological manner, Agreements are a legal instrument that enables the smooth and normal conduct of the commodity as well as the property transactions. Therefore, it is of particular importance to specify the conditions for their full validity.

Keywords: Agreement, Regulation, Validity, Trading

INTRODUCTION

Obligation agreements differ from all other agreements, primarily due to their nature, that by their conclusion the two contracting parties are in debt – creditor relations. This is due to the fact that at the same time both parties acquire the appropriate rights and obligations. Obligation agreements usually have a property character, i.e. in their case it explicitly comes to the core of the property legal regulation method. The general name used in our legal practice for this institute is a Contract or according to the Latin name contractus - contract, but in the legal doctrine there are other expressions that have a relatively identical meaning: pactum, convention.
The agreement comes to be with the consent of the will of its parties. In doing so, the reconciliation of the will on these sides is accomplished through a certain procedure, which in theory is sometimes referred to as locking or concluding the contract. (Радишић Ј. 2004, 69)

The subject of contractual obligations, as well as all bonds, may consist of: giving (dare), doing (facere), not doing or non-performance (nonfacere), and patience (pati). In addition, the subject of the contractual obligation must be: possible, allowed and determined.

GENERAL CONDITIONS OF THE CONTRACT

As in many other institutions, the agreement can be presented in two phases: birth and life, formation and effects (through which it conducts its work).(Carbonnier J. 2014, 1959)

For the formation of contracts, certain (general) conditions need to be fulfilled as a contractual relationship. These conditions relate to: the legal capacity of the contracting parties, the consent of the will, the subject of the contract, the cause (basis) of the contract, and in certain circumstances the form and conditions and deadlines specified in the agreement's dossier. (Дукоски С. 2016, 61)

The agreement can be considered as a kind of closed mechanism, due to the reunification of several components. These are the elements that give the structure of the agreement. The National Law on Obligatory Relations explains the general conditions for concluding a contract in Articles 130 and 13 where it explaines: The notion and the obligation. The general terms and conditions of the agreement are contractual provisions made up of a number of contracts that one contracting party (contractor), before or at the time of concluding the contract, proposes to the other party, whether contained in a formal (type) agreement, or whether the agreement is calling upon them. The general conditions complement the special agreements between the negotiators and, as a rule, bind as the ones before. In the event of a disagreement between the general conditions and the special agreements, the latter shall be binding. The general terms of the contract must be published in the usual manner. The General Conditions bind the contracting party if they were known or had to be known at the time of the conclusion of the contract. (Дукоски С. 2016, 63).

In addition to that, the following explanations are provided: the provisions of the general terms of the contract that are contrary to the principle of conscientiousness and honesty are null and void, providing an obvious disproportion in the mutual benefits of the parties and as such create the possibility of damaging the contractor's companion or endangering the achievement of the objectives of the concluded contract, even when the general conditions which they contain are approved by the competent authority.

The Court may reject the application of certain provisions to the general conditions that deprive the other party of the right to raise objections, or those on the basis of which the other party loses the rights of the contract or loses its rights in respect of the time limits or which are otherwise unjust or excessively strict to her. When assessing the nullity of certain provisions of the general conditions, all circumstances that incurred before and at the time of conclusion of the contract shall be taken into account, the legal nature of the contract, the type of goods and services which are a subject to the contract, the other provisions of the contract, and the provisions to another agreement with which the provision of the general conditions are related.

Nullity shall not apply to these provisions of the general terms of the contract whose content has been taken from the applicable regulations or their content has previously been negotiated individually and the other party may have affected their content as well as the provisions on the essential elements of the contract if they are clear, understandable and easily perceptible.

CONSENT OF WILL IN CONCLUDING A CONTRACT

The National law when concluding contracts stipulates that the consent of the contracting parties is not required for all the elements of the contract. But all national legislations provide that any agreement entered into in any way must include the consent of the will of the contracting parties in respect of certain essential elements of the contract.

The question of the validity of the agreement is set only once after its existence is characterized, that is, after the proof is submitted to establish the exchange of consents. The conditions for the validity of the contract are those which without the contract could be terminated. (Мањан М.Ф. 2011, 289).

The majority of national legal systems are on the opinion that for the Agreement itself, the consent of the parties is sufficient, no matter how that consent is expressed. This is the broadest interpretation of the principle of freedom of autonomy of the will of the parties. (Дукоски С. 2016, 64)

The agreement is concluded when the contracting parties have agreed on the essential constituents of the contract. (Law on Obligational Relations.Art.18)

The Legislator in Section 1, Part 1, regulates the compulsory conclusion and the obligatory content of the contract, stating: If a person is obligated by law to enter into a contract, the interested person may request that such contract be concluded without delay. The provisions of the regulations with which, in whole or in part, the content of the contract is determined are considered as integral parts of those contracts and complement or enter into the place of contractual provisions that are inconsistent with them.

Article 20 of the Obligations Act stipulates the state when a statement of will must be given, i.e.: the will to conclude an agreement can be stated in words, common signs or other behavior that can reliably conclude the existence, content and identity of the provider of the statement. The will to conclude a contract can also be declared using various means of communication (telephone, fax, internet connection, etc.). The declaration of will must be made freely and seriously.

If a license and approval is needed for the conclusion of the agreement, the legislator regulated it as following: When a consent of a third party is required for the conclusion of a contract, this consent may be given prior to the conclusion of the contract, either as a permit or after its conclusion, as an approval, unless the law stipulates otherwise. The permit, that is, the approval must be given in the form prescribed for the contracts for which the conclusion is granted. (Law on Obligatory Relations. Article 21)

FAULTS IN THE WILL

In circumstances where a contract is concluded under: a threat, a misconception, if there is a misunderstanding, fraud, or if there is a so-called apparent contract, the

legislator rightly concludes that it is a matter of: Fault in the will to conclude a concrete contract (Дукоски С. 2016, 66).
Fault in the will in the legal sense is a misunderstanding. This exists when the parties of the agreement believe that they agree, but in fact there is a misconception about each other's statement of the will of the other party. The parties of the agreement think they have agreed, and in fact their statements do not match. There is no misconception about the party's statement regarding its will, however, each party, in respect of the statement of the other party, accepts something other than what the other party has stated. Accordingly, it arises that misunderstanding does not enter into the systematics where there are manipulations of the will. Misunderstanding signifies a circumstance when, due to the disagreement of the will, it did not come to the conclusion of the contract, because in fact the contract does not arise.
This is regulated in the Obligations Act in Articles 52 to 58. This section states: If a Contracting Party or any third party with an unlawful threat has caused a justifiable fear to the other party, by reason of which it has concluded an agreement, the other party may require to cancel the contract. Fear is considered justified if the circumstances show that the life, body or other significant good is threatened by a Contracting Party or a third party.
A threat implies such an inadmissible causation of justifiable fear in one of the contractual parties to the extent that because of it, it concludes a particular contract, which would otherwise not have been accepted because the party is aware that the conclusion of the object of such an agreement is not wished upon. The threat is a conscious mismatch between the will and its expression, because with threating, the contracting party is forced to enter into a certain contract, because of the fear that is threatened by it.
A contract concluded with a threat, as a legal consequence and rudeness, that is, the person who concluded a contract under threat may require it to be annulled.
The misconception or error, that is, the inconsistency of consent, is that the agreement was concluded under the effect of one opinion, contrary to reality, one of the contracting parties at least lied upon about the elements of the operation. (Carbonnier J. 2014, 1990).
Misconception is a false perception about a certain existing fact, in which the inconsistency between the factual situation and the representation that causes a certain pronouncement, which does not correspond to the true will of the person who made the statement. It is a kind of unconscious discrepancy between the will and the statement. Disagreement between will and statement exists because the party declares its decision by forming it on the basis of a misconception. Misconception arises as a consequence of shortcomings in the play, which is why it is called - a real misconception. However, there is a misconception about the shortcomings in the statement, which is termed as - an untruthful misconception. (Дукоски С. 2016, 69).
Essentially the fault of the will to conclude a specific contract is fraud. The word evokes the general idea of dishonesty. It comes in two phases: during the formation and during the execution of the contract. (Carbonnier J. 2014, 1992)

Article 57 of the Law on Obligations states: If one party misleads the other party or keeps the other party in error with the intention to indicate it at the conclusion of a contract, the other party may request the cancellation of the contract even if the error in not essential. The party that has concluded a fraudulent agreement has the right to claim compensation for the damage suffered. If the fraud is committed by a third party, the fraud affects the agreement itself if the other contracting party knew or had to know about the fraud at the time of the contract conclusion. An agreement without compensation may be annulled even when a third party has committed a fraud, regardless of whether the other party at the time of entering into the contract knew or had to know about the fraud.

Fraud constitutes, causing or misleading one of the Contracting Parties from the other or from a third party, with the intention to deceive the affected party to conclude a particular contract with the content that otherwise that same party would not have agreed to in circumstances in which it was aware at the time of the conclusion of the contract for the existence of his misconception. In particular, it concerns two acts: one originating from one of the contracting parties which seeks to mislead the other in concluding the contract, and the second is related to the realization of such an intention which leads to a misperception of the relevant facts of the other party (Дукоски С. 2016, 70).

CONCLUSION

The agreement is the consent of the will of two or more natural or legal persons, aimed at the occurrence, change or termination of a particular legal relationship. Contracts appear as legal facts because they have arisen as a consequence of the proper agreement of the will of the contracting parties.

The contract is a special type of obligation relationship according to the legal facts that give rise to the obligations. However, the basis of the contracts under the Obligations Act is: The contract creates rights and obligations for the contracting parties. If this is transferred in another terminological manner, the Agreements are a legal instrument that enables the smooth and normal conduct of the commodity as well as the property transactions.

For the formation of contracts, certain (general) conditions need to be fulfilled as part of the obligation relationship. These conditions relate to: the legal capacity of the contracting parties, the consent of the wills, the subject of the contract, the cause (basis) of the contract, and in certain circumstances and the form and conditions and deadlines specified in the agreement's dossier.

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CHALENGES FOR THE MACEDONIAN SOCIETY ON THE PATH TO THE EUROPEAN UNION

Georgi Tonovski, Ph.D
Faculty of Law, UCLO University – Bitola, Republic of Macedonia
gtonovski@yahoo.com

Temelko Risteski, Ph.D
Faculty of Law, FON University – Skopje, Republic of Macedonia
temelko_mkd@yahoo.com

Vesna Sijic
vesnasijic@live.com

Abstract
The main aim of the relatively young Macedonian independent state is to achieve membership status at the Euro-Atlantic integrations. The debate related to Euro-Atlantic integrations as a path to the future Macedonian democratic and European state is lasting nearly three decades, from the beginning of its independency. This political orientation is positively accepted by the Macedonian public and is clearly presented in the serious scientific researches. Even, the larger part of the Macedonian people it evaluates on the fateful level, in the Hamlet's manner „To be or not to be".
However, the Macedonian society is not prepared for such responsible tasks. You can say, on the European path there are many challenges for the newly Macedonian and obligation they to be successfully answered. That is, the Macedonian collective social spirit is facing its historical examines to change its self and to become part of the high civilized world, i.e. European Union and the Atlantic integrations.

Key words: integrations, challenges, society, system, human rights, social practice.

INTRODUCTION

The main aim of the relatively young Macedonian independent state is membership at the Euro-Atlantic integrations. According the statistics and scientific researches the EU is in the circle of the most successful societies in the modern world. Its ambition is to unify the continent of Europe, and to continue and obtain the civilization moving of the European countries. In that way, the European Union is the natural direction and environment for the becoming Macedonian progressive society. The relatively young Macedonian independent state is still fitting the challenges on the path to the modern democratic system. In its everyday life and political efforts there are still obvious remains of the previous social system (so called socialism) and the tracks of the unsuccessful transitional process started after

the falling of the Berlin Wall (in the year 1989). So, from the one hand we have a social reality when the wishes of the public are oriented to the Euro-Atlantic integrations,[128] and, from the other hand, the problematic quality of the mechanisms and institution to achieve the predicted goals by the public in the social practice.
The transferring Macedonian society takes the measures and activities to change this inappropriate situation in itself and to clean the way to the successful social reforms and to proclaim its competence and willingness to enter the European Union and NATO. But, these activities and ambitions are not that ease to be done over the night. It needs an amount of social energy and knowledge of the Macedonian citizens, but do we have that and which are the priorities in the changing the social system? The answer follows below in the text.

ON THE ROAD TO THE PROSPECTIVE EUROPEAN SOCIETY

On the road to the prospective European society could be the title of the Macedonian EU project. Not easier stuff to imaging the developed society, but, it is difficult to find the adequate means and methods how to success the course.
On the path to the European Union the Macedonian society faces many challenges and efforts. To prevail the difficulties, the society must undertake set of measures to corroborate the mission. First, the efforts to put the basement for constructing adequate democratic social system (political, economical, cultural, etc.); secondly, an attempt to implement the ideas of the validity and quality of the new system to change the social practice; thirdly to convince the people to accept and favor the human behavior which is adequate to the new social system. It means the human of the newly era must to internalize the idea that they will exist and labor through another new social system its institutions, values, habits different in comparing whit the previous one. Forth, in the new social circumstances the social status, position and the career depends on the amount of the adopted knowledge, work experience, skills, and human relations with community.
The period of "pure, empty patriotism" (which characterizes biting on the chests) have to be replaced with the period of "creative contribution patriotism" (which characterizes personal and group success in the spheres of business, science, sport, culture, and the affirmation of the country in the world).[129]

IMPERATIVE OF THE RADICAL REFORMS

The radical reforms are not quite the characteristic of the Macedonian social practice. All the time since independency there was evident resistance to this question. The resistance was carried on by the authorities, by some antireform social forces and by some reactionary ultra (right and left oriented) movements. Part of them had positions in the institutions of so called Frozen state (EU term to

[128] According to a national survey conducted by the Center for Survey Research of the International Republican Institute (IRI) in August 2018, 83% of the citizens declared for membership of the Republic of Northern Macedonia in the EU and 77% for NATO membership (www.libertas.mk from 29.08.2018).
[129] Patriotism is distinguished by love for own people and own homeland and with tolerance and positive attitude towards other nations, towards their past, their present, their merits and values. It is a reflection of the solidarity between peoples and countries, a symbol of cooperation, friendship and mutual assistance, a symbol of freedom, independence and equality of peoples. (Vukasovic A .: Ethics, Morality, Personallity, School Book and The Institur of Philosophy and Theology, Zagreb, 1993, p. 181)

explain the stare of the Macedonian state in the time of fascist autocracy leaded by the premier Nikola Gruevski)[130]. Despite their official reform acceptance, in the practice it was not true, the institutions were their captive. Even in the period of the fascist autocracy there were big amounts of destructions of the political institutions and especially of the human rights. In such a circumstance the Macedonian citizens invent a parole that in the republic "the laws are marvelous but the practice is bad".
Nowadays, Republic of Macedonia faces hard pressure by the name issue and by the process of the needed social reforms. The name issue is on the way to be overcome, the Macedonian parliament adopted the constitutional changes that open the doors to negotiations with EU and NATO the country to enter the Euro-Atlantic integrations. The membership of NATO is first step. It suggests capacious reforms in the field of the security system of the republic. This is obligatory for country. The entry in the EU suggests deep changes in the essence of the social system.[131] Republic of Macedonia has to fulfill suppositions of the membership in the EU. It takes long time and large scale of the reforms of hall social system of the country. The Macedonian public and officials it understands as a serious, obligatory and responsible task of the national/state interest which must be done right in time and with obvious positive results. There is no place for improvisation and "slow motion" activities. Historic chance must be taken. The Europeanization of the country is on range of "dreams come truth" for the Macedonian citizens. There is no more time to lose, the civilization goes on quickly.

THE MAIN CHALENGES

It is multidimensional very complex and hard task to reform social system especially if it was devastated in a long period of time. The Macedonian society has inefficient and ineffective institutions. The political and general educational level and the role of the public opinion are still under the expected "highness of the tasks". The lack of the democratic traditions and skills is very important obstacle in the reforms which have to come. The periods of transition and of fascist autocracy lasted so long and took away lot of time and chances of the development process. And lot of problems in the social living, of course. So Macedonian democratically no experienced society, whit its newly democratic state must search and find the issues and methods how to resolve the problems and to keep open window for the measures which help in the process of constructing and developing the modern democratic Europeanized social system and lifestyle.
The new democracies (including the Macedonian one) must revise, correct and improve many elements in the political and institutional operations to open the door for the European-Atlantic integrations. We consider the most actual in the first hand are the measures in improving follow moments:

- The rational political behavior of the citizens in accepting the real vision of democracy in its fullness and quality;

[130] From June 2006, to May 2017.
[131] The most important are the reforms in the public administration system, the judicial and public prosecutorial system.

- The ruling activities in the state and its institutions, connected with the adequate human resources in the field;
- The decision-making process as a sort of engagement of the democrat, modern social spirit and expert knowledge for the social questions;
- The quality of the ruling class in the all spheres of the life and labor; with its well educated, socialized, cultural completed members;
- The role of the public opinion not more as an eclectic, mechanical sum of minds, but as an organized, powerful social energy prepared and capable to canalize and to control the social topics in the progressive and democratic way;
- The complex of the human rights is mark of the civilized modern societies; the organized people completed with the set of human rights are a ground of the human oriented communities. So, the human rights are not "the fashion trend", but characteristic of the people*s inborn and contemporary personality. The human rights for the people are like wings for the birds. Without the human rights personality become empty box. In the Macedonian society we have bad, ugly experience with the broken system of the human rights in the time of the Gruevist dictatorship era. That was one of the reasons to be held large social movement against the fascist regime in 2015, knowing as a Colorful revolution. Macedonian society needs stable and strong social commitment and system of instruments which would secure the democratic social space where the functioning of the human rights is a normal part of our democratic Europeanized society.[132]

All these elements include many dimensions which look forward the specific social engagements they to be full implemented in the Macedonian praxis. There is still much to do. The building of modern civilized society needs a hard work.

After the fall of the autocracy, Macedonian society made big step to the new democratic way. The better results are obvious. According the Index of democracy (The Economist, 10.01.2019) for 2018, the country has advanced ten places comparing with 2016, now it is 78th with 5.87 scores. So, Macedonian state is in the category "hybrid regimes" which scales from 5.98 to 4.06 scores. The main idea becomes the awareness that the Macedonian society cannot be successful society without the strong general social democratic assessment. The democracy is not only system of formal institutions, but also it is a lifestyle; it is a set of norms for thinking and behavior; it is internalized civilized system of values; it is a world view; simply it is a way which help us to overpass the alienation of the mankind.

The present phenomenon called political will in the decision-making social process creates many problems in the Macedonian society. The inner content of this phenomenon means the stare in which the realization of an official decisions made by the institutions depends on individual's or collective's will. Some officials of the political structure in the country have enormous power to allow or not even the

[132] The basics freedoms and rights of the individual and citizen recognized in the international law and established by the Constitution are one of the fundamental values of the constitutional order of the Republic of Northern Macedonia. (See Article 8, paragraph 1, line 1 of the Constitution of the Republic).

implementation of the laws. This phenomenon becomes a big obstacle in the promoting the reforms and in the fasting the development of the country.
The successfully democracy needs prolifically political system. It means system which contents a set of institutions and organizations capable and adapted to accept, articulate and set the human interests and to transfer them into the political decisions. In such an order the sentence "power to the people" becomes real. Unfortunately, the country has political system with many broken institutions.
The reforms of the society anticipate many changes. Strengthening the **NGO`s** sector; enhancement of the level of the political and law culture; quality of the value system; building of the human personality; education and socialization processes; rule of law and state of law; respecting the others and self-respect; are some of the topics (but not only) which ask higher attention of the social reformist forces in the Macedonian society.
Further, in the country we witness rise of the no legitimated law practice of **non punishment** the criminals especially those in the higher levels of the social strata. Such a practice has nothing at all with the democracy and humanity. In *ultima linea* it leads the society to the future mafia based social system.
The Macedonian society declares itself as a democratic oriented unit.[133] As a society based on the reason-scientific approach and development its principal effort is to establish such a quality of the social relations and circumstances which intend and secure opportunities to create, support and develop individual and collective **dignity** and **pride** in the society, as part of the main characteristics of the contemporary democracies.

CONCLUSION

The main aim of the relatively young Macedonian independent state is to achieve membership status at the Euro-Atlantic integrations. However, the Macedonian society is not prepared for such responsible tasks. You can say, on the European path there are many challenges for the newly Macedonian and obligation they to be successfully answered.
The most actual in the first hand are the measures in improving follow moments:

- The rational political behavior of the citizens in accepting the real vision of democracy in its fullness and quality;
- The ruling activities in the state and its institutions, connected with the adequate human resources in the field;
- The decision-making process as a sort of engagement of the democrat, modern social spirit and expert knowledge for the social questions;
- The quality of the ruling class in the all spheres of the life and labor; with its well educated, socialized, cultural completed members;
- The role of the public opinion as an organized, powerful social energy prepared and capable to canalize and to control the social topics in the progressive and democratic way;

[133] By the Article 1, paragraph 1 of the Constitution, the Republic of Northern Macedonia is defined as a sovereign, independent democratic and social state.

- The complex of the human rights as a system of instruments which would secure the democratic social space where the functioning of the human rights is a normal part of our democratic Europeanized society.

Macedonian society needs stable and strong social commitment. These elements include many dimensions which look forward the specific social engagements they to be fully implemented in the Macedonian praxis. The building of modern civilized society needs a hard work.

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THE FUTURE OF LABOR, PERSPECTIVES, CHANGES, CHALLENGES IN THE EU AND OUR COUNTRY

Zivko Mitrevski Doc. PhD
President of the Trade Union of forestry, wood industry and energetics
zivkomitrevski@gmail.com

Abstract
The legal concept of work and trade relations, from an aspect of the future of labor and the implications attached to the technological changes in the context of the upcoming fourth industrial revolution is connected to a series of challenges, how it will be conceptualized and in which directions it will spread.
Based on the historical evolution of work relations and collective bargaining as a historical civic benefit, labor continues to direct us to a few guidelines which will mean dealing with the future of labor.
Those guidelines or directions would mean building a mutual strategy regarding this question with our social partners, implementation of international standards, adjusting the concept of collective bargaining and securing the basic principles of minimum wage for everyone, changes in the social insurance system and adjusting the educational system with the needs of the labor market.

Keywords: globalization, labor, employment, law, trade, union

INTRODUCTION

The impact of globalization, the new forms of organizing operations, the economic and technological changes, and digitalization nowadays affect the nature of the labor relation both in the aspect of the economic organization and of its legal regulation.
Technological changes and their involvement in the economy future in the EU and our economy, but also on the future and the concept of labor relations, the danger of breaking down standard forms of employment, atypical forms of employment, flexibility, impose a range of issues, changes, challenges in theory, scientific thought, and practice.
Undoubtedly, technological changes are the main driving force of development, but on the other hand they cause radical changes in the labor market, changes related to the organization of the work, but also the opening and destruction of jobs or, as John Maynard Keynes once called it "a new disease" or even introduced the term "technological unemployment". The same author has indicated to the so-called. technological unemployment, such as unemployment, due to the fact that we find resources for economizing, labor utilization with much quicker steps than we can find new ways to exploit labor.[134]

[134] Keynes,J.M. "Economic posibilites for our grandchildchildrens", New York in The Nation, The Nation Company., 1930

The new so-called Fourth Industrial Revolution is assumed to have its implications on jobs not only related to physical activities, but also to those more sophisticated as Andrew McFee suggests in the book "The Second Machine Era: How the Next Digital Revolution Can Change Lives", Pointing to autopilots in trucks, taxi companies, sending drone shipments, cleaning robots, computer consulting programs, robotic surgical interventions, etc.

Studies at Stanford University on over 702 professional areas have shown that as much as 47% of the labor activities in industry, agriculture and services are closing due to technological change.

All this is imposed by the dilemma about the legal concept and employment, of course, in correlation with the economic organization, but also with the classical understanding employment and the classical distribution of rights and obligations. In this sense, of course, the issue of access to the relevant rights will be directly raised, as well as the negotiation of the working conditions, which will certainly be far from the existing legal employment.

History has shown that the historical evolution of employment directly influenced the employment-based discourse, based on rights, minimum working conditions and social protection. Of course, historical evolution, and above all the ever-present digitalization and technological changes, imposed the need for proper legal regulation of everything that was a non-standard form of employment vis-à-vis standard working relationships.

If non-standard forms of employment understood by the ILO [135] definition as all things that are performed outside the standard employment relationship:

a) temporary employment; b) work through temporary employment agencies and other work involving multiple parties; c) ambiguous employment; and d) part-time employment, in itself, have an impact on the legal concept of employment and the concept of decent work, it is certain that new jobs caused by technological changes, digitalization and innovation, and how they will modify that concept. Of course, the so-called. informal employment, the impact of the informal economy etc.

Employment and labor have historically evolved so far, and the legal model and concept for its regulation included elements of both public and private regulations, trying to find a solution and become an effective means, on the one hand, to provide a quality workforce, which in conditions of real changes, especially in the world of globalization, will provide greater productivity, efficiency, but also adequate protection and social security, helped by the process of evolution of collective bargaining. The traditional concept of employment and standard forms of employment have been directly and so far, and are still susceptible to the pressures imposed by globalization, as well as from the ever-present migration processes and work in the so-called "global" supply chains. The realization of employment in such conditions and informal forms, reduces the power of collective protection and the traditional power of trade unions, disabling an appropriate legal concept of protection.

[135] Non-standard forms of employment-Report for discussion at the Meeting of Experts on Non-Standard Forms of Employment (Geneva, 16-19 February 2015) (Geneva, ILO).

Neoliberal policies triggered by the financial crisis, especially 2008-2009, also threatened with the more urgent decollectivization and individualization of the employment. Legal theory and practice was even more challenged in relation to the employment of the so-called self-employed workers (independent contractors), ie works performed and commissioned through Internet platforms and applications. Issues concerning the scope of the legal framework of these workers, the scope and nature of the benefits, salaries, working hours are also a problem due to the possibility and the format for their collective representation, as well as membership in trade unions, even more so the possibility of collective bargaining. What challenge is the labor relationship and the legal concept associated with it facing with, and what solutions will arise for states and social partners, it can be seen not only from the above tendencies but also from the pressure to introduce a new legal category "independent workers" promoted by some theorists such as Harris and Kruger and others. [136]

There are different views, positions, including different solutions for the future of the jobs about the characteristics and future of the labor relation, but also for the legal concept and model in terms of traditional standard employment and non-standard forms of employment. The well known physicist Stephen Hawking, relying on Keynes' thoughts on "technological unemployment" at the end of 2015, will point to the danger of technological change, concluding that if robots completely replace human labor, it may be massive pauperization of already unnecessary workers and the constant growth of economic inequality. In contrast, the World Bank in its latest "World Development Report 2019", however, predicts that technological progress will create new jobs, predict deregulation of the labor market, incentives for lifelong learning, increased investment in education and social care for workers their re-education, that is, to ensure transfer to new jobs. The IMF through its research of a group of experts in the paper "Should We Fear The Robot Revolution?" (The Correct Answer is Yes)" points to the danger of job closure, economic inequality and the forecast for adjustment to the labor market in the years to come.

What is today's image of the labor world ?

According to the Report of the ILO's Global Commission for Labor in 2019:

-190 000 000 people are unemployed, out of which 64.8 are young people

-300 000 000 workers earn a living in an informal economy

-2.78 million people die each year due to work-related injuries and occupational diseases

-36.1% of the global workforce, works overtime more than 48 hours a week

- Wage growth has fallen from 2.4% to 1.8% in the period 2016-2017

- Women are paid about 20% less than men

- in the period between 1980 and 2016, the richest 1% of the world's population receive 27% growth in global income, while the poorest 50% receive only 12%

[136] Harris, S.; Krueger,A. A proposal for modernizing labor laws for Twenty-First-Century work:nThe independent worker, Hamilton Project Discussion Paper (Washington D C, Brookings Institution). 2015

- By 2030, it is necessary to open up 344 000 000 jobs, taking into account the 190 000 000 jobs needed to address the current unemployment. [137]

According to the Report of the World Economic Forum "The future of the world of labor 2018-2022, the future of employment, skills and workforce for the Fourth Industrial Revolution", the specialty of new technologies, the creation of new high-quality jobs, increased productivity and the need to avoid the worst case scenario - the lack of quality workforce, mass unemployment and growing inequality - it is important that enterprises take an active role by supporting the existing workforce by acquiring new skills and upgrading the existing lifelong learning recommendations and governments to create and promote conditions for this, and a new vision of the labor market caused by the transformation of the workforce.[138]

According to this report, 50% of surveyed companies expected that automation will contribute to a reduction in workforce, 38% that the workforce will expand due to new jobs that will provide more productivity, and more than a quarter only expect increase in job openings. Regarding the job prospects, an increase in occupations in the beginning by 2022 is projected at 27%, and on occupations in extinguishing of the existing 31% to 21%. Of the surveyed enterprises employing 15 000 000 workers, it is estimated that as a result of automation, 0.98 million jobs will be closed, and new 1.74 will be opened, or if an extrapolation of these trends is made, there would be a redeployment of 75 000,000 jobs, but there may be a new 133,000,000 jobs tailored to the new division of work among people, machines and algorithms.

This Report also points to the need for so-called "growth strategies", improving the comparative power of human labor and achieving the fundamental task of policy-makers, regulators and educators, providing assistance to education workers, and updating labor policies, in order to align with the reality of the Fourth Industrial Revolution.

The phenomenon of the future of labor and employment is gaining more in importance but it is also an increased challenge especially for the countries in transition and emerging economies. If, to a large extent, traditional legal regulation, and in particular the efforts of the social partners to implement international labor standards in labor legislation, were met with a number of obstacles, in this new constellation of labor relations and technological changes, the legal regulatory framework, makes problems in these countries, which certainly includes our country.

Investing in additional education and lifelong learning, will have to focus on proactive employment policies, a special system of social protection by affirming the principles for securing minimum incomes for all or for additional social insurance. These challenges will require the re-compiling and transformation of labor-related institutions, in particular trade unions and other social partners, who will have to ensure security of labor regardless of its forms. Of course, we should not forget the forms and strategies of the concept of dignified and decent work. In

[137] Report of the ILO's Global Commission for Labor from 2019

[138] The future of Jobs Report , World Economic Forum, 2018

any case, the responsibility remains to all stakeholders and in the framework of social dialogue to affirm strategies for a justified future of labor.

The activities in our country regarding the future of labor, initiated by the ILO and the trade union, started with a national debate in March 2017 with representatives of the social partners. It was the first and last meeting on this issue.

The focus in the very beginning is put in two directions: technological changes and their influence in the future of the Macedonian economy and the employment in the future, non-standard forms of employment and insecure work. Technological changes as an eventual risk for jobs according to national debate must be the result of common policies formed by the business community and the social partners, adapting to the labor market and aligning it with gaps and differences in skills and education system and curricula, alignment and practical lessons etc. This section proposes ideas for reducing inequality and integrating the population at risk and articulating the importance of social entrepreneurship. The idea of developing strategies for redistributing the benefits of productivity in reducing inequality is also affirmed.

Regarding the second direction, the danger of breaking down the standard forms of employment is clearly defined, both from the aspect of technological changes, globalization, atypical forms of employment, flexibility, etc. These dangers, accompanied by differences in working conditions, lower incomes, reduced social security, point to the need to maintain the standard benefits of employment contracts or to analyze ideas promoted by a number of Western analysts and theorists about a new single employment contract, which would abolish the difference between a contract on a fixed and indefinite working time, i.e. the difference between standard and so-called non-standard forms of employment. It is for sure that we must focus on maintaining employment security and finding ways to preserve traditional security. The focus of this second direction also emphasizes the reaffirmation of the insurance system and the protection of vulnerable categories of workers, including those workers with non-standard forms of employment.

In defense of the future of labor, collective bargaining as a civilizing benefit must be defended by reaffirming the ideas and innovations of the financial crisis of 2008. Within the framework of the strategies for defending the future of labor and the more frequent pressures on labor legislation, defense and further promotion of international labor standards should also be a priority in these activities.

Regardless on the which scenarios about the future of labor is being discussed, it is a fact that transformation strategies formed by the social partners must be developed and in their creation they will have to absorb both optimistic and pessimistic forecasts, in order to find an optimal approach to preserving labor and its values.

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LAW ON PROTECTION OF CONSUMERS AND THE PROHIBITION OF UNFAIR BUSINESS PRACTICE IN SERBIA

Milica Stojković, PhD, assistant professor
Faculty of Law for Commerce and Judiciary in Novi Sad
University Business Academy in Novi Sad
mstojkovic1@yahoo.com

Milica Cvetković, PhD, professor of applied studies
High school for Criminalistics and Security in Niš
milica.cvetkovic85@yahoo.com

Abstract
Commercial practice is considered like unfair if it is contrary to the demands of professional attention and if it essentially damages economic behavior in relation to the product and to the average consumer. Consumers in Republic of Serbia are often unaware that they are victims of unfair commercial practices and are not sufficiently protected from it. It is good that the new Consumer Protection Law offers a better degree of protection when it comes to business practices. Certainly, the particular place is taken up by entering into our legal order the provisions on protection against unfair commercial practices, that is, those behaviors or omissions that traders do at the expense of consumers, who deviate from the usual business practice and represent examples of misleading the consumer, that is, aggressive attacks on the consumer decision. Nevertheless, it is necessary to strengthen the institutional framework, and enforce the law through state institutions and the market surveillance sector, as well as greater consumer involvement. The provisions of the Consumer Protection Law are harmonized with the provisions of European legislation, which constitutes a major step towards harmonizing national law with communal law, while the implementation of these provisions in practice indicates a gap between the provisions of the regulations and their practical aspect. For these reasons, the coauthors dealt with this problem, which proved to be very actual in everyday life, using the deductive and inductive method, the method of abstraction and specialization, as well as the historical-descriptive method, in the research.

Keywords: law, consumers, law, practice, protection

INTRODUCTION

Business practice is any act or omission of a trader, the manner of his business or presentation, and business communication, including advertising that is directly related to the promotion, sale or delivery of products to consumers. With this in mind, it is any action taken by the trader, or has failed to take it, as well as all the above mentioned directly related to the promotion, sale, delivery of products to the consumer. For the purposes of Article 5 of the Consumer Protection Act (Službeni

glasnik RS, 62/2014), in the section on unfair business practices, the product is any goods and services including immovable property, rights and obligations, as well as for the purposes of this law governing liability for defective products, a movable matter that is separate or embedded in another moving or immovable thing, including energy which is produced or collected for giving light, heat or movement. These provisions include the duty of pre-contractual and contractual notification of traders, distance contracts, travel trips (package arrangements), time sharing of real estate, etc.

As in the previously applicable Consumer Protection Act (Službeni glasnik RS, 73/2010), unfair commercial practices are prohibited pursuant to the provisions of Article 17 of the Act, with the difference that the jurisdiction of inspection bodies, ie market inspection in the area of goods and services traffic, and tourism inspections in the field of tourism and catering, has been significantly expanded. The burden of proving that he has not done an unfair business practice is striving on the trader himself. Unfair business practice regulates the provisions of the Consumer Protection Law on three levels, both at the general and the middle level, as well as by determining the "black" list of individual forms. It is evident that in general this type of business practice is defined, then certain forms of unfair commercial practices are defined, depending on the circumstances of the particular case, consumer or consumer group, and the separation of a certain "black" list of certain forms whose manifestation is always considered unfair, regardless of on the circumstances of the individual case.

CONCEPT AND KINDS OF UNFAIR BUSINESS PRACTICE

Pursuant to Article 18 of the Consumer Protection Act, business practice is unfair if it is contrary to the requirements of professional attention or significantly violates or threatens to significantly impair economic behavior in relation to the product of the average consumer to whom this business practice applies or to which exposed, that is, behavior of an average member of a group, when business practice is passed on to a group of consumers. It should be noted that professional attention is defined as increased attention and skill that is expected in a legal transaction from a trader in business with consumers, in accordance with good customs, as well as the principle of conscientiousness and honesty. The economic decision of consumers is a decision on whether, in what manner, and under what conditions to buy a product, to pay the price in whole or in part, whether to retain or return the product, or to exercise any other right in connection with the product, which is based on a contract, whether to do something, or to refrain from any action. For example, if a trader offers a particular product to the consumer, under certain conditions, and if he does not indicate that such a method of payment carries with him an increase in the price in percent, the incompatibility of this information can lead to the consumer making an economic decision. Then, if a trader knows that a consumer who buys a mobile phone lives in an area with a limited or non-existent mobile network, and does not notify him, in that case the trader's behavior becomes misleading or fraudulent. In this situation, the consumer would not be able to make a reasonable decision on the choice and purchase of products or services that would be based on accurate and full information, because the trader influenced his business behavior to

the economic behavior of an individual or group by silencing the necessary information.

Since the trader's business practice refers to a particular consumer, that is, to a particular group of consumers, and accordingly, it is estimated in relation to the average consumer, that is, the average member of that consumer group. Pursuant to Article 5 of the Law, the average consumer is a consumer who is well informed and reasonably observant, bearing in mind social, cultural and linguistic characteristics. It should be noted that the Law provides for increased attention that the trader must undertake when addressing particularly sensitive consumer groups. For example, a deaf person, as a consumer, attempts to tell the merchant about the lack of a product, and he ignores the objection through justification that he does not understand the sign language.

Misleading business practice refers to advertisements, promotional sales, quotations, claims and reviews that give the wrong picture to most consumers about the prices, values and quality of consumer goods and services. False commercial practices may refer to fraudulent acts and fraudulent non-practice. (Vilus, 2009, 365-388) By misusing the trademark or business name, the trader can easily mislead the consumer (label "Naik" instead of "Nike", "Panasoanic" instead of "Panasonic", "Vageta", instead of "Vegeta", "Live Fitness" instead of "Life fitness"). As far as the false or misleading description is concerned, the trader cannot give them in terms of the price or value of the product, the standard, the age of the product, its origin, the quality or the category, etc. Also, contrary to good business practices and practices, there are cases where the trader offers discounts, gifts or rewards without the intention of giving them, or failing to give them the way he is offered.

Traders should not advertise goods and services at a reduced price if they do not have an acceptable amount of such goods for potential customers. For example, a store that sells furniture begins to advertise intensively the armchairs at a reduced price that lasts for a week. The seller usually sells twenty armchairs a week, even at full price. However, during the advertising period, the store has only three such armchairs in the warehouse, and refuses to take a purchase order from the buyer for the armchair at a reduced price. This behavior is considered a false advertisement that only fights customers, because the store has launched an advertisement that will likely attract customers to the store without simultaneously having enough armchairs in the warehouse to meet demand. A trader cannot charge for goods and services if he does not intend to deliver them, or if he cannot deliver them within a specified time limit. For example, the company for decorating the exterior for new year lighting, agrees to deliver decorations in red, and it charges, knowing in advance it has only white decorations.

The trader must not give false and misleading assertions about where the state of the goods is made, produced or raised. This includes the following product labels: "produced in" a particular country (written in "made in" or "manufactured in"), "product" of a particular country (write "produce of", "product of" or "produced in"), logo of the symbol, for example, the logo "Made in Holland", claims that the products, its ingredients or components are "grown in" to a particular country. For example, if the wrapper says that the product is Dutch ("Produce of Holand"), this means that all the important ingredients of this product and its manufacture must

have origin in the Netherlands. Placing different prices for the same product, in case the merchant expose the product for which he has different prices, is another example of unfair commercial practices. For example, the price on the shelf may be different from the ones listed in the catalog. If this happens, the trader has to sell the product at a lower price or withdraw the goods from the sale until he corrects the price. To emphasize only one part of the price of the product, the trader can not advertise or exhibit a price, which is only a part of the cost of the product, unless the entire amount is visible. For example, a commercial in the catalog for the corner set shows the price as "4 favorable rates in the amount of 25,999.00 dinars". The total price of 103,996.00 dinars is indicated, but it is written in small letters at the bottom of the advertisement, and the picture of the set does not make it visible enough. The price of 103,996.00 dinars is not visibly highlighted, as it is 25,999.00 dinars, and it is unlikely that such a price display will be in line with good and honest business practices.

Forms of business practice considered to be a misleading business practice

The provision of Article 20 of the Act stipulates that misleading business practice exists when a trader by failing to perform a particular operation, taking into account all the circumstances of the case, spatial and temporal limitations of the used communication medium and supplementary measures undertaken for the purpose of informing consumers. The trader is doing this type of violation of the law when he denies the essential information that the average consumer needs for the appropriate level of information in the decision-making process, indicating or threatening to instruct him to make an economic decision that he would not have brought, or concealing important information or essential information provides untimely, or in an unclear, incomprehensible or ambiguous way, when he fails to point out the business purpose of his or her address to the consumer, indicating or threatening to indicate to the average consumer to make an economic decision he would otherwise not have made.

In business practice, by silencing the information, the trader can violate the law if he does not provide important information about the product or service. For example, if a seller knows that a customer who buys a mobile phone lives in an area with a limited or non-existent mobile network, and does not notify him, in that case the seller's behavior becomes misleading. Promises, opinions and predictions can be misleading and misleading, if the person who gave the statement knew that it was false, did not matter whether it was true or not, and/or did not have enough evidence for such a statement. There are more examples of misleading omissions when the offer of airline tickets for certain destinations does not specify that additional taxes are paid (taxi and tickets), or when the trader offers a sales incentive, but does not specify the conditions under which the offer is valid.

In paragraph two of the same Article, it is prescribed what the invitation to tender and the notice on the characteristics and prices, if something else does not arise from the circumstances of the case, the essential information must contain the basic characteristics of the product to the extent that corresponds to that product and the means of communication used, the name and address the trader, the price and method of payment, the manner in which complaints are dealt with if the rules

deviate from the requirement of professional attention, the notice of the right to withdraw from the contract. In assessing whether a trader's business practices are deceptive, it is necessary to take into account the objective circumstances of the individual case and apply specific assessment criteria. It is not necessary to assess whether the consumer has suffered damage due to these reasons. If there are elements of the possibility of fraud in the particular case, it does not matter if the trader has acted with intent or accidentally, his behavior will be characterized as misleading.

The provision of Article 21 lists 23 forms of commercial practice which, regardless of the circumstances of the individual case, are considered to be misleading business practices. The most common forms of misleading commercial practices are: unauthorized highlighting of a quality mark, a sign of trust, or a similar sign by a trader (the gym shows plagiarized confessions), the call from the trader to the consumer to make a bid for the purchase of a product at a certain price if the trader conceals the existence the underlying reason to suspect that it will be able to deliver the product or equipment or to hire another dealer for the delivery of the product at a price, in quantity and time that could be expected in relation to the type of product, the volume of advertising and the offered price (the merchant received payments for textbooks that are not in a condition and the deadline for delivery, even though such textbooks are no longer printed). So, the call from the trader to the consumer to make a bid for the purchase of a certain product at a price if the trader intends to indicate the consumer the purchase of another product refuses to show the consumer the product to which the ad relates or refuses to receive the order or to deliver the product within a reasonable time or to show the consumer a damaged sample of the product to which the advertisement relates (when the trader offers a machine for but at a lower price, but the offer includes an insufficient quantity, and at the consumer's request it says that the model is not in a condition but has a similar one that is more expensive for 2000 dinars).

Thus, an untruthful claim that the product will be available in the short term, or that be available in the short term under certain conditions, in order to make the consumer decide without delay, that is, to be denied the opportunity or time required for the appropriate level of information when making a decision (if you call in the next hour, you will receive two products at the same price, and this is extended to while this offer is in progress). Also, the representation of certain rights as special benefits that are otherwise guaranteed by the law to the consumer and the abuse of the term "guarantee" (the guarantee for the proper functioning of the hair dryer for two years, in case of product damage or theft, we repair the damaged or give a new device), the creation, guiding or advertising by a trader of a product sales system within which a consumer pays a fee for the ability to generate income that does not depend on the success of the sale of a particular product, but from the participation of others spending in this system of sales - a pyramid scheme (the organization of such a system of sales where the profit of a participant depends on the number of other participants who are a member of the system while the membership fee is charged).

For example, the untruthful trader's claim to discontinue business or move to new premises (he is on his own actions indicated that the shop stops working on 1st June

and for this reason the goods are reduced by 50% and after this date continue to work in the same business space). Similarly, the trader say for a particular product to increase the chance of winning in games of chance (the consumer is called for a multi-time presentation with a notice that he received a gift), a false claim that a particular product cures a disease, disorder or malfunction (drinking water for which the trader claims to treat heart disease), describing the product with the words "gratis", "free", "free of charge", or other words with similar meaning, if the consumer is obliged to take one of these products. Acquisition costs, except inevitable costs related to business practices and takeovers, ie delivery of the product (indicating that the consumer was given a gift without explanation that it was conditioned by the use of a large number of products or products in a certain amount), placing an invoice or similar document in advertising material, which gives the consumer the wrong impression that he has already ordered the advertised product (in the catalog for cosmetics delivered by mail, there is a purchase order).

Aggressive business practice

The provision of Article 22 of the Act stipulates that a hostile business practice exists if, taking into account all the circumstances of the particular case, the trader disturbs or threatens to distort the freedom of choice, or the behavior of the average consumer in relation to a particular person by harassment, coercion, including physical coercion or unauthorized influence product, and in this way it states or threatens to instruct the consumer to make an economic decision that would otherwise not be brought. If a trader substantially limits the consumer to achieve an appropriate level of information when deciding whether or not he uses the physical force, or appears to use it, the trader exhibits this type of unfair business practice.

Commercial practice is considered aggressive if, in a factual context, taking into account all the circumstances of harassment, coercion, including the use of physical force or excessive influence, significantly jeopardizes the free choice of the average consumer in relation to the product and thereby contributes, or is likely to contribute to concludes a transaction that would not be concluded in other cases. (Vilus, 2009, 365-388) There are certain criteria for assessing whether certain business behaviors can be considered as aggressive business practices, such as: time, place, nature and duration of business practice, the use of threatening or offensive language or behavior, etc. Circumstances are always of crucial importance for the decision making of the buyer. Violent business is directly endangering one of the basic consumer rights - the right to choose. In the provision of Article 23 are the forms that make up the "blacklist" of business behavior that are always turning around. The Consumer Protection Law envisages the so-called list of misleading acts and omissions, which, regardless of the circumstances of the individual case, are considered to be a misleading market act, as well as a list of aggressive business practices, following the model of Annex I to the Unfair Commercial Practices Directive.

APPLICATION OF THE LEGAL PROVISIONS AGAINST UNFAIR BUSINESS PRACTICE

The modern constitutions of democratically regulated countries put the individual, natural person and the protection of his basic human rights, proprietary interests and dignity to the forefront. In this regard, consumer protection is seen as a protection of human rights. (Knežević, 2009, 125-142) A special (administrative) procedure for the protection of the collective interests of consumers is foreseen - the imposition of administrative measures in case of violation of the provisions of the law relating to unfair business practices and unfair provisions in consumer contracts. The scope of authority of inspection bodies has been extended (sanctioning of certain behaviors that have not been the subject of supervision). Cooperation has been extended to other market surveillance authorities (eg product safety, financial services, telecommunications, tourism, etc.). A mechanism for out-of-court settlement of consumer disputes has been improved. The National Registry of Consumer Complaints has been introduced. Everything is on paper, but the question of applying the provisions on unfair business practices is raised?

Supervision over the application of the provisions of the Act is primarily carried out by the Ministry competent for consumer protection, while in the inspection supervision, we have market and tourist inspection. In supervisory cooperation, exchange of data and notifications regarding consumer protection is of great importance, submission of analyzes of the situation in areas of importance for consumers, establishment of coordination bodies. New violations and extended powers of competent inspectors were prescribed. Sanctioning of certain behaviors that have not been the subject of supervision. New provisions on education and consumer information are defined, as well as more stringent criteria of independence and representativeness. It is evident that there is greater participation in: representing consumers in extra-judicial and judicial procedures, decision-making process in the field of services of general economic interest, defining and implementing consumer protection policy and initiatives at the level of local self-government. Traders benefit from the rules that introduce the order in the trade, which are deterred by competitors from unscrupulous and underhand procedures. (Stanivuković, 2004, 512)

In spite of this, in practice, the unwitting behavior of the phenomenon is everyday life. An unhealthy behavior is a statement or process of unreasonable nature that is contrary to responsible conscience. Examples of misconduct include situations where a trader does not explain how a contract to a consumer whom he/she knows does not speak the language in which he/she addresses it, invites a person to sign an incomplete or very unfavorable agreement, use the situation in which the consumer is located, such as a remote location, uses pressure as a tactic such as not accepting a negative response (for example, saying that if a consumer does not buy a car, this will jeopardize the existence of the trader's family). Then, promoting product quality or hiding some information about product quality or aggressive business when it comes to compelling consumers to conclude a particular contract, advertising that the product is free from sugar, preservatives or additives, is produced in the EU, or is of organic origin, and that this is not actually the case, are just some of the many examples of unfair commercial practices.

The unauthorized influence is the exploitation of the power-to-consumer relationship, using pressure, regardless of whether the force or threat is used, in such a way as to significantly limit the ability of consumers to make a decision based on full information (economic decision). Each of the above data can be identified by the consumer in the choice of the product and the trader with whom it will conclude the contract, and it is assessed in relation to the circumstances of the particular case. Namely, the introduction of a hotel as a luxury, while the renovation has not yet been completed, or stating that the product is new when it comes to a repaired product, or, when the price is stated without notice not including the cost of delivery, the incorrect claim that the fruit juice does not contain sugar, or a notice that vacuum cleaner spare parts are available over a long period of time, is an important fact in the choice of product and trader, so that incorrect information distorts the consumer's economic behavior. Consumer protection will depend on the development of administrative infrastructure, in order to ensure market surveillance and law enforcement in this area. (Knežević, 2009, 125-142)

CONCLUSION

Unfair business practice is forbidden. News in the Law are that, in addition to the "black list" of unfair commercial practices of traders, that is, 31 business behavior, which without exception is considered unfair practice, all forms are now covered by inspection supervision (supervision on the application of Article 18 to 23. Law). The policy of active consumer protection in accordance with communal law, including greater awareness and development of independent organizations, should be encouraged and ensured. It is essential that through the protection of consumers' rights, the need for creating an active consumer, aware of his rights under the laws, is guaranteed by the guaranteed quality of goods and services, as well as the cultural and human worthy attitude of producers and service providers towards the consumer. In this way, indirectly, society is protected from bribery, corruption, bureaucratic and monopolistic arbitrariness. A well-informed, educated supervisor, or manufacturer and service provider, is an obstacle to the violation of legality and violation of consumer rights, and is a guarantee for the functioning of the market of goods and services, according to the principles of good business practices.

A special place is certainly taken into account by entering into our legal order provisions on the protection against unfair commercial practices, that is, those behaviors or omissions that traders do to the detriment of consumers, who deviate from the usual business practice and represent the occurrence of cases, the misleading of the consumer, that is, the aggressive act on a consumer's decision. It is certainly necessary to make additional efforts to bring these solutions to life in both business and judicial, that is, administrative practice, so that at the level of life-long behavior it will provide adequate protection to consumers, as a matter of course, of the weaker side in the market and trade relations.

The problem is the fact that there are no developed administrative, misdemeanor and judicial practices in this area, but this should not be an obstacle to the correct application of new legal solutions. In this sense, a wide range of possible modalities of protection, from measures of administrative supervision and operation, to the consumers and other interested entities are available, through the increasingly

popular use of mediation as an alternative way of dispute resolution, to classical misdemeanor and judicial protection. It remains to us to monitor and analyze the application of these solutions in practice. It is necessary to educate consumers and their associations in order to better protect consumer rights and loyal market behavior. It is necessary to add that the penalties must be effective, proportionate, and that they can be deterred from the practice that is evident.

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COMPARISON BETWEEN SPOKEN AND WRITTEN LANGUAGE

Liljana Markoska MA
Faculty of Law
University "St. Kliment Ohridski", Bitola
markoskaliljana@yahoo.com

Abstract
The fundamental point of this paper is to describe some of the differences between spoken and written language.
Language is a tool for communication and conveying information to others. As a social phenomenon language is connected with humanity who is its creator and its user. Language grows and develops together with the development of society.
Language is spoken and written. When comparing spoken and written language it could be pointed out that spoken and written language fulfil different purposes in society. Spoken language is dynamic, in the sense that it is created at the moment of speaking, while written language is not dynamic but it is fixed. When speaking, we have less time to plan and organize our message and we are often exploring our phrasing and meaning as we speak. Written language is planned, organized, formal, and academic and requires strict rules while spoken language often does not require strict rules so it is less rigid and more flexible than written language.

Key words: Language, spoken, written, formal, informal, communication.

INTRODUCTION

Language as a tool for communication evolved first as speaking and listening, and languages were spoken for many thousands of years before any of them came to be written down. In other words, in the history of human evolution speech evolved as the primary language mode for the purpose of communicative and social needs of the people in the nomadic community. When people began to live in settled communities they needed to record their taxes, to keep records of exchanges of money, so writing evolved to satisfy these needs. Actually, written language emerged in Sumer, a region in southern Mesopotamia 3500-3000 BCE and it was called cuneiform which consisted of making specific marks in wet clay with a reed implement. It is believed that the phonetic writing system was developed in Mesoamerica by the Maya c. 250 CE.
It would have been very difficult to have evidence and knowledge of the ancient past and the history of different cultures and the very early civilization if there was not a kind of written evidence. Anyhow, we can point out that in whatever age, since its inception, the written language has served to record events, wars, human culture and history, feelings, happiness and sadness and so on, in order to preserve these experiences for future generations.

Spoken language and written language fulfill different purposes in society, so their natures are different. Spoken language is used in conversations between two or more people face to face, describing personal experiences, ordering food in restaurants and similar service encounters and so on. Speech is dynamic because it is created at the moment of speaking and exists only for that moment unless it is recorded. It is not planned and it cannot be drafted and edited. Actually, speech can be edited by self-correction, hesitation and so on. During the conversation the participants can ask for additional information about the topic on which the discussion is carried out or they can ask for clarification if they did not understand something, or they can ask for more details, and so on. Writing, by its nature is not dynamic but fixed. This means that it can be planned and carefully developed, drafted and edited.

When comparing the written and spoken forms of a language it could be said that both of them have their own advantages. In the process of speaking, a person can use his or her hands and eyes to express his/her feelings, ideas, while in written language this is not possible. Speech has been able to achieve subtler variations of meaning than can be expressed in writing. An advantage of written language is that it could be preserved and reproduced while in spoken language a listener has to adjust himself/herself to the speed of the speaker in order to receive and understand the message and respond if necessary.

DIFFERENCES BETWEEN SPOKEN AND WRITTEN LANGUAGE

There are many differences between spoken and written language. Written language involves writing and reading skills and spoken language involves speaking and listening skills. All four skills have to be well mastered in order to be literate, so all of them are very important and play a crucial role in communication. One of the main differences between spoken and written language is that written language is more complex and formal whereas spoken language is more informal and less complex.

Spoken language is different from written language in that, that speakers can use their hands for gestures, they can lower their voice, tone, and they can speak very loud, laugh, and so on. Spoken language cannot be recorded in the way as written language can be. In other words, unless the conversation is recorded using the modern technology, there is no record of the conversation that was carried out. On the other hand, written language tends to be permanent because there are written records of it. For example, if we take contracts we will see that most contracts are enforceable in court whether they are oral or written although some of those must be in writing in order to be enforced. In other words, written contracts are better than oral contracts because in written contracts the terms of a contract are written down and are signed by both parties. With the oral contract, it is easy for both parties to agree and then have second thoughts and breach the contract.

Written language is more formal and complex. It uses features such as punctuation, headings, paragraphs, and should be well ordered and presented by using higher level vocabulary.

Hammond (1992:32) has argued that the most obvious difference between spoken and written texts is that spoken texts are normally jointly constructed by two or

more participants, while written texts are essentially monologues. Spoken texts, with few exceptions, are created by speakers in conjunction with other speakers, within the same physical context. Written texts, on the other hand, are typically produced in contexts removed by time and distance from those in which they are read. The fact that spoken texts are produced by writers in isolation from their readers has a significant influence on their organization and development. Actually, spoken text is dialogic in nature, and that the discussion between the participants moves from one aspect of the topic to another in a flexible manner.

According to Halliday (1985:93) writing does not incorporate all the meaning potential of speech; it leaves out the prosodic and paralinguistic contributions. Spoken language does not show sentence and paragraph boundaries, or signal the move into direct quotation. Spoken language and written language in practice are used in different contexts, for different purposes.

With the fast progress of the informational technology and the new technologies such as mobile phones, i-phones, smart phones that enable the user to send messages, there are exceptions to the rule that spoken language is informal and written language is formal. In other words, the messages that are written by using the option 'messaging' use a very informal language with structures making their writing be more like a conversation. If we consider the following example, of a written message sent on messaging.

We're having a party on Friday night at the Irish pub wonna come. Come at 7
See U.

This text massage is written but has all the characteristics of a spoken language, that is, the usage of the short form of the verb to be, usage of slang, colloquial words, using U instead of 'you', sentence structure as in spoken language, etc. If this text was written as a short letter on paper it would be:

Dear Monika,
I would like to inform you that we're having party on Friday night at the Irish Pub. If you want to come, be there at seven o'clock.
See you,
Dora

ASPECTS OF GRAMMAR IN SPOKEN AND WRITTEN LANGUAGE

Lexical density

Most linguists use the technical term 'lexical item' to refer to the words that carry the content of the text. In other words they are words that we find in dictionaries and belong to an open set of linguistic items, in the sense that languages continually add lexical items to refer to new technologies, new objects etc.

In the following example the lexical items are underlined and the words that are not underlined are grammatical items.

Monika is a little tall girl with a long straight blonde hair.
She has fair complexion and wears pink clothes because she loves that color.

Written language has high lexical density, which means more lexical content words such as, nouns, verbs, and adjectives, and more meaning is packed in words. On the other hand, spoken language is characterized with lower density, which means more

function grammatical words such as pronouns, conjunctions, adverbs, prepositions, determiners and so on.
Halliday (1985:64) defines lexical density as "the number of lexical items as a proportion of the number of running words". Nominal groups are group of words organized around a noun which forms the head of the group. It is the composition of the nominal group which makes the clause lexically dense that is, the proportion of content words to function words in a text. The higher the proportion of content words the greater the lexical density. Lexical density measures how much information is in a text.
Halliday (1985:61) has pointed out that written language typically is more lexically dense than spoken language. Written language is relatively denser; it has more information packed in one single clause, while spoken language is relatively sparse. Spoken texts do not contain a lot of long nominal groups, but written texts contain many long and lexically dense nominal groups. Hammond (1992:32) argues that longer nominal groups enable a written text to compress information, to convey more content within its clauses, while spoken language can convey the same amount of content, but it employs more clauses to do so.
Spoken language has its own set of grammatical patterns which are different from those in written language.

Nominalization
Long nominal groups, besides increasing the lexical density of a text, enable much of the content of written texts to be coded as nouns. In other words, much of the content is nominalized. In spoken language the content is coded in lexical items, verbs, adjectives as well as nouns.
Let us consider the following written and spoken texts adopted from (Hammond: 1992:40) to explain the phenomenon 'nominalization'.
.....This familiarity in part from the long standing interest in the operation of government and in policy issues among academics and researches. Studies which had originally developed out of the work of political scientists and others were now embraced by the emerging policy analysis perspective.
If the above written text was spoken it would have been as follows.
It was familiar, because academics and researches had been interested for a long time in how governments operate, and how people decide on policy. Political scientists, economists and other people had studied these things, and how they were taken up by people who were interested in analyzing policy.

Written text	**Spoken text**
familiarity	it was familiar
long standing interest	had been interested for a long time
operation of government	how governments operate
policy issues	how people decide on policy
studies	people who had studied
policy analysis	people who were interested in
analyzing policy	

Nominalization, and the abstraction that result from it, is functional in that it enables abstract concepts to be discussed and complex arguments to be summarized and then used as a basis for further discussion or argument.

CONCLUSION

Spoken and written languages are used in different context because they have evolved to satisfy different human needs. With the steady evolution of human societies, language has had to serve increasingly complex purposes. Therefore, as the spoken and written modes have developed, they have drawn differently upon the various aspects of the linguistic system, particularly the grammatical system.

Spoken language is usually a dynamic conversation between two or more participants and they can use tone, volume and timbre to add emotional context. Spoken language is not previously planned; and comes spontaneously between two or more participants who during their conversation can repeat themselves, can correct each other, can switch from one topic to another, can use gestures, hesitations, and their conversation could last for a long time or just a short time. In spoken language the participants do not pay any attention to lexical content and meaning.

Written texts are permanent and cannot be changed or edited once they are published or printed.. Written language is more complex and intricate with long sentences and many subordinate clauses. Some grammatical constructions are used only in writing, as well as some vocabulary, complex legal terms in legal documents.

With the progress of the new technologies written texts that are written on messaging or viber have the characteristics of spoken texts.

Both, spoken and written languages have their own value. As Halliday (1985:98) argues, language evolved as speech, and is learnt as speech by individuals so we have to study it in its spoken form in order to understand it properly.

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DESIGNATING ELECTIONS AS CRITICAL INFRASTRUCTURE: LEGAL AND POLICY CONSIDERATIONS

Vesna Poposka, PhD Candidate
Asoc.prof Abdulmecit Nuredin, PhD
International Vision University-Gostivar
vesna.poposka@vizyon.edu.mk

INTRODUCTION

In September 2017, the United States Department of Homeland Security (DHS) confirmed to election officials in 21 states that their election systems had been targeted by Russian hackers during the 2016 election cycle. 139 million Americans cast their vote in the wake of a massive Russian cyber-enabled influence operation designed to "undermine public faith in the U.S. democratic process, denigrate Secretary [Hillary] Clinton, and harm her electability and potential presidency" (Congressional Task Force on Election Security, 2018). Using a vast network of social media trolls, fake "bot" accounts, and state-owned news outlets, the Kremlin spread disinformation to the American electorate through more than 1,000 YouTube videos, 130,000 tweets, and 80,000 Facebook posts viewed by as many as 150 million people on Facebook platforms alone. They hacked into U.S. political organizations, selectively exposing sensitive personal information about DNC staffers using third-party intermediaries like WikiLeaks (CTFES, 2018). According to U.S. intelligence reports, Russia targeted voter registration databases in at least 21 states and sought to infiltrate the networks of voting equipment vendors, political parties, and at least one local election board. Although this election cycle was unlike any before, the U.S. Intelligence Community warns that it may be the "New Normal." Recent reports show that the vast majority of U.S. states are still relying on outdated, insecure voting equipment and other election technologies that lack even basic cybersecurity standards. Meanwhile, Republicans in Congress have shown little interest in fighting Russian interference, and have instead chosen to act on measures that would eliminate rather than bolster funding for the Election Assistance Commission (EAC), the Federal agency responsible for helping states secure these vulnerable systems

Such attacks included attempts to infiltrate state voter registration databases and, in two instances, hackers were successful in obtaining access to information in state voter registration systems. This confirmation by DHS comes on the heels of United States House, Senate and intelligence community investigations which offered further substantiation of Russian attempts to influence the 2016 election. Furthermore, these investigations confirmed that there is no reason to believe that such disruption attempts were isolated incidents, and that states need to upgrade their cyber security efforts to prevent, recognize and mitigate threats to state and local election systems. The result of those occasions was the fact that in January 2017, DHS's Secretary designated election infrastructure as a critical infrastructure

subsector. This designation is given to “systems and assets, whether physical or virtual, so vital to the United States that the incapacity or destruction of such systems and assets would have a debilitating impact on security, national economic security, national public health or safety, or any combination of those matters” (42 USC 5195c: Critical infrastructures protection, April 2019).

Two years later, as the 2018 elections approach, the American intelligence community is issuing increasingly dire warnings about potential interference from Russia and other countries, but the voting infrastructure remains largely unchanged. D.H.S. has now conducted remote-scanning and on-site assessments of state and county election systems, but these are still largely Band-Aid measures applied to internet-facing server s.

Survey from Venafi has found that a full 93 percent of security pros are concerned about cyber-attacks targeting election infrastructure. The poll, which gathered responses from 411 IT security professionals in the U.S., U.K. and Australia, found that 81 percent believe that it’s not just ballot machines themselves at risk; they fear that cybercriminals also will target election data as it is transmitted by machines, software and hardware applications, from local polling stations to central aggregation points(Ezez. 2019)

The significance of this critical infrastructure designation is that it enables DHS to prioritize cybersecurity and physical assistance to election officials who request it. On the other side it is a mere fact that what constitutes critical infrastructure (CI) is often in the eye of the beholder. The pure notion of “critical infrastructure” was developed pretty late, as a response to the new security architecture.

THE NEW SECURITY ARCHITECTURE

The focus of critical infrastructure is the result of changes in more mutually dependent variables that have resulted in and from the changes caused by the collapse of the Berlin Wall and the emerging open societies under construction. This is primarily due to the change of security concepts and interdependent variables.

The contours of global change can be defined on several fronts: firstly, there is the change of actors, due to the redefinition of the power relations between the existing actors, and the emergence of new actors - transnational corporations, NGOs, terrorists, global rebels, organized criminal networks, mafia cartels and other atypical structures.

Secondly, international law does not recognize new actors as subjects. In the international law, the subjects are subjects of the subjectivity, and all other actors are only an object of law. Thirdly, the increased awareness and the rapid flow of information have led to the public's reactions become inevitable, especially through the popularization of social media. Fourth, of radicalization, in every sense, leads to an increase in the divergence of the interests of individuals and groups, at the expense of the ideal of open societies. Fifth, increased industrialization and uneven industrial development have led to ecological disaster and amplification of the effects of global warming. Sixth, technological advances allow the accumulation of power in the hands of individuals with malicious intentions. Seventh, transnational companies whose capital is larger than the budget of many countries, raises the race

for profit and the fight against competition in networks that traditionally did not affect the business sector. Often, because of the above, the concept of war has changed dramatically. The power is redefined, and the strength of forces is beyond equilibrium. The present character of the war is extensively expanded, yet its manifest forms can be fused in 140 characters-as much as in a Twitter announcement.

Globally, there are no legal acts and documents that treat the critical infrastructure *en général*, but there is an abundance of documents that treat its specific manner. Firstly, this is the resolutions of the Security Council -document which is legally binding in accordance with Article 25 of the UN Charter. (UNSCR 2431/2017)

DEFINITION AND DESIGNATION OF CRITICAL INFRASTRUCTURE

For the first time, the definition of critical infrastructure is made by the United States. In May 1998, President Bill Clinton issued a presidential directive PDD-63 on the topic of critical infrastructure protection (The White House, 1998). With this act, certain parts of the national infrastructure are indicated to be critical to the United States' national and economic security and the well-being of its citizens, and it is necessary to take steps to protect it. This was updated on 17 December 2003 by President Bush through the HSPD-7 Presidential National Security Directive on the identification, prioritization and protection of critical infrastructures (The White House, 2003). The directive addresses the critical infrastructure that is "so important for the United States that the inability or destruction of such systems and assets will have a debilitating impact on citizens' security, national economic security, nation health or public security." President Obama in 2013 prioritized this issue, and it was effected by the Department of National (Homeland) Security of the United States. This initiative identifies 16 areas as areas of critical infrastructure, such as: Chemical sector; Commercial services; Communications; Critical Manufacturing; Damn; Defense industry; Sector for Emergency Services; Energy sector; Financial services sector; Food and Agriculture; Government services; Health and public health; Information technology; Nuclear reactors, materials and waste; Transport system; Water supply.

Gradually, as the global context developed, more and more countries joined the practice of separating and standardizing the protection of critical infrastructure as a separate category. Defining critical infrastructure is different for each state or international organization, but in general, critical infrastructure is determined as such on the basis of the same or similar characteristics. There are several theories or approaches to how critical infrastructure is defined, which include a different methodology and criteria, such as: the geographical coverage of the influence of a certain segment of critical infrastructure, the significance (national, regional, global), and the duration of protection which is indispensable (permanent, occasional / temporary).

There are numerous ways in which the integrity of elections can be affected. Election results may be improperly tallied or reported. Inaccuracies may be introduced by human error or because of a lack of proper oversight. There are many ways to prevent the casting of votes. Voters can be physically barred or otherwise deterred (e.g., by intimidation) from accessing polling sites. Information on voting

locations, voting times, and voting processes may be manipulated to mislead potential voters. Disruptions in mail or Internet service may adversely affect remote voters. Registration data may be altered to disenfranchise voters. Voting equipment failures or inadequate supplies could prevent vote collection (National academy, 2018). What constitutes “critical infrastructure” (CI) is often in the eye of the beholder; compared to the sixteen CI sectors in the U.S., for example, the European Union recognizes eleven. Election infrastructure is now not the 17th sector, but will fall under the "government facilities" sector. "The designation makes clear both domestically and internationally that election infrastructure enjoys all the benefits and protections of critical infrastructure that the US government has to offer” (DHS 2017). The designation of election infrastructure as critical infrastructure subsector does mean that election infrastructure becomes a priority within the National Infrastructure Protection Plan. It also enables this Department to prioritize our cybersecurity assistance to state and local election officials, but only for those who request it. Further, the designation makes clear both domestically and internationally that election infrastructure enjoys all the benefits and protections of critical infrastructure that the U.S. government has to offer. Finally, a designation makes it easier for the federal government to have full and frank discussions with key stakeholders regarding sensitive vulnerability information. Particularly in these times, this designation is simply “the right and obvious thing to do “.

ELECTIONS AND ELECTORAL SYSTEMS AS CRITICAL INFRASTRUCTURE

In September 2017, the United States Department of Homeland Security (DHS) confirmed to election officials in 21 states that Russian hackers had targeted their election systems during the 2016 election cycle. The result of those occasions was the fact that in January 2017, DHS’s Secretary designated election infrastructure as a critical infrastructure subsector. The debate that followed opened Pandora’s box. Many cybersecurity experts have also long called on the Obama administration to make the critical infrastructure designation, saying it would give state officials better tools to combat hacks (Bennet et al. 2016). On the other side, many of the federal states assumed this act as overcoming federal competencies. The argument was that the federal government has no constitutional legal authority to classify elections systems as critical infrastructure (Rockwell, 2016) . As pointed out by Hans A. von Spakovsky is that “the formal designation itself admitted that ‘many [state and local election officials] are opposed to this designation” (Spakovsky 2016). A final concern, also expressed by von Spakovsky, is that “nothing prevents DHS from making recommendations now —no ‘critical infrastructure’ designation is required.” It is true that assistance can be provided to states without the critical infrastructure designation, but the designation increases the capacity for voluntary information sharing organizations, and prioritizes DHS cybersecurity resources for electoral infrastructure. Yet, many find it concerning that a designation claiming to give more resources to states, would be opposed by those same states. This fear likely ties into concern of federal overreach, which can, at least partially, be allayed by the voluntary nature of DHS assistance. It is also important that as the CI sector develops, new processes, platforms, and policies are put in place to prevent DHS

from using its resources as leverage to manipulate elections—that is, appropriate checks. It is possible that this is the case, but regardless, it is a constitutional law issue to be dealt with separately from the continuing upsurge in engagement among local, state, and federal government on improving protections.

The truth is, that due to the cyber dependence of USA elections, the risk was more than real.

"Regardless of whether you voted for Donald Trump, Hillary Clinton, or anyone else, Russia's attacks on our election are an attempt to degrade our democracy and should chill every American—Democratic, Republican, or Independent—to the core," said Ranking Member Cummings (Ezez. 2019). However, for experts concerned over federal outreach, it is not clear what would be the real benefit of designation. Secretary Johnson seems to suggest the designation creates opportunities, rather than obligations, for state and local election officials, saying that the designation of election infrastructure as critical infrastructure subsector [means]that election infrastructure becomes a priority within the National Infrastructure Protection Plan. It also enables this Department to prioritize our cybersecurity assistance to state and local election officials, but only for those who request it (Chapin, 2017).

CYBERSECURITY RISKS FOR ELECTORAL PROCESSES

While there are many components to a complete election system, many of the cybersecurity risks associated with them can be grouped to simplify the steps to manage risk. One approach to this is by analyzing the manner in which they connect to networks and other devices. One approach is addressing components of elections systems based on three types of connections that most clearly define the risk landscape:

1. Network connected systems and components. Network connected components are interconnected with other devices to achieve their objectives. The level of interconnection, while providing various benefits, also introduces additional risks that must be taken into consideration when managing the lifecycle of the device.
2. Indirectly connected systems. Indirectly connected components are not connected to a network at any time and are not persistently connected to other devices. They do, however, have to exchange information with other elections system components including network connected systems in order to complete their objectives in the election process. These information exchanges are done either through the use of removable media or a direct connection to another device such as a printer or an external disk drive.
3. Non-digital elections components. An example would be the mailing, completing, and returning of a paper mail-in ballot.

Transmission between components also creates weaknesses. Weaknesses in communications protocols, or in their implementation, risk exposure or corruption of data, even for systems that are otherwise not network connected (CTFC, 2018).

At least five areas of the electoral process are possibly vulnerable to hacking. These are: (1) the information received by voters in the lead-up to the election, (2) the rolls used to check voters **in on** Election Day, (3) the machines on which voters cast their ballots, (4) the tabulation mechanisms for determining the winners, and (5) the

dissemination systems used to spread news of the results (Appel, 2016). Two potential scenarios have been developed:

a) A nation-state uses the internet to access and disrupt one or more state voter registration databases such that legitimately registered voters are denied the ability to vote on election day, or are required to file a provisional ballot. Consequence: Although no votes are manipulated, this attack would likely be a major national news story that results in reduced confidence by the public in the integrity of the voting process and the election results. Additionally, this slows the voting process, creating the risk of long lines and making in-person voting less efficient;

b) An adversary gains access through the internet to one or more election night vote displays and changes the displayed results such that the real winner of the election is now the reported loser in the election. Consequence: Again, while no votes have been changed, and the erroneous posting of election results by an authoritative source will subsequently be republished (CIS, 2018).

CONCLUSION

The analysis showed that elections and electoral systems can fulfill the criteria of "function vital to our societies" and should be considered as critical infrastructure. However, the designation itself might not mean deeper or better protection. What makes designation matters is the actual level of protection itself and establishing the balance between civil liberties and security needs.

Another issue that should be considered is the political system of the state: the designation of elections as critical infrastructure mattered in the USA due to the political system and power sharing between the federation and states. However, proving the effectiveness of the designation will need some more time.

According to a dossier from the National Academies of Sciences, Engineering, and Medicine, which probed the fallout of alleged Russian meddling with America's 2016 elections, and concluded that voting systems anywhere near the internet or a computer network were too vulnerable to be relied on to collect and tabulate vote counts, the upcoming 2020 US presidential election should be conducted on paper, since there is no way currently to make electronic and internet voting secure (NASEM, 2018).

The development of cyberwar norms is still in its early stages. Designating election systems as critical infrastructure, however, draws on a broader national-security standards of conduct: The same norms that deter an attack on a foreign country's electrical grid would now cover electoral systems, too (The Atlantic, 2017). That might be a powerful, but also dangerous precedent.

Further, although elections and electoral systems should be considered as critical infrastructure, a functional analysis and risk assessment should be considered on case by case analysis. Every state has its own differences that are vital to the electoral processes. For the USA and Canada, cyber security is crucial, but for the western Balkan region, physical protection and human factor still play important role, as well as the legal basement for organizing the elections.

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THE STATUS OF JUVENILE WITNESSES IN JUVENILE CRIMINAL LEGISLATION OF SERBIA AND EU STANDARDS

Višnja Ranđelović, teaching assistant,
University of Kragujevac, Faculty of Law,
email: vmilekic@jura.kg.ac.rs

Abstract
Juveniles have a special status in criminal procedure, in whatever capacity they take part in the procedure – as offenders, as witnesses, or as victims. Their special status is the result of understanding of specific characteristics of their biopsychic and social development and the level of their maturity, which distinguish them from adults. Consequently, their involvement in criminal procedure is adjusted to these specific characteristics. This is the situation in most of national legal systems, as well as in the Republic of Serbia. Serbia has a separate juvenile criminal legislation, which regulates the position of juvenile offenders, and their position and protection when they appear as witnesses and victims in a criminal procedure. In the paper, author analyzes the position of juvenile witnesses of criminal offences according to the juvenile criminal legislation of Serbia. Then, EU standards related to juvenile witnesses will be analyzed, because EU has plentiful legislative activity related to this. The aim is to compare Serbian regulations related to juvenile witnesses with EU standards and propose some useful guidelines for their further development and improvement.

Key words: juveniles, witnesses, law of criminal procedure, juvenile criminal law, EU standards

INTRODUCTION

In the 20th century the special status of juveniles in criminal legal system was established and developed, separately from the status of adults. The development of biological and psychological sciences pointed to the new understanding of the juvenile age and its characteristics. Namely, the special biophysical, psychological and social development, as well as maturity of juveniles, requires completely different status of juveniles within the criminal law system, separate and divers from the status of adults (Soković & Bejatović 2009, 44). Consequently, the special procedural bodies were established with necessary specialization of all authorized actors within this apparatus, the special rules of procedure were developed, less formalized, and the special system of criminal sanctions applicable only to juveniles was established.

As this practice was flourishing in many countries across the world, the idea of international standardization of rules related to juveniles within the criminal legal system was born. Consequently, many international documents related to juvenile delinquency and the position of juveniles in criminal law were adopted, based on

the examples of good practice and the new knowledge about characteristics of juvenile age (Van Bueren 1998, xv-xix). There are many universal international documents, adopted within the United Nations, such as The Convention on the right of the child from 1989, Standards Minimal Rules for the Administration of Juvenile Justice from 1985 (*Beijing rules*), Rules for the protection of Juveniles Deprived of their Liberty from 1990 (*Havana rules*) etc. Also, there are many regional international documents, for example those adopted by the Council of Europe, such as Guidelines of the Committee of Ministers of the Council of Europe on the child-friendly justice from 2010.

One of the features of new understanding of characteristics of juvenile age is that the position of juveniles within the criminal legal system should be regulated separately and differently from the position of adults, not only when they are perpetrators of criminal offences, but also when they are victims and witnesses of criminal offences. In the situations where juveniles appear as victims or witnesses of criminal offences, it is recognized that their position in criminal procedures should be particularly and carefully regulated. Above all, their treatment during the criminal procedure should be regulated more sensitively and child-friendly, and measures for their protection should be raised to a higher level.

In the juvenile criminal legal system of the Republic of Serbia there is a particular law which regulates the position of juveniles when they are perpetrators of criminal offences, but also when they are victims or witnesses of criminal offences. As there are many international, universal and regional standards which regulate these specifics of juvenile justice, the aim of this paper is to present and analyze relevant provisions of juvenile criminal law of the Republic of Serbia and compare it with relevant international standards of juvenile justice.

THE GENERAL SPECIFICS OF JUVENILE WITNESSES

Participation in criminal procedure as a witness could be very stressful for any person and this could be particularly expressed if the witness is a juvenile. Taking in account that the juvenile will appear in criminal procedure as a witness mostly when he is also an injured party, the attention should be paid to the fact that the juvenile has already suffered harm as a consequence of the committed criminal offence. Consequently, his appearance before the court, lack of knowledge about criminal procedures and the formalism of the procedure could have an intimidating effect to the juvenile. Furthermore, the fact that the juvenile has to testify about past events related to the committed criminal offence could, by itself, be very stressful for the juvenile.

During one part of history there was a presumption that juveniles are not competent to testify because of their young age, their questionable capacity to memorize all circumstances of the committed criminal offence, their questionable capacity to recall a critical event and to reproduce it correctly and precisely before the court, and finally, their suggestibility. This means that the credibility of juvenile witnesses was questionable. Later, it turned out that in some circumstances juvenile witnesses can provide a more accurate testimony than adults, and that their testimony is very valuable for the criminal procedure and conviction of the offender, especially when the juvenile is at the same time the injured party and the only witness.

According to all specific characteristics of the juvenile age, especially the specifics of their biophysical, psychological and social development and maturity, lack of life experience, extreme suggestibility and rich fantasy (Simonović 2012, 178), it was obvious that the position of juveniles as witnesses in criminal procedure should be regulated differently from the position of adult witnesses, in a manner which is more sensitive and child-friendly. In this sense, specific rules were being developed related to the way of questioning the juvenile witnesses, the place and atmosphere of questioning and the characteristics of all persons who interact with the juvenile witnesses during the criminal procedure, especially those who ask him/her the questions.

At the same time with the increased interest in all aspects of juveniles` testimony, the great number of researches were conducted related to the outcomes of testimony for juveniles who testify in criminal court and of procedure that could be child-friendly oriented and reduce potential trauma for juvenile witnesses resulted from participation in criminal proceedings (Troxel and others 2009, 150). In that sense, some of the guidelines for questioning juvenile witnesses were developed and are considered to present the good practice examples. The most important guidelines are the following. The person who asks questions should be specialized for this type of witnesses, meaning that he has to acquire knowledge in the area of child rights, child protection and child psychology, as well as experience in working with juveniles. In order to conduct the interview in the way which is in the best interest of the child and in order to obtain reliable evidence, it is necessary to prepare the interview and to obtain all relevant personal information about the juvenile. Also, in order to mitigate the formalism of criminal procedure, the interview should be conducted in the premises which are adapted to the every day experience and the age of the juvenile witness. It is crucial to establish a good and trusting relationship with the juvenile witness in order to rid him of fear and get reliable evidence. Finally, the aim should be to conduct only one interview of the juvenile witness, and if it is not possible the number of interviews should be limited (Simonović 2012, 179-180).

Also, nowadays it is recommended to conduct the testimony of a juvenile witness before the court by the use of audio-visual technologies, such as closed-circuit television, video links etc., in order to avoid direct contact between the juvenile witness and the offender. Furthermore, the first interview of a juvenile witness should be audio-video recorded and allowed to be presented later before the court as evidence (Škulić 2003, 513; Troxel and others 2009, 158-161).

The status of juvenile witnesses in juvenile criminal legislation of Serbia

In the Republic of Serbia there is a special *Law on juvenile perpetrators of criminal offences and criminal law protection of juveniles*,[139] through which adoption Serbia got comprehensive legal regulation of juveniles` position within criminal law system, separate from legal regulation of adults` position within this system. Separate regulation of juveniles` status within criminal law system reflects the

[139] *Law on juvenile perpetrators of criminal offences and criminal law protection of juveniles*, "Službeni glasnik RS" no. 85/2005

recognition of all specifics and characteristics of juveniles` biopsychic and social development and maturity. The Law on juvenile perpetrators of criminal offences and criminal law protection of juveniles, as it is seen from its title, regulates the position of juveniles when they appear as perpetrators of criminal offences, and criminal law protection of juveniles which refers to situation when they appear as victims and witnesses of criminal offences.

According to the topic of our paper, the subject of the analysis will be the position of juveniles as witnesses in a criminal procedure. Article from 150 to 157 of the Law refers to juvenile witnesses, and from its content we can distinguish the main characteristics of the procedure where the juvenile appears as an injured party and the witness: the types of criminal offences which should be committed against juveniles in order to apply this specific Law; the functional jurisdiction of trial chambers in the criminal procedure against the person who has committed some of these types of criminal offences, and the way and jurisdiction for the initiation of the criminal procedure; the functional jurisdiction for investigation, involvement of specialized law enforcement officials in investigation; and special protection of the juvenile as an injured party (Soković and Bejatović 2009, 209).

Bearing in mind that juvenile can be injured through perpetration of any criminal offence, it is undisputable that some criminal offences, because of their nature, injure juveniles more than other criminal offences and more than adults. Guided by this idea, Serbian legislator decided to determine specific criminal offences, in the case of which perpetration by an adult against a juvenile, the provisions of the Law on juvenile perpetrators of criminal offences and criminal law protection of juveniles will be applied in the criminal procedure. Some of these criminal offences are: serious murder, abduction, rape, intercession in prostitution, displaying pornographic material and exploiting children for pornography, family violence, change of family status, neglect and abusing the minor, robbery, enabling the use of drugs, human trafficking, children trafficking for adoption, war crime against civilians etc. (article 150. par. 1. of the Law). These criminal offences are determined by the *numerus clausus* principle, and, as it was stated, in the case of their perpetration against juvenile special provisions of the Law on juvenile perpetrators of criminal offences and criminal law protection of juveniles will be applied, while in the case of perpetration of any other criminal offence by an adult against juvenile general provisions of *Code of criminal procedure*[140] will be applied during the procedure. If we look at the systematics of these criminal offences, we can see that they belong to many different groups of criminal offences from *Criminal code*[141] of Serbia, such as criminal offences against life and body, criminal offences against sexual freedom, criminal offences against family, criminal offences against property, criminal offences against human health and criminal offences against humanity and other goods protected by international law. As groups of criminal offences in Criminal code of Serbia are divided according to the object of protection, the legislator`s intention to provide special protection when the *actus*

[140] *Code of criminal procedure*, „Službeni glasnik RS“, no. 72/2011, 101/2011, 121/2012, 32/2013, 45/2013 and 55/2014

[141] *Criminal code*, “Službeni glasnik RS”, no. 85/2005, 88/2005, 107/2005, 72/2009, 111/2009, 121/2012, 104/2013, 108/2014 and 94/2016

reus of criminal offence is directed towards juvenile as a holder of the object of protection is clear and obvious. Some of listed criminal offences are serious whomever they are committed against, other could be committed only against juvenile according to legal description of the specific criminal offence where juvenile age is determined as material element, and others are specific because the fact that they are committed against juvenile is prescribed as a qualifying circumstance which creates a more severe form of the specific criminal offence and a more severe punishment (Perić 2007, 261).

As these are very serious criminal offences, especially when they are committed against juveniles, because of their nature and very negative and long-lasting consequences to injured juveniles, their *numerus clausus* determination within the Law on juvenile perpetrators of criminal offences and criminal law protection of juveniles reflects the legislator`s intention to apply special provisions of this Law whenever some of these criminal offences are committed against a juvenile. However, the legislator didn`t disregard the fact that some other criminal offences could be very severe when they are committed against juveniles, according to their nature, circumstances of the perpetration and personal characteristics of specific juvenile. Consequently, it is prescribed that prosecutor who acquired special knowledge about child rights and criminal law protection of children will initiate criminal procedure against an adult perpetrator of other criminal offences prescribed within Criminal code, when they are committed against juveniles, when he assesses that it is necessary because of the special protection of personality of a juvenile as an injured party in a criminal procedure (article 150. par. 2. of the Law). This means that the prosecutor has to decide if the juvenile needs a special protection on the base of his own discretionary assessment (Knežević 2010, 325).

Regarding the functional jurisdiction and composition of trial chambers in the criminal procedure against an adult who has committed a criminal offence against a juvenile person, the relevant provisions of Code of criminal procedure will be applied, except in the case when some of the listed criminal offences have been committed against a juvenile person, when the presiding judge must be the judge who has acquired special knowledge on the rights of the child and criminal law protection of children (article 150. par. 1. of the Law). The specialization required for the presiding judge in the field of the rights of the child and criminal law protection of children is also prescribed for the investigative judge authorized to conduct investigation in the case of perpetration of any of the listed criminal offences against a juvenile, and for the law enforcement officers who take part in the investigation (article 151. par. 2. and 3. of the Law). The required specialization is a very important provision, because it allows all persons authorized to act in the criminal procedure where a juvenile is an injured party to act `child friendly` and to take care of his protection and treatment. As it will be explained later, specialization of all authorized persons who take part in the procedure where a juvenile is an injured party and a witness is one of the most relevant international standards of juvenile justice, so it can be stated that the Serbian legislator keeps pace with modern international ideas and solutions in this sense.

As a juvenile appears as an injured party and a witness, particular attention is paid to the protection of the juvenile within the Law on juvenile perpetrators of criminal

offences and criminal law protection of juveniles. *Firstly*, during the procedure for the criminal offences committed against a juvenile, the prosecutor and the chamber judges will treat him according to his age, personality, education and circumstances he lives in, and they will endeavor to avoid all possible harmful consequences to his personality and development. The hearing of these juveniles will be conducted with the help of a psychologist, pedagogue or other qualified person (article 152. par. 1. of the Law). This solution also reflects modern knowledge and the understanding of specific characteristics of juvenile age and maturity, whereas all persons who interact with them during the criminal procedure have to behave according to these characteristics, with the help of professionals qualified to work with children and juveniles.

Secondly, the number of hearings of juvenile witness who is injured by any of the listed criminal offences is limited to two times. Only if it is necessary because of the purpose of criminal procedure the juvenile witness can be heard more than twice, in which case the judge is obliged to pay particular attention to the protection of personality and the development of the juvenile (article 152. par. 2. of the Law).

Thirdly, the hearing of the juvenile can be conducted by the use of technical means for sound and picture transmission, while the juvenile is placed in a separate room in the absence of parties and other procedure participants. Parties and other authorized persons can ask him questions through a judge, psychologist, pedagogue, social worker or other qualified person. This way of hearing will be conducted if the judge assesses that it is necessary according to the characteristics of the criminal offence and personality features of the juvenile (article 152. par. 3. of the Law).

Fourthly, it is possible to conduct the hearing of the juvenile as injured party and the witness in his place of living or other room, or in the authorized institution - organization, professionally trained for questioning of juveniles. In this case, the judge can order that measures for the previous article 152. par. 3. of the Law could be applied (article 152. par. 4. of the Law). In the cases of the hearing of the juvenile according to article 152. par. 2., 3. and 4. of the Law, the record of his statement will always be read at the trial, or the recording of the hearing will be played (article 152. par. 5. of the Law).

Fifthly, there is a prohibition of confrontation between the juvenile witness and the defendant, if the witness is particularly sensitive, i.e. if he is in a particularly difficult mental state, because of the nature of the criminal offence, its consequences and other circumstances (article 153. of the Law).

Sixthly, the juvenile as injured party has to have legal counsel from the defendants` first hearing, and if he doesn`t appoint a legal counsel, one will be appointed by the court president from the ranks of attorneys who acquired special knowledge in the filed of rights of the child and criminal law protection of children (article 154. of the Law).

Seventhly, the recognition of the defendant by an injured juvenile is also regulated in a particular way, because in that case the court has to act particularly cautiously, and in all phases of criminal procedure the recognition will be conducted in the way which absolutely disables the defendant to see the juvenile (article 155. of the Law).

Eighthly, in the cases where any of the listed criminal offences is committed against a juvenile, the *principle of urgency of criminal procedure* must be respected (article

157. of the Law). All persons, organs and institutions authorized to take part in criminal procedure have to respect this principle, and to conduct urgently all acts they are authorized to. The aim of the principle of urgency is to protect the well-being of an injured juvenile as much as possible, bearing in mind that he has already suffered harm as a result of the criminal offence.

UNIVERSAL AND EU STANDARDS RELATED TO JUVENILE WITNESSES

Consideration of EU standards related to juvenile witnesses would not be comprehensive if conducted isolated from *UN Convention on the rights of the child*[142], as a basic and comprehensive document which regulates five main groups of human rights - political, civil, economic, social and cultural, when their titular is a child (Vranješević 2006, 469-471). Bearing in mind that this Convention is almost universally adopted (with the exception of USA and Somalia), it is understandable that every analysis of children's rights should start with provisions of this Convention.

The Convention on the rights of the child promotes four main principles that should be respected in each case where a child is involved: the principle of non-discrimination (article 2.), the principle of the best interest of the child (article 3.), child`s right to life (article 6), and child`s right to express his views freely in all matters that affects him (article 12.). As these principles are applicable in all matters affecting the child, they should also be applied and respected in the cases where the child appears as witness in the criminal procedure. Consequently, all persons who have contact with the child witness during the criminal procedure should act in accordance with these four principles.

From the child witness perspective the most important aspect is his right to express his view freely if he is capable of forming his own view, and the views of the child will be given due weight in accordance with the age and maturity of the child. According to the Convention, this particularly relates to the opportunity of the child to be heard in any judicial proceeding that affects him, either directly, or through a representative or an appropriate body, in a manner consistent with the national procedural rules (article 12. par. 2.). Consequently, when the child takes part in a criminal procedure as a witness, his testimony will be assessed in accordance with his age and maturity. In relation with the right of the child to express his own views is his right to be informed on all relevant issues related to his participation in a criminal procedure, such as availability of health, psychological and social services, their role in the procedure, the manner of questioning, availability of protective measures, possibility of reparation etc.[143]

Furthermore, there is an obligation for state parties to take all legislative, administrative, social and educational measures to protect every child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of

[142] *United Nations Convention on the rights of the child*, Adopted and opened for signature, ratification and accession by General Assembly Resolution 44/25 of 20 November 1989.

[143] United Nations, Committee on the Rights of the Child, *General Comment No. 12 (2009)*, The right of the child to be heard, CRC/C/GC/12, 20 July 2009, par. 62-64.

parents, legal guardians or any other person who has to care of the child (article 19. par. 1.). This is particularly important provision in the case when a child participates in criminal procedure as a witness, because it provides him/her with protection from all kinds of mistreatment. There is an obligation for anyone who interacts with the child witness during the criminal procedure to avoid all listed acts of mistreatment because of its harmful effect to the child.

The other important UN document are *Guidelines for action on children in the criminal justice system*,[144] whose main aim is to provide a framework for the implementation of the UN Convention on the rights of the child and its goals with regard to children in the context of the administration of juvenile justice, as well as for the use and application of UN standards and norms in juvenile justice.

Part III of the Guidelines refers to child victims and witnesses. Above all, it is prescribed that all child victims and witnesses should be provided with appropriate access to justice and fair treatment, restitution, compensation and social assistance (guideline 43.). In accordance with the awareness of specific developmental characteristics of children and their maturity, it is prescribed that child witnesses need assistance in the judicial processes, and in the cases of children who are witnesses of the crime, their rights have to be fully protected in evidential and procedural law of he states. Further, the direct contact between the child victim and the offender should be avoided as much as possible during the investigation, prosecution and trial hearings. The identification of the child victim in the media should be prohibited when it is necessary in order to protect the privacy of the child (guideline 49.).

It is recommended for the states to allow in their penal codes videotaping of child`s testimony and its presentation in the court as an official piece of evidence. Police officers, prosecutors and judges should apply more child-friendly practices, for example, during the police operations and interviews of child witnesses (guideline 50.).

Finally, the responsiveness of judicial processes to the needs of child victims and witnesses should be facilitated by: a) informing child victims of their role and the scope, timing and progress of the proceedings and of the disposition of their cases, especially where serious crimes are involved; b) encouraging the development of child witness preparation schemes to familiarize children with the criminal justice process prior to giving evidence. Appropriate assistance should be provided to child victims and witnesses throughout the legal process; d) taking measures to minimize delays in the criminal justice process, protecting the privacy of child victims and witnesses and, when necessary, ensuring their safety from intimidation and retaliation (guideline 51.).

The third relevant UN document which regulates the position of juveniles as witnesses are *Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime*,[145] the adoption of which is the result of the recognition that children who are victims and witnesses of a crime are particularly vulnerable and

[144] *Guidelines for action on children in the criminal justice system*, Recommended by Economic and Social Council resolution 1997/30 of 21 July 1997

[145] United Nations, The Economic and Social Council, Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime, ECOSOC Resolution 2005/20, 22 July 2005

need special protection, assistance and support appropriate to their age, level of maturity and unique needs in order to prevent further hardship and trauma that may result from their participation in the criminal proceedings. Also, the drafters were aware of the serious physical, psychological and emotional consequences of crime and victimization for child victims and witnesses, and of the fact that participation of child victims and witnesses in criminal proceedings is necessary for effective prosecutions, in particular where the child victim may be the only witness. The Guidelines reflect the good practice based on the contemporary knowledge and relevant international and regional norms, standards and principles, and each country should implement them in accordance with its national legal system and legal, social, economic, cultural and geographical conditions. Beside the fact that the Guidelines present the soft law instrument, they should be implemented in national legal systems because they provide a lot of useful solutions for the regulation of the position of juvenile victims and witnesses in criminal procedure (Stevanović 2017, 78).

This document sets forth four main principles that must be respected by all professional and other persons who come in contact with a juvenile witness during a criminal procedure: dignity, non-discrimination, best interest of the child and the right to participation. These principles are the same as principles set forth in The Convention on the rights of the child.

According to the definition, the term `child victims and witnesses` refers to children and adolescents, under the age of 18, who are victims of a crime or witnesses to a crime regardless of their role in the offence or in the prosecution of the alleged offender or groups of offenders.

Furthermore, relevant rights to which juvenile witnesses are authorized during the criminal procedure are also listed. Those are the following rights: the right to be treated with dignity and compassion, the right to be protected from discrimination, the right to be informed, the right to be heard and to express views and concerns, the right to effective assistance, the right to privacy, the right to be protected from hardship during the justice process, the right to safety and the right to special preventive measures.

Beside these universal international acts, adopted within United Nations, there is an extensive legislative activity within European Union related to child witnesses. The most important and comprehensive EU document that regulates the position of juveniles as witnesses in criminal procedures is *Guidelines of the Committee of Ministers of the Council of Europe on child-friendly justice*[146]. Fundamental principles of the Guidelines, which have to be respected in relation to any juvenile within the justice system, are participation, best interest of the child, dignity, protection from discrimination and rule of law.

There are several guidelines related to evidence/statements of children. *First*, the specialization of persons authorized to interview and gather the statements from children is promoted, stating that it should be carried out, as far as possible, by trained professionals. In this sense, children should give their statement in the most

[146] *Guidelines of the Committee of Ministers of the Council of Europe on child-friendly justice,* Adopted by the Committee of Ministers on 17 November 2010 at the 1098th meeting of the Ministers' Deputies

favorable settings and under the most suitable conditions, taking into account their age, maturity and level of understanding and any communication difficulties they may have (guideline 64.). *Second*, audiovisual statements from children who are victims or witnesses are promoted and encouraged (guideline 65.). *Third*, it is desirable to conduct only one interview of the juvenile, but in the case that more than one interview is necessary, it is in the best interest of the child if it is carried out by the same person (guideline 66.). Furthermore, the number of interviews should be limited as much as possible and their length should be adapted to the child`s age and attention span (guideline 66.). *Fourth*, direct contact, confrontation or interaction between a child victim or witness with alleged perpetrator should be avoided, unless at the request of the child victim (guideline 67.), and children should be given the opportunity to give evidence in criminal cases without the presence of the alleged perpetrator (guideline 68.). *Fifth*, the formalism of criminal procedure should be mitigated when children take part as witnesses. In this sense, less strict rules should be applied, such as absence of the requirement for oath and other child-friendly procedural measures, interview protocols that take into account different stages of child`s development which should be designed and implemented in order to underpin the validity of children`s evidence. Also, leading questions should be avoided. Furthermore, taking statements of child victims and witnesses in specially designed child-friendly facilities and child-friendly environment is promoted (guidelines 70., 71. and 74.). *Sixth*, the judge should be authorized to allow a child not to testify if it is in the best interest of the child and his well-being (guideline 72.). *Seventh*, according to the modern understanding of children`s developmental capacities and maturity, it is proscribed that a child`s statements and evidence should never be presumed invalid or untrustworthy by reason only of the child`s age (guideline 73.).

CONCLUSION

There are a few main international standards that refer to position of juvenile witnesses within criminal law, and they are defined mostly in the same manner in all analyzed international universal and EU documents. These are: 1. the principle of non-discrimination, the principle of the best interest of the child, child`s right to life and child`s right to express his views freely in all matters that affect him; 2. protection from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation; 3. availability of special protective measures suitable for juvenile age; 4. the right to be informed on all relevant issues related to his/her participation in criminal procedure; 5. juvenile witness preparation schemes to familiarize juvenile with the criminal justice process before the testimony; 6. the specialization of all persons authorized to interview and gather the statement from the juvenile; 7. only one interview of the juvenile witness is preferable; 8. direct contact, confrontation or interaction between the juvenile witness and the offender should be avoided; 9. juvenile`s statement should be audiovisual recorded and it should be allowed to be used as evidence latter during the criminal procedure; 10. the juvenile witness should be interviewed in the premises and atmosphere which are child-friendly; 11. the protection of the juvenile

witness`s privacy is recommended; 12. the promotion of measures to minimize delays in criminal procedure where juvenile is a witness.

When these main standards are compared to relevant provisions of the Serbian Law on juvenile perpetrators of criminal offences and criminal law protection of juveniles, it can be concluded that most of these standards are incorporated into these provisions. Serbian Law highlights the specialization of all persons authorized to act in criminal procedure where a juvenile is a witness, as a very important standard. Also, the number of interviews of the juvenile witness is limited, and the confrontation between the juvenile witness and the offender is prohibited. The statement of the juvenile witness could be conducted by the use of technical means, can be audiovisual recorded and used latter during the criminal procedure.

However, it seems that some additional provisions related to child-friendly ambient in which the interview of the juvenile witness takes place are necessary, as well as the provision which is emphasized in all relevant international standards related to the right of the juvenile witness to express his views and concerns in all matters that affect him and to be informed on all relevant issues related to his participation in criminal procedure.

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DEVELOPMENT OF THE INHERITANCE LAW IN THE REPUBLIC OF MACEDONIA

Pakiza Tufekdji MSc
Faculty of law-Kichevo *tufekci.pakiza@gmail.com*
Laze Jakimoski Phd
Faculty of law-Kichevo *ljakimoski@yahoo.com*

Abstract
The inheritance law forms part of the civil (property) law that regulates the relations that arise on the occasion of the death of a person. The moment of death opens the question of transferring everything that the person possesses, which he has acquired during his life, on his successors. The latter law examines all the questions about the manner and conditions under which the transfer of the legacy to the heirs . The hereditary right regulates relations between the heirs themselves and among the heirs and third parties whose rights and interests may be affected by the death of one person. The institution of succession, as well as the majority of institutions in the field of civil law, has its beginnings in Roman law. The nature of the inheritance consists in the transfer of the property, i.e. the legacy of the deceased person on his heirs. There are many to determine the concept of inheritance in comparative law definitions.

Key words: property, inheritance, testator, successors

INTRODUCTION

Inheritance is the transfer of spiritual and material qualities and values from ancestors to descendants, the interconnectedness of all generations, the chain of continuity.
Inheritance is therefore not only a legal concept. On the contrary, it also occurs in many other sciences, both natural and social (eg in biology, genetics, psychology, sociology, history, etc.).
In modern rights, inheritance is of a property nature and is often referred to as the transfer of the deceased person's property to other persons. The person who died and whose property is transferred to other persons is called the abductor, and persons who at the time of death exceed the deceased's property are called the heirs. The property that passes from the abandoner to its successors is called a legacy.
Since physical persons are subjects of the law, the occurrence of death comes to the extinguishment of his subjectivity, and thus the interruption of all his rights. Accordingly, since the death of a natural person occurs, his property should be transferred to the heirs and thus come to succeed.
The essence of succession is the transfer of the property of the deceased person to his successor. Just like a large number of other legal institutes, such succession also draws its roots far beyond the Roman law.

There are a large number of definitions for defining the very essence of succession in the legal literature. According to one group of people who deal with this issue: succession is the transfer of the rights, property, liabilities and debts of the perpetrator to his successor or heirs.
Other inheritance is defined as a process through which the heir can acquire ownership of property that previously belonged to an already deceased person. Ownership here would also mean control, enjoyment and management of his property, rights, obligations, debts and the like. And according to a third group of scientists from different countries: the inheritance is the transfer of the rights and obligations of the deceased to heirs. Inheritance refers to the property, rights and debts of a person leaves them after his death, whether property exceeds debts, or debts exceed the property, or it has only debts without any property. The inheritance does not only include the rights and obligations of the deceased in existence the moment of his death, but also everything that will be collected until the opening of the inheritance.
Despite the many definitions of inheritance, it can be noted that its essence is the same. It consists in transferring the property of the deceased person to his heirs. (Naumovski, 2017, p. 15)
In accordance with the Law on Inheritance, it is possible to inherit items and rights that belong to individuals. On the basis of this we can conclude that the inheritance has a property character. The fact is that the hereditary right has always not had the property character, but the subject of inheritance was various items. The same is true of Roman law. Here the traditional notions of extension of family power through inheritance prevail, and the main goal of inheritance is the extension of the personality of the testator. Characteristic for this period of transfer the property of the testator over the heirs was a way of conveying the family power that at that time manifested itself as a power over people and power over things.
Unlike Roman law, today's position for inheritance is accepted as extension and transfer of property, and not on the person of the testator. (Polenak-Akimovska M, Buckovski V, 2008, p.126)
Given that property is a set of rights that belong to one person, and with death to that person those rights are extinguished, inheritance is a way of attaching the legacy to the property of the person who is the heir. This is because the property surprises the individual.
Accordingly, it can be concluded that by inheritance at the moment of the death of the testator, his property goods are transferred to his heirs. From here, there are three basic elements of succession. These are: leftovers, legacies and heirs. (Spirović - Trpenovska Lj, 2009, p. 59)

BASIC CONDITIONS FOR THE EMERGENCE OF A HEREDITARY - LEGAL RELATION

Given that ownership is one of the most important human rights, inheritance is one part of it, since through inheritance the property of the testator of his successors is actually transferred. In the Constitution of the Republic of Macedonia, the right to protection of property has been raised on the level as one of the most important fundamental values, which guarantees the right of ownership of each citizen.

The significance of inheritance is that it provides us with the property security in the family, it should provide property security in the marital union, everything that has been gained within a family and beyond, after the death of the testator to remain in the circle of that family, that is the meaning of the civil and inheritance right, as part of it, to ensure and provide security in the family as the basic cell in a society, to ensure the existence of all members in the marital and family community. (Mickovic D, Ristov A, 2011, p. 78)

In order to achieve an inherited legal relationship whose final result will be inheritance in a particular case, the following conditions must be met:

- Death to one person - the existence of a remnant; at the moment, the opening of the inheritance is directly connected,
- Legacy- the existence of items and rights that make up the property and can be subject to inheritance,
- Heirs - the existence of persons on whom the things will be transferred and made which are hereditary
- Legal basis - the existence of a law, a testimony (somewhere an inheritance agreement), on the basis of which concrete persons and, in the specific case, become successors of a specific legacy.

Each of these conditions is important for the emergence of a hereditary-legal relationship. Thus, the existence of the remains is the essential condition for the emergence of a legally legitimate one because the court institutes a legitimate procedure ex officio as soon as it will find out about the death of a natural person.

As for the existence of a herb, it can be said that this condition is most significant for the emergence of the hereditary-legal basis. Because if it does not exist the court decides not to conduct a procedure for disputing the legacy.

The third condition, that is, the existence of heirs is also an important element for the occurrence of a hereditary-legal relationship. If there are no persons who can inherit the legacy of the deceased person, then there are no conditions for the occurrence of hereditary-legal relationship. And as for the fourth condition, that is, the existence of a legal basis for inheritance, in our country, this is the law and the will, and in some countries, the inheritance agreement. This is a necessary condition for the emergence of a certain hereditary-legal relationship.

HISTORICAL DEVELOPMENT OF HEREDITARY RIGHT

Inheritance as a phenomenon appears before the hereditary right. The hereditary right has its beginnings even to a certain degree of social development when it comes to the legal regulation of relations that arise in connection with inheritance.

Prior to the emergence of the state, relations that arose in the face of the death of a person were not regulated by regulations.

In the period of the tribal-tribal arrangement, there was inheritance only of the personal belongings of the testator, so that the gens as a whole appeared in the role of a heir. Then with the emergence of the patriarchal familywhich operated under the rule of the oldest male member of the family (pater familias), in a case of his death, his property was transferred to male descendants in the family. If there were no male descendants of the family, the property was transferred to those individuals

who at least once lived with the testator under the power of the same pater familias. If there was no such category of persons, then the property belonged to the gens. (Polenak-Akimovska M, Buckovski V, 2008, p.131)

Later with the emergence of the state and the law comes the legal regulation of the relations that arise in connection with the inheritance and thus the inheritance gets a new dimension. In the period of slave rule, there was a category of free individuals who operated and lived together with pater familias, that is, with the head of the family.

That category of people was known as sui. Although they were considered free, by living together and managing the family head, they were somehow tied to him during his lifetime. Therefore, during this period, the hereditary right was set up in such a way as to protect the interests of this category of persons, and after the death of the head of the family, they acquired the right to free management of the property.

Further social development and the emergence of private property strengthen the relationship between the individual and his property. So the property no longer represents the general good of the community ie the gens. Accordingly, the right of inheritance from the previous category of free persons who have operated and lived together with pater familias is transferred to persons who are related to blood relation with the testator, that is, his descendants and other blood relatives.

At the time of feudalism, the stalemate of the inheritance comes to the fore.

In the period of capitalism, the idea of preserving the property within the family and its transfer from generation to generation. Together with this transfer of property, the economic power that impacts is transferred the social position that the individual enjoys in the society.

Thus, in this period, the role of spouses is even greater. At the time of socialism, it is known that the right to property was not inviolable, and this also reflected the inherited right.

Today, besides the original collective ownership, the categories of personal and private property. It is the property of items that the individual can in one a moment to separate them for themselves and to dispose of them at will.

Thus, apart from the right of the individual to dispose of his property during his life, the right of the individual to dispose of his property also in the event of his death. By doing so, the individual as successors besides the closest relatives of the blood can determine the persons according to his will.

Today, the person of the theory of inheritance, that is, the understanding of the inheritance is abolished as an extension of the person of the deceased person, and the inherent character of the inheritance is generally accepted.

What remains after his death is his property, that is, the inheritance that is inherited to his heirs. By transferring the legacy of the heirs besides inheriting the property rights of that hermit, the obligations of the testator are also transmitted which are hereditary.(Spirović Trpenovska Lj, 2009 p.35)

„The foundations of the new modern hereditary right, in the wider region, which includes the Republic of Macedonia, were set after the end of the Second World War, that is, with the adoption of the Law on Inheritance, since 1955" (Antić, Blagoevic, 1988, p.514)

With the law of inheritance enacted in 1955, for the first time in the then Yugoslavia, the foundations of the hereditary legal system were laid.
The succession law of 1955 was based on the following principles:
- editing the inheritance;
- equality of citizens in the inheritance;
- determining the law and the will as a basis for invoking inheritance, which ruled out the possibility of inheritance on the basis of an agreement;
- retroactive application of the inheritance law;
- the inheritance procedure was an integral part of the inheritance law.
And according to this law, the law and the will are foreseen as a legal basis for inheritance. (Official Gazette of the FPRY, No. 20/55, Article 6) According to the legal inheritance, the heirs are divided into four hereditary rows. External married children are equated with the spouses in the inheritance. Regarding the types of wills this law knows several:

- Handwritten testament
- A written testament before witnesses
- Court testament
- Oral testament
- A testament drawn before. diplomatic or consular representative abroad
- A testament made up of a Yugoslavian ship
- Testimant made during the mobilization or war.

The first Macedonian Republican Law on Inheritance was adopted in 1973, at the then SR Macedonia, and until its entry into force, the Federal Law on Inheritance was applied from 1955. Such a procedure proved to be justified, since this law contained modern solutions that in their application in practice showed very positive results. This abolished the principle of unity in inheritance, and the particularism was again restored in the framework of the hereditary-legal regime.
With this law, the number of hereditary orders decreases to three. There are no changes to the types of wills and the ability to compile it.
Finally, in 1996, the Assembly of the Republic of Macedonia adopted the Law on Inheritance. This law is based on the Law of Inheritance of the Socialist Republic of 1973, and this is reflected in the taking of the principles and principles on which the 1973 law relies, with that change which imposes the new socio-economic changes whose main characteristic private property. The basic principles on which the inherited right is based today are:

Principle of universal succession

Under the principle of universal succession, the heirs inherit all the things and rights that the testator possessed at the time of his death.
Regarding the inheritance of the rights that the testator had, it should be noted that those rights that are inherently transferable are inheritable, that is, the heirs can not inherit rights that are strictly related to the person of the testator. But in addition to inheriting things and rights, the heirs also inherit the obligations, that is, the debts of the testator. Just like the rights, only inheritable obligations can be transmitted. According to Article 120 of the Law on Inheritance, the death of one person opens

his inheritance, and the same effect has the proclamation of one person for the deceased. This means that the death of the testator is the moment when the universal heir acquires these rights and obligations, whether he as a successor occurs on the basis the law or on the basis of a will. If there are more faces as successors, a the testator did not leave a will, the law regulates the distribution of the property and the size of the inherited parts of those persons. t can be concluded that the basic assumption of the principle of universal succession is the transfer of the total property of the testator to his successors, that is, the transfer of things, rights, obligations and debts. This principle is accepted in our inherited legal system and is dominant in the inherited legal systems in most countries of the world. (Mickovic D, Ristov A, 2016 p. 22)

Principle of limiting the grounds for calling the inheritance

In different systems there are different legal foundations for inheritance. The most common are: the law, the testament and the inheritance agreement. This is not so in our country; our inheritance agreement did not constitute a legal basis for inheritance. The nullity of the succession agreement is explicitly expressed in Article 7 of the The Law on Inheritance, where it is said that "the agreement with which someone leaves her is null and void his own right or part of his contractor or a third person, unless the disposal is done with a lifelong support contract ".

According to this agreement the contracting parties agree on the way of mutual inheritance and the distribution of the legacy is null and void. Such contracts for the distribution of the inheritance are usually concluded between close relatives who are legally inherited by law.

But from the content of this article it can be noticed that such invalidity is exempted by the provisions made with a lifelong support agreement. That means that the lifelong support agreement is accepted in our inheritance law, which although by its nature is a contractual legal agreement, nevertheless produces a hereditary legal action and is a kind of basis for reference to inheritance. The agreement for lifelong support in our country is regulated by the Law on Obligatory Relations.

,,With the lifelong support agreement, the provider of the maintenance is obliged to provide the lifelong support to the recipient of the support or to a third person, and the recipient of the support for the remuneration leaves all his property or certain part of the property, whose lecture is postponed until his death ". (Law on Obligatory Relations, Article 1029)

This agreement is generally concluded for the recipient of the support to provide lifelong support from a certain person, that is, the provider of the support. Regarding the kinship between the parties in these contracts, most often providers of support are persons who are legally heirs of the lifelong support recipient. Thus, in most cases, contracts for life support are concluded between parents and children, but it is also common for the occurrence of the conclusion of such contracts and between spouses. Given the fact that the Lifetime Support Agreement allows for agreement between the rights parties that are the subject of inheritance, ie the distribution of the legacy is agreed, the question of the justifiability of this agreement. It is obvious that this agreement leaves an opportunity for various

abuses in exercising hereditary rights and endangering the rights of the closest relatives of the testator.
It is known that in our country, in the distribution of the legacy of a certain remnant, often disputes arise among the heirs. Whether the Lifetime Support Agreement will further complicate the allocation of the legacy or not depends on the particular case. Despite the many remarks and criticisms that concern the justification and constitutionality of a lifelong support agreement, this agreement persists for a long time in inherited legal regulation and practice and is a frequent occurrence in our everyday. (Spirović - Trpenovska Lj. 2009 p. 25)

Principle of equality
The principle of equality is one of the basic principles that represent the pillars of our inherited legal system. This principle means that all citizens of the Republic of Macedonia, under the same conditions, are equal in the realization of their inherited rights. Thus, Article 3 of the Law on Inheritance states that everyone citizens under equal conditions are equal in inheritance. The equality in inheritance arises from Article 30 of the Constitution of the Republic of Macedonia in which it is guarantees the right to ownership and the right to inherit all citizens of the Republic of Macedonia. The inheritance inheritance also applies to extracurricular kinship and affinity with adoption. In accordance with Article 4 of the Law on Inheritance Inheritance kinship is equal to the marriage, and the kinship created by complete adoption equates with blood affinity. (Mickovic D, Ristov A, 2014, p. 46)

Principle of acquisition of the ipso jure legacy
According to this principle, which is one of the basic principles in our inheritance system, the inheritance is acquired at the moment of the death of the testator, that is, by force of law. This is confirmed in the Inheritance Law, which states that the death of a person opens his legacy, and the same effect is the proclamation of one person for the deceased. (Mickovic D, Ristov A, 2014, p. 48)

Principle of limiting the testamentary disposal
With the will, the testator freely disposes of his inheritance in the case to his death, that is, he has the freedom at will to determine the heirs and their inherited parts. However, that freedom of disposal with the legacy is not absolute and is limited to this principle. The principle restricting the use of the testament serves the protection of the rights of the closest persons of the testator. In our hereditary-legal system and continental law, this is done through the institute necessary inheritance, and in the Anglo-Saxon law, the restriction of absolute freedom for the testamentary disposal is exercised through the right to support.

Principle of limited liability of the heirs
According to this principle, the heir has a kind of limited liability, that is, it responds solely to the debts of the testator up to the height of the inherited part that he inherited. The principle of limited liability serves to protect the rights of the heirs and applies only to lawful inheritance, because when the testator left the testament it was possible to perform another distribution of the obligations between the heirs. As

a logical conclusion from the foregoing, it follows that the heir is not responsible for the debts of the testator in the event that he gave up his inheritance.

Principle of official adjudication of the legacy

This principle tells us that the procedure for hearing the legacy is done before court under the rules of non-contentious proceedings. Officiality means that a lawsuit is instituted by a court of law, ex officio, in all cases find out about the death of an individual or to declare a person dead. This means that there is no obligation for the heirs to start the legal proceedings, but it is made by the court of justice to be ex officio. It is also a lawsuit that determines what constitutes the legacy of the deceased person and which persons appear as successors. The legal procedure is regulated by the Law on Extrajudicial Procedure. (Spirović - Trpenovska Lj. 2009, p.27)

CONCLUSION

It can be concluded that while the legal inheritance is the weakest basis for referring to inheritance, it is the most used way of distributing the legacy after the death of one person. The reason for this is that in our country the use of a testament or a lifelong support agreement is at a rather low level. That is why this type of inheritance is the most developed in our right. Regarding the arrangement of the legal inheritance in our right, one can say that it is on a solid level. The grouping of the heirs in three legally inherited rows is justified and correctly depicts the situation according to which the distribution of the legacy after the death of one person should be carried out. In that sense, the introduction of a fourth or more legally inherited rows, as established in some other countries, will not be of great practical significance. This is because such a solution is contrary to biological laws and the heirs of a fourth or more distant hereditary order will almost never be called to inheritance. In practice, almost all or most of the cases the legacy is distributed among the heirs of the first hereditary order, and the number of cases when it is distributed among the heirs of the second or third successive order is quite small.

The very fact that the Law on Inheritance persists for so long without change points to the fact that it is a matter of a quality law. For a long time we are waiting for the Civil Code, which should absorb in itself all the material from this area, including the Inheritance Law. But, under the influence of everyday changes and innovations, an urgent change of the Law is required. The need for serious reform in the inheritance law also points to the comparative analysis, which shows that, unlike the Republic of Macedonia, significant reforms of the former socialist countries have been made in the area of succession. At the last conference attended by top experts in this field regarding the Macedonian hereditary right, the following reforms were foreseen

a) the law should supplement the provision that it can simultaneously be inherited both on the basis of a law and on the basis of a will,
b) to define the legal inheritance more closely,
c) to define the affinity, lines and degrees of kinship, which are the basis for reference to the inheritance,

d) to introduce an inheritance agreement between marital partners as a basis for inheritance, in addition to will and law,
e) to regulate the cases of simultaneous death of multiple persons that can be inherited each other,
f) to define the legacy and its composition,
g) to foresee obligatory separation of the part of the surviving spouse from the legacy,
h) to envisage a special inheritance regime for agricultural land and farms, land plots, stocks and stocks in companies, and to provide rules for the inheritance of a family business,
i) to foresee the right to usurp the joint home of the spouse in the second legally inherited order and many other.

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EU MEMBER STATES ENVIRONMENTAL LIABILITIES – BASIC PRINCIPLES AND ENFORCEMENT

Marin Cetinić, LL.M.
Senior Legal Advisor at Commissioner for Information of Public Importance and Personal Data Protection of Serbia
PhD Candidate at the Faculty of Law University of Belgrade
marin.cetinic@gmail.com

Abstract
The goal of this paper is to examine and analyze general principles and legal basis of the European Union environmental policy and legislation. It outlines the fact that well-chosen principles produced the relatively strong growth of environmental legislation and practice. It explains the relations between general principles and policy application practice and the EU Commission efforts to improve the application of EU environmental principles in Member States practice. Special attention is given to important EU Commission remedy Environmental Liability Directive Multiannual Work Program (ELD MWAP) which sets environmental liabilities framework for prevention and reduction of environmental damage. In conclusion author stress the importance of agreed primacy of Union law over national laws. The main controversy of EU environmental policy is a fact that it is a product of interaction between legal and constitutional changes and political pressures. Clear legal basis of EU environmental law is seen from the fact that CJEU uses Articles of Treaty in dealing with environmental court cases.

Key Words: environmental legislation, environmental policy, EU Member States, fundamental principles, ELD MWAP, CJEU.

INTRODUCTION

With the expansion of environmental problems in twentieth century, there is stronger awareness of seriousness of massive environmental endangerment. Due to intensive industrialization, other historical changes and complexities of modern world, Europe developed into a continent with major environment problems. To cope with these development European Union (hereinafter: EU) established comprehensive criteria for environment safeguarding. Thanks to activities in internal and international contexts, EU specific development process led to permanent improvement of environmental protection and especially of legal competences of EU environmental policy. The progress of EU legal principles, policy and law was advancing parallel to general development of the EU integration process with its ups and downs. For a long time, the United Nations played a central role in the environment protection on the global scale, but though being regionally limited the EU is positively influencing not only Member States and European nonmember states but the other states as well.

Together with other world countries, European Commission explicitly and systematically started with developing of environmental policy in the early 1970s. The EU legislation is based on four fundamental principles of the EU environmental policy. The environmental policy was based on European Council broad interpretation of the original objectives of the Treaty (Lee, 2005, 1). The turning point was European Council Summit held in Paris in 1972 which declared that economic expansion is a priority but emphasized the importance of a (European) environmental policy (Jans and Vedder 2012, 3, hereinafter: Jans). It is based on UN "Declaration on the Human Environment" and its first and the most important principle that preservation of environment is a fundamental human right. Also, important are Declaration's principles that provided the base for international environmental law, especially customary international environmental law (Kiss and Shelton 2004, 45-7). The Single European Act from July 1st 1987 increased importance of environmental protection in EU policy-making process, setting up the principal that environmental protection must be considered in all new Community legislation. The most important instrument for environmental protection was Environmental Impact Assessment Directive (hereinafter: EIA)[147] which was adopted after twenty-two draft versions. This Directive listed that all projects with significant effects on the environment must be (e.g. long-distance railway lines, motorways and express roads, airports, installations for the disposal of hazardous waste, installations for the disposal of non-hazardous waste, waste water treatment plants etc.) in line with EIA. For the other projects the national authorities must decide whether there is a need for an EIA. This is done through the national authorities "screening procedure" (European Commission – Environment, 1985).

GENERAL PRINCIPLES OF EUROPEAN UNION LAW IN RELATION TO ENVIRONMENTAL PROTECTION

General principles of EU law are *ius non scripta* (unwritten law) and they became law through customs. Written Union law mostly deals with economic and social matters and is only to limited extent capable of laying down the rules, which means that general principles are one of the most important sources of EU law. These principles have effect when law is applied, mostly in the judgments of the Court of Justice of the EU (hereinafter: CJEU) (Borchardt 2010, 85-6). They are also superior to national law because of supremacy doctrine of TEU (Consolidated version of the Treaty on European Union 2012). In several cases the Court emphasized that Member States ceded some of their sovereign rights to Union and confirmed the primacy of Union law over national law which ensured that Community law may not be revoked or amended by domestic law or to take precedence over national law if the two are in conflict (Flaminio Costa v E.N.E.L., 1964). Also the Court has developed some general principles (proportionality and legal certainty and equality). General principles are indirect source of EU environmental law. Member States cannot make any legislation which is opposed to

[147] Environmental Impact Assessment Directive (known as the EIA Directive) is an adaptive directive to reflect the experience gained as well as changes in EU legislation and policy, and European Court of Justice case law. The EIA Directive has been identified as a **potential instrument for a future simplification** exercise (COM (2009)15).

any European directive and EU Environmental Directive cannot be bypassed by national legislation.

General Principles of Union law in relation to protection of environmental are following: the principle of conferred powers, subsidiary principle, proportionality principle, equal treatment and integration principle. **Conferred principle** or creating legal basis of environmental measures is important due to various participants in the decision-making process (European Council, European Commission, European Parliament) and their influence on environmental policy. Therefore, it is very important to choose correct legal basis. The choice of legal basis can influence Member States jurisdiction to adopt more strict environmental measures than the measure agreed by European standards (Jans, 13-4). **The Subsidiarity Principle** states that in areas which do not fall within exclusive competence, the Union shall act only if and insofar as the objectives of the proposed action cannot be sufficiently achieved by the Member States (Consolidated Version of The Treaty on European Union 2008). Regarding environmental law European action to prevent cross-border environmental effects satisfies this principle. This means, for example, that European action is competent to restrict trans frontier environmental pollution of regional (water and air pollution) or global nature (ozone layer depletion, greenhouse effect from CO2 emissions) or to protect wild fauna and flora (Jans, 15). National actions are to be preferred whenever possible. If Union measures cannot be avoided, they must be carefully applied to achieve the intended aim (Eagle 2009, 5). Under **the Principle of Proportionality** "the content and form of Union action shall not exceed what is necessary to achieve the objectives of the Treaties" (Consolidated Version of The Treaty on European Union, 2008). The EU legislature must choose methods which leave big freedom for national decisions. They represent minimum of standards, but Member States can implement stricter national standards if they want. The EU's environmental policy must comply with guidelines on the use of the directives. From the beginning directive were often used for regulating environmental actions. Regulations were used much less than directives, only to implement international agreements and to regulate international trade (Jans, 18-9). European environmental law has minimum of standards for harmonization which are laid down in Article 193 of TFEU. There is no need for complete harmonization of EU legislation with national legislation (Ibid., 19). **The Equal Treatment Principle** is one of the most questionable fundamental principle of EU law. This general principle demand that comparable situations must not be treated differently, and different situations must not be treated in the same way unless it is objectively justified. The case law of CJEU demonstrates that the full explanation of the environmental principles of the Treaty must be provided to answer what is objectively justified (Ibid., 21). **The Integration Principle** It is defined by Article 11 of TFEU and it states: "Environmental protection requirements must be integrated into the definition and implementation of the Union policies and activities, in particular with a view to promoting sustainable development." (Consolidated Version of The Treaty on European Union 2008). The integration principle is intended to ensure that environmental protection must be taken into consideration even if commercial policies are involved, especially in the fields of agriculture, fisheries, transport, energy, development aid, trade and

external relations, internal market, competition policy, regional policy and so forth (Ibid.). The integration principle is indicated in Charter of Fundamental Rights of the European Union.

THE FOUR PRINCIPLES OF EUROPEAN ENVIRONMENTAL POLICY

In Title XX of TFEU and Article 191 paragraph 1 it is stated that "Union policy on the environment shall contribute to pursuit of the following objectives:
- preserving, protecting and improving the quality of the environment,
- protecting human health,
- prudent and rational utilization of natural resources,
- promoting measures at international level to deal with regional or worldwide environmental problems, and in particular combating climate change".

In paragraph 2 of same article it is said that Environmental policy "shall be based" on four principles:

- The precautionary principle
- The principle that preventive action should be taken (the prevention principle)
- The principle that environmental damage should as a priority be rectified at source (the source principle)
- The principle that the polluter should pay (the polluter pays principle)

This means that environmental legislation must include these European principles into Member States obligations (Jans, 41).

The Principle of Precaution

This principle is a part of international customary law as well as a part of the Union law. The precautionary principle was created in the preamble of 1992 Rio Declaration in principle 15. The declaration was not legally binding - it was more some kind of environmental guideline. In international environmental law there is no universally accepted definition of the precautionary principle (Eagle 2009, 7-8).

The Principle of Precaution arose from German environmental law as the "Vorsorgeprinzip". This basically means that if there is a strong suspicion of environmentally harmful actions, it is better to act before it is too late and before full scientific evidence is complete. In other words, this principle justifies actions to prevent damage without gathering available scientific evidence (Jans, 43). In international environmental law it is argued that this principle means that serious environmental breach is likely to happen, positive action to protect the environment should not be delayed until scientific proof is gained (Eagle 2009, 7).

Some authors call it *in dubio pro natura.* According to it, the European Commission has the right to set up reasonable and appropriate environmental protection which concerns human, animal, and plant health (Jans, 43). Guidelines of European Commission are representing kind of "risk-management" and what is to be defined as acceptable for society is a clear political responsibility. When action is believed to be necessary, measures must be proportional to the protection level and without discrimination based on costs and benefits of action or lack of action (Ibid., 43-44).

Court of Justice of the European Union is applying precautionary principle in its case law. In several cases the Court stated that EU institutions can take protective measures without having to wait. CJEU applied this principle in accordance with identifying potential negative consequences and if that threat is real to public health, it is justified to apply restrictive measures, if they are non-discriminatory and if they are objective (Ibid., 43). Also, the Court apprehended opportunities to apply this principle both within and outside of the EU environmental policy. An assessment is necessary whenever it cannot be excluded that a certain project or plan will have major effects on the site concerned and that this should be interpreted in a precautionary manner (Morgera 2010, 23-4).

The Prevention Principle

This prevention principle like precautionary principle is an international environmental principle which enables actions for environmental protection at early stages, with a purpose to prevent damage from happening rather than repairing it. The main difference with precautionary principle is the available data on the existence of a risk. But in everyday practice such distinction is very difficult to be agreed on. (Morgera 2010, 24).

Legally speaking this principle was included in the Single European Act from 1987 which stated that European environmental policy should be based on fundamental principle that preventive action should be taken and that prevention is better than cure. Now a question of repairing damage after it has occurred is no longer primary. This principle makes possible to take measures preventing damage before it occurs (Jans, 47).

The Third EU Environmental Action Program[148] was especially focused on this principle, stating that following conditions must be fulfilled to reach the full effect of the prevention principle:

- Knowledge and information must be improved and available to decision makers, including the public
- Making and introducing procedures for judgments which will enable that the proper fact is considered in decision making process (best example is environmental impact assessment in which prevention principle plays a vital role)
- Implementation of adopted measures needs to be observed to enable their proper application and adaptation. (Jans, 47-8).

Prevention is the highest priority in waste management and is functioning through actions taken before a substance, material or product has become a waste. Such actions reduce: 1) the quantity of waste, including re-use products, 2) the impact of generated waste on human health and the environment, 3) the content of harmful substances in products and materials (Morgera 2010, 24).

The Directive lays down basic waste management principles: it requires that waste should be managed without endangering human health and harming the

[148] The third Environmental Action Programme (EAP 3) was carried out from 1982 to 1986 and the main focus of its concerns was the Internal Market and how it was "influenced by environmental policies through the risks and benefits that accrue to them".

environment, and without risk to water, air, soil, plants or animals, without causing a nuisance through noise or odors, and without adversely affecting the countryside or places of special interest.

The waste legislation and policy of the EU Member States should apply in the following priority order:

Source: EC – Environment, http://ec.europa.eu/environment/waste/framework/

These are two basically hierarchy steps: first, non-waste phase of product production. In a second phase if waste necessarily occurred, EU policy and legislation envisages four steps: preparing waste for re-use, recycling of waste, recovery of waste and finally disposal of waste. These four steps are logical hierarchy to reach minimal damage from waste.

The Source Principle

The source principle is related to polluter pays principle and it proclaims that any form of pollution should be treated as closely as possible to the source. For example, air pollution must be remedied by stack scrubbers at the source; water pollution must be remedied by filters at the source; automobiles must be recycled, incinerated or buried as close to their factory (Eagle 2009, 7). According to this principle, environmental damage preferably should not be prevented by using end-of-pipe technology. This term refers to technical measures for reactive environmental protection such as filtering plants, wastewater treatment plants etc., which serve to contain emissions (exhaust gases, wastewater, noise), pollutants and other polluting substances which have already occurred or arisen, or to render them controllable or disposable. 'End of pipe' strategies are usually expensive, and they only become effective when damage (e.g. occurrence of problem materials) has already occurred (Ec[o]ncept, 'End of Pipe' technology)

This principle entails significance in the area of waste management. The Court of Justice of the EU stated that local authorities must take all necessary measures to ensure reception, processing and removal of its own waste so it can be disposed as

close to the place of production. Basically, CJEU justifies discrimination of waste producer but also specified that the principle cannot serve for justifying any restriction on waste exports, only when the waste in question is non-hazardous for the environment (Morgera 2010, 24-5).

The Polluter Pays Principle

"The 'polluter pays principle' states that whoever is responsible for damage to the environment should bear the costs associated with it." (The United Nations Environmental Program). Like the prevention and precaution principle this one is also an international environmental principle with purpose that the costs of dealing with pollution should be paid by those who are causing the pollution, through imposing environmental charges, environmental standards or environmental liability. This principle was interpreted in EU environmental legislation as a notion that the environmental protection must not depend on state aid or other policies which are burden to society (Morgera 2010, 25). This principle is closely connected with Guidelines on state aid for environmental protection (Communication from the Commission - Guidelines on State aid for environmental protection and energy 2014-2020). The costs for protecting the environment should be internalized by companies just like any other production cost. According to European Commission, state aid and environmental policy must support each other to make sure that the polluter pays principle is applied stricter (Jans, 50-1).

The Polluter Pays Principle is one of the milestones of European environmental policy even before it was part of EU Treaties. It was a principle of Union environment policy in the First Action Program.

Safeguard Clauses

Treaty on Functioning of the EU in Article 192 paragraph 2 provides that harmonization measures answering environmental protection requirements shall contain, when appropriate, a safeguard clause enabling Member States to take provisional measures; for non-economic environmental reasons, subject to an inspection procedure (Jans, 51). It is evident that this clause is different from other environmental principles and it is debatable in scientific circles whether its place in the Treaty (next to real principles) is well selected (Ibid.) According to the Jan Jans and Hans Vedder the safeguard clause must be interpreted in co-relation with the precautionary principle.

MULTI-ANNUAL ENIVORONMENTAL LIABILITY DIRECTIVE (ELD) WORK PROGRAMME (MAWP) FOR THE PERIOD 2017-2020[149]

"The Environmental Liability Directive 2004/35/EC (ELD)" was adopted in 2004 and amended in 2006, 2009 and 2013. The overall objective of the ELD is to apply common, legally binding EU standards designed to reduce damage to natural

[149] This Multi-Annual Work Programme has been developed by the Commission on the basis of the action plan set out in the Commission report (COM(2016)204), finalised as part of a consultative process with national experts from EU Member States. A first draft ELD MAWP for period 2017-2020 was sent out for consultation in September 2016 to the Liability Directive (ELD) government experts. On 28th February 2017, the EG meeting endorsed this MAWP with some amendments as a result of the discussions at that meeting.

resources (biodiversity, water and land). It sets an environmental liability framework to prevent and remedy environmental damage to pre-damage (baseline) condition when it is caused by economic operators" (Support for REFIT Actions for the ELD-Phase 1, 2017).

Being aware of problems in realization of environmental policy on different national policy levels (local authorities, environmental and other specialist agencies, police, customs and prosecution services) such as small and/or have limited resources and expertise with lack of effective evidence, insufficient know-how on strategic and operational planning and on choosing the right interventions, insufficient knowledge on use of modern technologies and techniques, lack of structured mechanisms for cooperation and coordination between competent authorities; insufficient involvement of the citizens and lack of adequate complaint handling mechanisms, the Commission initiated *Communication on Action Plan on Environmental Compliance Assurance*. The initiative supports national authorities responsible for promoting, monitoring and enforcing compliance with EU environmental law ("environmental compliance assurance"). A new European Commission action plan "Making the Environmental Liability Directive More Fit for Purpose" has the ambition to help public authorities to promote, monitor and enforce compliance with rules – known as "environmental compliance assurance" (Multi-Annual ELD Work Programme (MAWP) for the Period 2017-2020, 2017).

The final goal of this plan is to prevent and to remedy environmental damage based on the polluter-pays principle – and thus to contribute to a better environment by preserving the natural resources (biodiversity, water, land) in the EU. The MAWP consists in three main pillars: 1. Improving the evidence base for evaluation and decision-making for the Commission, Member States, stakeholders and practitioners (assessment framework and ELD registry), 2. Supporting the implementation through tools and measures for more even implementation (common understanding of terms and concepts, capacity building and training), 3. Ensuring sufficient availability of financial security, in particular for large losses or in case of insolvency (secure, sufficient and available instruments to cover ELD liabilities).

Those three pillars are attacking the weakest points experienced in enforcing EU Environmental law in practice in previous periods. The ELD provides for two liability regimes:

Under the **first** liability regime, operators of certain activities deemed to be of actual or potential concern, can be held liable in the event of damage to protected species and natural habitats, water damage and land damage. Among the activities concerned, are large industrial installations; waste management operations; certain installations releasing polluting substances into air; installations discharging polluting substances into water; manufacture, use, storage, processing, filling, release into the environment and onsite transport of dangerous substances and preparations; contained use of genetically modified micro-organisms and deliberate release into the environment, transport and placing on the market of genetically modified organisms.

The **second** liability regime provided for by the ELD applies to damage to protected species and natural habitats caused by any occupational activities other than those

listed in Annex III[150], and to any imminent threat of such damage occurring by reason of any of those activities, whenever the operator has been at fault or negligent.
The ELD gives also high priority to prevention and remedying of environmental damage. Where there is an imminent threat of environmental damage occurring, the operator shall, without delay, take the necessary preventive measures and, in certain cases, inform the competent authority of all relevant aspects of the situation, as soon as possible. The operator liable under the ELD must bear the cost of the necessary preventive or remedial measures. In case of multiple party causation, the ELD leaves to the Member States to decide how the costs will be allocated - on a proportional basis or jointly and respectively - among the various operators concerned.
Natural or legal persons, including NGOs, affected or likely to be affected by environmental damage, or having a sufficient interest, or whose rights have been impaired, may request the competent authority to take action under the ELD. Those persons have access to a court.
The implementation of the MAWP is supported by an external service contract: Support in the implementation of the REFIT actions for the Environmental Liability Directive (ELD). In 2017 and 2018 the main tasks consist in building an assessment framework and an ELD information system, and in capacity building including common understanding of ELD key terms and concepts, revising the existing ELD training program and developing an IT concept for risk and damage assessment. It will be important to critically review and evaluate the success and the effectiveness of the MAWP at the next evaluation stage for the ELD Directive which is likely to start by 2020 (Multi-Annual ELD Work Programme (MAWP) for the Period 2017-2020, 2017).

CONCLUSION

General principles of the EU environmental policy and legislation prove to be a good basis for development and progress of environmental protection. The general principles are *ius non scripta* and they became laws through customs. They lean on the fact that Member States ceded some of their sovereign rights to Union and agreed on the primacy of Union law over national law. As such, principles are indirect source of EU environmental law. The positive influence arises from the fact that basic principles are binding for all EU institutions and Member States when they are implementing EU law.
Well-chosen principles are main reason for relatively strong growth of environment legislation and for the success of the EU in becoming leading world institutional driving force for spreading of environmental legislation and practice. Two general procedural principles of Union law subsidiarity and proportionality show flexibility of the Union in relation with MS in solving environmental problems especially in preventing cross-border environmental effects. Both principles clearly encourage national actions whenever it is possible. To ensure minimal conflict practice, MS environmental policies must comply with guidelines on the use of the directives.

[150] Summary list of practical ELD implementation promotion measures undertaken by the Commission so far.

The next two general principles, equal treatment and integration principle are also nondiscriminatory demanding that comparable situations must not be treated differently. The integration principle tends to ensure that environmental protection must be taken into consideration even by commercial policies.
The basic principle of European environmental policies - a high level of environmental protection which is included in general objectives of the EU law, is stable and important fact for further environment legislation development. But as the principle is not defined by the Treaty it has diversity of manifestations in the various regions of the European Union. Obviously, this principle main outcome is that it represents a moving target of continuous improvement of EU environmental policy protection standards. Fundamental principle that preventive action should be taken and that prevention is better than cure, question of repairing damage after it has occurred is no longer primarily, as it used to be at the beginning of environmental legislation introduction. Environmental policy is a product of the interaction between legal and constitutional changes and political processes. Clear legal basis for European Union environmental law is confirmed by the fact that Court of Justice of European Union uses Articles of Treaties in dealing with environmental issues. The case law of CJEU approves that legal basis for European environmental measures have to be based on objective factors which are open to judicial review.

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BRUSSELS AGREEMENTS BETWEEN SERBIA AND KOSOVO IN A SCOPE OF MINORITY RIGHTS AND NON-TERRITORIAL AUTONOMIES

Attila Nagy, LLM
Law Lecturer and Independent Researcher
E-mail: natila01@yahoo.com

Abstract
Minority rights and the challenges people face while trying to achieve them are an everyday issue in many EU countries. Recent agreements between Serbia and Kosovo about the Serbian minority in Kosovo have produced a wide range of various and new solutions to this very challenging problem, they are found in the Brussels agreements. As Kosovo independence was (miss)-used in various countries for secessionist movements so will these EU observed and guaranteed rights be soon potentially requested by various minority groups in and outside of the EU. As per the Brussels agreement from April 2013 (BA) a basis for a wide, but still unclear, Serbian minority rights have been established and in specifically the right to establish the Association/Community (A/C) of Serbian municipalities in Kosovo. It will be a somewhat hybrid entity since it is not recognized by neither the Serbian or Kosovo constitutions in force. Also it will be interesting to see how EU will enforce such minority rights when we know that minority groups in EU have already started to build their positions on the Kosovo case and its outcomes. We will examine how rights present today in Kosovo and ensured by the Serbian state over the Serbs in Kosovo can be potentially changed. Rights offered by the Serbian state in various areas are of a much higher volume than the same rights offered by Kosovo state towards its Serbian minority. How such rights could be changed or revoked? Naturally they can't be revoked but just transformed and reshaped into the services of the future A/C of Serbian municipalities, just as the EU supported BA prescribes. What will be the answer of Albanians in Kosovo when they see, again, better conditions offered to Serbs than to Albanians in Kosovo? On the end we research if there is a benchmark for minority rights for all EU minorities and if this idea is potentially applicable.

Keywords: Association/Community of Serbian Municipalities, Non-Territorial Autonomy, Minority rights, Brussels agreement, Kosovo

INTRODUCTION

In our work we will deal with the most recent agreement regarding minority rights in Europe as it is made for Kosovo, the BA of 2013. This widely discussed agreement is still being discussed (re-discussed) as regard what it really is and what it means. Kosovo is not just a new state but a state of an omnipresent minority right challenges. Namely Albanians which were a minority in the Serbian province of

Kosovo and Metohija somehow managed to get big international support and by various means declare Kosovo as a country. This has caused turbulence since then in various legal understandings of standards regarding statehood, sovereignty and minority and human rights in specific. If Kosovo was made for a cause to protect minority rights it certainly does not maintain that cause anymore. Besides all, Kosovo was made out of a conflict which seems has not ended until now. Minority rights are a topic about what the International community permanently discusses a lot in Kosovo, but does less. The presence of various UN and EU organizations in Kosovo, together with the most prominent NGOs work for nearly 20 years now to present Kosovo as a "bright" example of minority rights protection. The recent outcome of the Brussels dialogue is the Brussels Agreement (BA) from 2013 which was agreed by the Serbian and Kosovo governments. In many aspects it is a very interesting new tool for dealing with "frozen" conflicts just as it is this case of Kosovo. Out of the statehood precedence Kosovo has already served as an example, we will discuss, point by point, various legal and political outcomes as present in the BA. Minorities and their rights issues are present always and everywhere. They even more "positively" influence each other by boosting themselves mutually. From the Brussels agreement we are expecting to provide new and functional tools in not just conflict prevention and resolution, but also in real and everyday protection of minority rights in the form of a Non-Territorial Autonomy (NTA) among others. Kosovo more or less serves as a lab for experimenting on potential minority right guarantees and our work has an aim to explain, understand and predict future outcomes. Even more our aim is to try to apply outcomes from Kosovo to other various situations with a very similar problem.

TERRITORIAL DIVISIONS-SOLVING OR MAKING CONFLICTS

Territorial issues are an omnipresent issue in almost every state on the globe. Territories change and states increase or decrease depending on their political influence or even more on their military strength. Our aim is to research and see what the case of Kosovo, in particular, can teach us and how can it be applied to other similar situations, if it is possible at all. Kosovo has influenced strongly the separation of Crimea from Ukraine to Russia by peoples vote and "self-determination". The Crimean crisis lasts for years and it is hardly predictable when it will end, together with the war like activities in the Donbas region of Ukraine. This conflict has additionally divided and confronted the International community and together with Kosovo serves as an engine for destabilization in their corresponding regions and wider. State building has never been an easy job and even less a conflict free activity, some could even argue that it is "worth" the effort. Now not to go that far in a wrong direction we will describe what can prevent conflict and still satisfy the divided nations. "On a decreasing scale – meaning that any item in the list has less volume than the item above and more than the one below – the types of autonomy can be: territorial, political, administrative, functional, cultural and personal."[151] It is not possible for every nation to have its

[151] Levente Salat, ' The Chances of Ethnic Autonomy in Romania-between Theory and Practice' in Zoltan Kantor (ed), *Autonomies in Europe: Solutions and Challenges* (L'Hartmann Budapest 2014)

own nation state or sometimes two states or just a bigger one. Nations can actively work in order to get a better position as a national minority in a certain nation state. Using self-determination, or sometimes abusing it, is not a widely recognized right of minorities. Some minorities can use it and some can never even dream about it. "The doctrine of national self-determination may have been proclaimed as one of the cornerstones of the peace settlement, but it was largely disregarded in the case of nationalities such as the Germans, Hungarians, and Galician Ukrainians."[152] If a nation does not get the opportunity for self-determination as granted it does not mean it will not want it and use an opportunity to get it. That was the case with the German nation in the Second World War but it failed in the phase of implementation, we are not going into details now. Germans maintained to get the territory their nation inhabited and that is something what should not be ignored and forgotten. Obviously determination is not a thing which can be simply self-proclaimed, it does depend a bit on others as well. So the momentum of gaining independence in the 1990s was not made for Hungarians, Albanians and some others we will mention later. "These inherited communist and pre-communist legacies mean that governments in the region have been reluctant to endorse far-reaching territorial autonomy for national minorities, seeing this as a barrier to successful state-building and state consolidation or even as a potential threat to state integrity."[153] In general minorities had their autonomous provinces of Vojvodina in North and Kosovo and Metohija on the South of Serbia, but they were at some point lost. "However, autonomy does not in itself necessarily resolve all issues in the relationship between state and minority. For instance, it leaves open the question of minority representation and participation in institutions of central government."[154] Albanians refused to maintain their position as a minority after this and started organizing their "structures" on the territory of Kosovo. Serbian state has lost the control over them what will be more visible in 1999 when NATO bombed Serbia as a way of supporting Kosovo Albanians. Interestingly, Albanians live also on other places in Serbia and continue even today and were never protected by NATO even though they represent an easier target to the Serbian majority. Still an outcome of the NATO bombing and UN administration of Kosovo was an exodus of Serbs from Kosovo.

In 2008 Kosovo Albanians declared their independence from Serbia by using their right for self-determination. Again this right was given exclusively to Kosovo Albanians at this moment without giving it to others now or later. "Also, from a legal perspective, there are no clear reasons to treat „self-determination" as something other than a fictive norm."[155] After this we will not be going back and

[152] David J. Smith, 'Non-Territorial Autonomy and Political Community in Contemporary Central and Eastern Europe' (2013) Vol. 12, No 1. Journal on Ethnopolitics and Minority Issues in Europe 27

[153] David J. Smith, 'Minority territorial and non-territorial autonomy in Europe: theoretical perspectives and practical challenges' in Zoltan Kantor (ed), *Autonomies in Europe: Solutions and Challenges* (L'Hartmann Budapest 2014)

[154] David J. Smith, 'Minority territorial and non-territorial autonomy in Europe: theoretical perspectives and practical challenges' in Zoltan Kantor (ed), *Autonomies in Europe: Solutions and Challenges* (L'Hartmann Budapest 2014)

[155] Alexander Osipov, 'Changing the Angle: Does the Notion of Non-Territorial Autonomy stand on Solid Ground?' (2013) ECMI Brief #29, <http://www.ecmi.de/uploads/tx_lfpubdb/Brief_29.pdf> accessed 5 March 2019.

discuss again this overly discussed topic. “The autonomy solutions for the minorities’ accommodation and protection need to be realized without touching upon the question of the integrity of the state, which needs to be unharmed and in a political systems that recognizes diversity as such.”[156] This would be the case in the most perfect situation, but unfortunately we desperately lack such situations and need to continue with another dimension and solution in the form of Non-Territorial Autonomy (NTA).

NON-TERRITORIAL AUTONOMY HELPS SOMETIMES BUT NOT ALWAYS

The territorial exclusivity of minority rights has been overcome in many cases during history. During history many nations which had specific skills like professional soldiers, trading, mining or masonry have been granted rights. They have dwelled or worked in cities or regions which were multinational and not compact. They enjoyed various rights and no state wanted to forcefully assimilate them. The territoriality problem is tied to regions usually conquered from others. “While personal autonomy could hardly be seen as providing any basis for territorial claims, the main problem is seen in the close interrelation perceived between the right to autonomy and peoples’ right to self-determination.”[157] People right for self-determination is an excuse in cases where military action is sufficient and political power is strong enough to support it. Even if the right for self-determination would be universal it would be not possible to absolutely execute it. “Almost each modern society represents a mosaic of ethnic and racial groups, partly created by recent immigration flows; different categories may have different numerical strength, social characteristics, claims and demands.”[158] When a certain nation believes that by independence all its problems will be gone it would be good to rethink why it exists in such a situation in a “foreign” state. Of course striving for better and more rights is never a disadvantage, neither is talking or arguing towards them. Ideally what should be more valuable for a certain minority, economic prosperity or independence? “On the one hand, NTA was ideologically inacceptable to Marxism-Leninism.”[159] In the past Communist ideology prosperity was the most important thing, surprisingly or not minorities did have the same rights as majorities. Simply in Communism people were not divided by any other means but their class belonging, where Bourgeoisie class had no chances for prosperity. Cultural differences we respected as much as they were needed to incorporate a minority into the big and global socialist system. Language was used to spread the idea of Communism and culture to strengthen the feeling of belonging to a more

[156] Marina Andeva, ‘Non-territorial autonomy: European challenges and practices for ethnic conflict resolution’ (2013) Year.11 No. 44 Political thought, 81. Also available on: http://www.kas.de/wf/doc/kas_36379-1522-1-30.pdf?140128084800

[157] Balázs Vizi, ‘Does European Integration Support the Minority Quest for Autonomy? Minority Claims for Self-Government and Devolution Process in Europe’ in Zoltan Kantor (ed), *Autonomies in Europe: Solutions and Challenges* (L’Hartmann Budapest 2014)

[158] Alexander Osipov, ’Non-territorial Autonomy and International Law’ (2011) 13 International Community Law Review, 393

[159] Alexander Osipov, ’Non-Territorial Autonomy during and after Communism: In the Wrong or Right Place’ (2013) Vol. 12, No 1. Journal on Ethnopolitics and Minority Issues in Europe 27

just system of a common interest. Recently in the process of global liberalization minorities are also getting a right to choose. "The communities do not deal directly with individuals, but rather regulate and finance institutions that provide services to individuals who can freely choose them."[160] More users means more taxes and people can even choose whom to give a percentage of their taxes and that way finance an idea. This EU trends take into consideration even micro and brand new minorities which are out of the classical differentiations, e.g. animal friendly, various causes and interests. "In this context, the adjective of „non-territorial", like most other potential adjectives („cultural" or „personal"), are to a certain degree problematic. „Functional autonomy" turns out to be more appropriate; however, „non-territorial" may also serve as a generic term if we are to give respect to the recently established tradition of naming ethnicity-based arrangements."[161] Clearly ethnic groups still need more attention and better treatment. The size of the group influences this and respecting this states also supports it financially. "The implication that „disguised" ethno-businesses (resting on incentives) can be separated from „true" representation (based on wishful thinking) also invites state intrusion."[162] To miss use funds and gain benefits is not foreign to any nation or minority, this is something what can be hardly controlled since even by using democratic rules to choose representatives the time lapse between voting as a natural cause of "democratic deficit" enables certain variations. Still democracy in this instance is much better than any other way of decision making so therefore it is widely used and encouraged. "The Hungarian system of minority self-government has been routinely regarded as the most prominent example of NTA."[163] Hungary has nothing to lose by giving wide rights to minorities, it is almost impossible to find a group which would be entitled for any kind of self-determination after all. The more Hungary gives to its minorities the more it can demand for Hungarians living in surrounding countries.

KOSOVO IS LOCKED TO ITS BRUSSELS AGREEMENT

When we talk about inter-ethnic conflicts and divisions Kosovo is becoming a synonym. Even when some other similar conflicts on the territory of Ex-Yugoslavia got solved on a long term, Kosovo struggles in a limbo for almost 20 years. "In fact, the bigger the problems are in terms of territorial, democratic, and economic development, the more likely ethnic conflicts will be."[164] Apart from its contested self-proclamation of independence and a recent case of establishment of a court dealing exclusively with war crimes occurred in Kosovo, we have another precedence coming up. The unique and omnipresent solution for all Kosovo related

[160] Emmanuel Dalle Mulle, 'Belgium and the Brussels Question: The Role of Non-Territorial Autonomy' (2016) Vol.15 Issue 1, Ethnopolitics 105

[161] Alexander Osipov, 'Changing the Angle: Does the Notion of Non-Territorial Autonomy stand on Solid Ground?' (2013) ECMI Brief #29, <http://www.ecmi.de/uploads/tx_lfpubdb/Brief_29.pdf> accessed 5 March 2019

[162] Alexander Osipov, 'Changing the Angle: Does the Notion of Non-Territorial Autonomy stand on Solid Ground?' (2013) ECMI Brief #29, <http://www.ecmi.de/uploads/tx_lfpubdb/Brief_29.pdf> accessed 5 March 2019

[163] Alexander Osipov, 'Non-Territorial Autonomy during and after Communism: In the Wrong or Right Place' (2013) Vol. 12, No 1. Journal on Ethnopolitics and Minority Issues in Europe 27

[164] Francesco Palermo, 'Owned or Shared? Territorial Autonomy in the Minority Discourse' in Tove H. Malloy and Francesco Palermo (ed), *Minority Accommodation through Territorial and Non-territorial Autonomy* (Oxford University Press 2015)

problems related to Serbia is being in a process of slow implementation. "Strong democracies provide societies and free citizens with the institutions and the proceedings to resolve the conflicts which are natural children of freedom without any violence."[165] The agreement called The Brussels agreement which was an outcome of the talks between the Serbian and Kosovo governments in April 2013 is still being in the process of implementation and wide debate. Still everyone is aware that after 20 years of conflict production this agreement will at least at some aspects help Kosovo citizens of both Serbian and Albanian nationalities. "1. There will be an Association/ Community of Serb majority municipalities in Kosovo. Membership will be open to any other municipality provided the members are in agreement."[166] This A/C is the most debated and discussed problem in the Kosovo political life, looks almost like an impossible mission. On the top of all BA is called by the Kosovo Constitutional Court a "document" nothing even close to "First International Agreement" as it is named by the Law enacting it in the Kosovo Parliament, in fact on BA itself states that it is "First agreement of principles governing the normalization of relations." Kosovo Constitutional Court has upheld the admissibility of the A/C in Kosovo and decided among others as follows: "TO HOLD that the Association/Community of the Serb majority municipalities is to be established as provided by the First Agreement, ratified by the Assembly of the Republic of Kosovo and promulgated by the President of the Republic of Kosovo"[167] Still so far one of the biggest steps towards reintegration of North was the establishment of a common border crosses in North Kosovo where police and customs officers from Serbia and Kosovo work together. Serbia has agreed to this since Kosovo established a special account where customs collected at this borders will be used exclusively on North Kosovo. "First, modern capitalism experiences turbulence, and one can hardly expect that the public funding of minority institutions would be a universally applicable model while segmental autonomy remaining without a stable financing cannot be deemed viable, especially when private funding is never guaranteed."[168] This financing tool is in fact much more when we add all the incomes the A/C will supposedly have as a crown organization for four municipalities on North. Some ideas present in Kosovo regarding the A/C as an NGO are after all not likely viable, although one can argue that some NGOs do have a strong influence on the Kosovo government. "Lastly, there are only a few examples of public authorities and jurisdictions having been granted to non-governmental institutions in the fields pertinent to minority issues, and it is not obvious that such cases constitute a distinct research area and give rise to a

[165] Andreas Gross, 'Empowered citizens as the heart of autonomies, strong democracies and good governance: Autonomy as part of the democratization process' in Zoltan Kantor (ed), *Autonomies in Europe: Solutions and Challenges* (L'Hartmann Budapest 2014)

[166] Brussels Agreement, 'First agreement of principles governing the normalization of relations' in Kosovo Law No.04/L-199,
<https://www.kuvendikosoves.org/common/docs/ligjet/Law%20on%20ratification%20of%20agreement%20-normalization%20of%20relations%20between%20Kosovo%20and%20Serbia.pdf> accessed 8 March 2019.

[167] Constitutional Court of The republic of Kosovo, 'Judgment in Case No. KO 130/15'
< http://www.kryeministri-ks.net/repository/docs/Constitutional_Court_of_the_Republic_of_Kosovo_-_Judgment_in_Case_KO_130-15.pdf> accessed 8 March 2019.

[168] Alexander Osipov, 'Changing the Angle: Does the Notion of Non-Territorial Autonomy stand on Solid Ground?' (2013) ECMI Brief #29, <http://www.ecmi.de/uploads/tx_lfpubdb/Brief_29.pdf> accessed 5 March 2019.

meaningful scholarly debate."[169] What is agreed in Brussels and stated in the Brussels Agreement will certainly not be an NGO but a very specific Autonomous body. The A/C will at some instances also have elements of a Non-Territorial Autonomy. The A/C and its NTA elements will be widely discussed is the following chapter.

NEW SOLUTIONS IN THE BRUSSELS AGREEMENT AND THEIR RELATION TO NTA

Other international agreements incorporating NTA elements before the BA and their use in its understanding and implementation

As mentioned earlier the most prominent use of NTA was in the Austro-Hungarian Empire. The majorities, Germans and Hungarians, have noted that some rights have to be transferred to other nations, although not on a territorial principle. "Most German parties understood that it was only a matter of time before Czech representatives would prevail and have the capacity to out-vote them. They therefore agreed on negotiations to reach a compromise under which they would voluntarily give up their existing majority in exchange for a national veto on key issues."[170] This case from a territory of today Czech Republic shows that majorities did not want to risk much when they were about to become a minority. Even as a minority they wanted to play a key role in decision making. Also a recent case which could be more closely connected to Kosovo in time and territory is coming from North Serbia in the form of the Hungarian National Council (HNC). This council is one of the many national minority councils in Serbia on a side of its two Autonomous provinces as they are stated in the relevant Serbian laws. "Although the relevant provisions are neglected and violated by many authorities, and the process is obstructed by many, the number of institutions under the HNC is growing. At the beginning of 2013 the HNC is the founder or co-founder of eight schools, seven public cultural institutions and four publishing and broadcasting companies or institutions."[171] As much as the Serbian state wants to incorporate minority rights in Vojvodina to be able to claim them later on Kosovo is noted by others as well. "At the same time, Part III of the European Charter of Regional or Minority Languages, which deals with promoting the use of a language in education, in dealings with the judicial authorities, the administrative authorities etc, provides a way of reaching an agreement that could strike a balance with the linguistic rights of the Serb minority in Kosovo, as well as those of the minorities in Vojvodina"[172] Vojvodina as an Autonomous Province fits perfectly into the EU agenda of regions and cooperation on various EU regional levels. Also EU is about

[169] Alexander Osipov, 'Changing the Angle: Does the Notion of Non-Territorial Autonomy stand on Solid Ground?' (2013) ECMI Brief #29, <http://www.ecmi.de/uploads/tx_lfpubdb/Brief_29.pdf> accessed 5 March 2019.
[170] Börries Kuzmany, 'Habsburg Austria: Experiments in Non-Territorial Autonomy' (2016) Vol. 15 No. 1 Ethnopolitics 43
[171] Tamás Korhecz, ' Non-territorial Autonomy in Practice: the Hungarian National Council in Serbia' in Zoltan Kantor (ed), *Autonomies in Europe: Solutions and Challenges* (L'Hartmann Budapest 2014)
[172] Political Affairs Committee, Rapporteur: Mr Gross, Switzerland, Socialist Group, 'Positive experiences of autonomous regions as a source of inspiration for conflict resolution in Europe' (2003) Doc. 9824 of 3 June 2003, < http://assembly.coe.int/nw/xml/XRef/X2H-Xref-ViewHTML.asp?FileID=10177&lang=EN> accessed 07 Sept. 2017 also available in Zoltan Kantor (ed), *Autonomies in Europe: Solutions and Challenges* (L'Hartmann Budapest 2014)

citizens and their rights and sovereignty anyway causes many troubles in this correlation. Regions can better represent themselves and their interests since they have bigger similarities and less compromises are needed. "The same goes for other political representation opportunities, such as opening regional representation offices in Brussels, para-diplomacy, etc."[173] We can't say that Kosovo as an "independent" state although not fully recognized by EU, has a better position in applying for EU funds than Vojvodina. Kosovo is very dependant on foreign funds and locked with its sovereignty claim in an EU system where sovereignty loose on importance anyway. "In this respect the lessons learnt from unsuccessful examples (e.g. Kosovo, Abkhasia, Nagorno-Karabakh) are emphasized over successful, positive European ones."[174] It is hard to "self-determinate" a stable and sovereign position for a small nation in such a turbulent world. Without wider debates and discussion it is not possible to step further. In the case of Kosovo recognition from EU countries as Spain, Greece and Cyprus are not likely to happen, in particular it is interesting to note that the absence of Slovakian and Romanian recognition is due to the ignorance of Hungarian minority claims in them. "No system of human coexistence can function without the various parties entering into a constructive dialogue with peaceful intentions. If a conflict situation, involving the use of armed force, already exists, the autonomy will thus find it harder to stand the test of time."[175] Kosovo with all its un-clarified military activities from both Serbs and Albanians now after twenty years faces another chance to process its war criminals. On the end it would not be fair to blame Kosovo and Serbia solely for missing this important step earlier, it certainly isn't their fault after all. The International Community is the one which can't reach an agreement and that's why we have problems cumulating instead solving them.

BA AND ITS UNIQUE TOOLS FOR MINORITY PROTECTION

Even when we know that the BA was signed in 2013 its final outcomes are still somewhat unpredictable, or even better to say different for the two agreeing parties. It can be stated that the citizens of Kosovo have no idea what will exactly be implemented and what form the final solution will have exactly. Lack of information is the reason citizens are hesitant towards the BA. "Participatory rights create polities and processes which allow mutual information and learning processes. Citizens start to think more, get better informed and involved and politicians learn to listen more and answer better all questions. More

[173] Balázs Vizi, 'Does European Integration Support the Minority Quest for Autonomy? Minority Claims for Self-Government and Devolution Process in Europe' in Zoltan Kantor (ed), *Autonomies in Europe: Solutions and Challenges* (L'Hartmann Budapest 2014)

[174] Károly Kocsis, ' Historical predecessors and current geographical possibilities of ethnic based territorial autonomies in the Carpathian Basin' in Zoltan Kantor (ed), *Autonomies in Europe: Solutions and Challenges* (L'Hartmann Budapest 2014)

[175] Political Affairs Committee, Rapporteur: Mr Gross, Switzerland, Socialist Group, 'Positive experiences of autonomous regions as a source of inspiration for conflict resolution in Europe' (2003) Doc. 9824 of 3 June 2003, < http://assembly.coe.int/nw/xml/XRef/X2H-Xref-ViewHTML.asp?FileID=10177&lang=EN> accessed 07 Sept. 2017 also available in Zoltan Kantor (ed), *Autonomies in Europe: Solutions and Challenges* (L'Hartmann Budapest 2014)

communication is in the interest of all."[176] It is not just the BA that lacks support from locals, many times before people have showed their distrust in the UNMIK and EULEX administration as well. Kosovo Serbs from the North have succeeded in even totally ignoring any kind of authority coming from The Republic of Kosovo* so far. Only their trust in the Serbian state has made viable an agreement like the BA but still recognizing and protecting certain rights they never let from their hands. BA in its article 4 says: "In accordance with the competences given by the European Charter of Local Self Government and Kosovo law the participating municipalities shall be entitled to cooperate in exercising their powers through the Community/ Association collectively. The Association/ Community will have full overview of the areas of economic development, education, health, urban and rural planning."[177] In addition to this comes the special account reserved for customs collected on North Kosovo.

Police is one of the most important pillars of state administration and enforcement. Neither of these functions was practiced by Kosovo* on the North. Obviously this right to choose their own police commander and have the national composition respected in the Police is a big a unique step in respecting minority rights. "9. There shall be a Police Regional Commander for the four northern Serb majority municipalities (Northern Mitrovica, Zvečan, Zubin Potok and Leposavić). The Commander of this region shall be a Kosovo Serb nominated by the Ministry of Internal Affairs from a list provided by the four mayors on behalf of the Community/ Association. The composition of the KP in the north will reflect ethnic composition of the population of the four municipalities. (There will be another Regional Commander for the municipalities of Mitrovica South, Skendaraj and Vushtrri). The regional commander of the four northern municipalities will cooperate with other regional commanders."[178] Regarding Police there is a very strict territorial competence and no signs of NTA. On the other hand in relation to the future Appellate Court jurisdiction, it will deal with all cases related to Serbs from the A/C. Although practically everyone who uses Serb as main language will end up on this court irrelevant of its habitual residence in or out of the A/C. "10. The judicial authorities will be integrated and operate within the Kosovo legal framework. The Appellate Court in Pristina will establish a panel composed of a majority of K/S judges to deal with Kosovo Serb majority municipalities. A division of this Appellate Court, composed both by administrative staff and judges, will sit permanently in North Mitrovica (Mitrovica District Court). Each panel of the above devision will be composed by a majority of K/S judges. Appropriate judges will sit

[176] Andreas Gross, 'Empowered citizens as the heart of autonomies, strong democracies and good governance: Autonomy as part of the democratization process' in Zoltan Kantor (ed), *Autonomies in Europe: Solutions and Challenges* (L'Hartmann Budapest 2014)

[177] Brussels Agreement, 'First agreement of principles governing the normalization of relations' in Kosovo Law No.04/L-199, <https://www.kuvendikosoves.org/common/docs/ligjet/Law%20on%20ratification%20of%20agreement%20-normalization%20of%20relations%20between%20Kosovo%20and%20Serbia.pdf> accessed 8 March 2019

[178] Brussels Agreement, 'First agreement of principles governing the normalization of relations' in Kosovo Law No.04/L-199, <https://www.kuvendikosoves.org/common/docs/ligjet/Law%20on%20ratification%20of%20agreement%20-normalization%20of%20relations%20between%20Kosovo%20and%20Serbia.pdf> accessed 8 March 2019

dependent on the nature of the case involved."[179] These solutions are necessary as the initial step for making the rule of law and enforcement possible on North. The vacuum which was created during years after the declaration of independence and systematic departure of international police has made the rule of law a distinct feature in Kosovo and in particular on North. This turbulent case of Kosovo is now offered with a permanent solution for conflict prevention, but still lacks the final idea. Therefore no one takes BA as an everlasting solution, what might worry many. "This makes 'one size fits all' and 'once and for all' solutions-including with regard to territorial arrangements- nearly impossible and counterproductive."[180] Establishing peace never has a guarantee that it will last forever, at least we need to establish it at a certain point in order to be able to prevent similar, nonsense, conflict arise elsewhere.

CONCLUSION

As we have discussed the issues related to minority rights in detail we will outline the most important outcomes of our work and the whole dialogue process between Serbia and Kosovo. The conflict in Kosovo is specific since it entangles all the differences between two neighboring nations. They have differences in areas such as language, religion, customs and general understanding of their common future in Kosovo. Not surprisingly all these differences have been maintained in various political systems before. We all have the right to be disappointed by the long standing of this conflict and years and resources wasted by many influential organizations, but mainly UN, EU, OSCE and others. BA as a solution came very late and the time lapse since the conflict started is very long to make any instant results. The everyday habit of people to live in harsh conditions better than having a lost case/war is now so deeply rooted that even changes for a better common future are hard to be developed. Therefore these unique solutions and the very deep ideas for autonomy on the North Kosovo in both territorial and non-territorial sense are not coming as a surprise. The BA could potentially change our understanding of autonomies, minorities and general sense of sovereignty as we know these terms today. The very powerful institutions and rights established by BA could be widely used in similar conflict situations. In any case the good understanding and development of ideas steaming from the BA are necessary and this work has the aim to contribute as well. When all the fifteen points of the BA get fully applied we will have a better picture, in the near future. Until then comparative research, as this work, has to help the parties to understand what they have signed and stop their endless confrontations and arguments, all for a mutual benefit and common future.

[179] Brussels Agreement, 'First agreement of principles governing the normalization of relations' in Kosovo Law No.04/L-199,
<https://www.kuvendikosoves.org/common/docs/ligjet/Law%20on%20ratification%20of%20agreement%20-normalization%20of%20relations%20between%20Kosovo%20and%20Serbia.pdf> accessed 8 March 2019

[180] Francesco Palermo, 'Owned or Shared? Territorial Autonomy in the Minority Discourse' in Tove H. Malloy and Francesco Palermo (ed), *Minority Accommodation through Territorial and Non-territorial Autonomy* (Oxford University Press 2015)

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CAN IT BE ARGUED THAT THERE HAS BEEN A SUCCESSFULL PROCESS OF CONVERGENCE IN THE MAKING OF FOREIGN POLICY IN EUROPE?

Hajrulla Hajrullaji, Artan Binaku
Phd students, South East European University, Tetovo.
hajrullai@gmail.com, artan.binaku@gmail.com

Abstract
The primary objective of the paper will be to try and argument why and based on what justification it can be argued that there has been a successful process of convergence in the making of the foreign policy in European Union (EU). Initially, before starting this analysis, the historical concepts of the foreign policy making and processes in EU have to be analysed. Thus, the paper will start from first steps of treaty making, processes, success stories and deadlocks encountered on the way during the last century and the present situation of the EU compared to the past with regard to the foreign policy, the Treaty of Maastricht and Amsterdam. Secondly, the paper will be concentrated also in latest developments with regard to foreign policy in the EU, new legislation/treaties approved and the institutional improvements that have been made as a result of these documents versus the past existing documents regulating and affecting the foreign policy in the EU Treaty of Nice, EURO currency, and draft European Union Constitution.
In all probability, the reasons why the EU foreign policy was developed in the very beginning, as early as the creation of the European Steel and Coal Community, was the "belief that through co-operation European nations can avoid a return to nationalistic conflicts" [181]and that " of European nations voices will be heard more clearly if they are united"[182]. Copenhagen Criteria, accession principles as measure of foreign policy Draft Constitution, Minister of the Foreign Affairs of the EU, will be also considered in assessing and arguing if process of convergence in the making of foreign policy in Europe was successful.

Keywords: Foreign policy, European Union, treaty, global player, European Single Act, European Economic Community**,** Common Foreign and Security Policy, EURO currency, European External Action Service, diplomacy.

CONVERGENCE OF THE EU, MAASTRICHT TREATY, BEGINNING OF FOREIGN POLICY

The EU as an institution was created as result of the Maastricht Treaty, consecutively; the organisation was operational since November 1, 1993. The Maastricht Treaty was not only designed to enhance the existing economical and political matters and issues, but it aimed at regulating the aspects of the foreign

[181] Civitas, EU Facts, in *EU Foreign Policy*, http://www.civitas.org.uk/eufacts/OS/OS9.htlm
[182] Ibid.

policy issues too. It has to be noted also that even before the existence of the EU (Maastricht Treaty) as an institution, during the 70's and 80's the agreement on European Economic Community (EEC) had rudiments of foreign policy. At that time, the foreign policy of the Community was exercised through the European Political Cooperation, where foreign ministers of participating countries coordinated their foreign policy actions.

At first, an important development in this area was the establishment of the European Regional Development Fund that was created with the aim of minimizing economic disparities and the creation of the unified monetary system. Further, a strong shift was also made with the endorsement of the Single European Act (SEA), and as result of this successful endeavour, the meetings of the EPC became obligatory. Furthermore, it called for "more intensive coordination of foreign policy among members, though foreign policy decisions were made outside community institutions"[183], and it also instilled the institutional development of the foreign policy concept.

As result, funding and assistance was increased in order to assist the development of members/areas that were not equally developed within the structure, thus successfully reaching the set, by having new members benefiting from the accession. The agreement of SEA was not only concerned with the provision of policies for internal businesses, the act itself "aimed primarily at funding transnational research efforts"[184]. Further, the approval of this act enabled the" heads of state or government, or foreign ministers, to discuss foreign policy problems and issues such as immigration and transnational crime"[185]. As noted above, the history of the progress of the foreign policy dates back from the Treaty of Rome, and even though it was somehow slow in its path, it successfully developed, considering the diversity of interests involved in the processes of the foreign policy making.

During this period of institutional development, the EU had encountered its first issues and challenges in coordinating foreign policy actions as a single actor. Noteworthy, cases to be mentioned are the involvement of the EU in the conflicts in Rwanda and former Yugoslavia. However, it can be noted that in recent years there has been a successful series of the EU missions outside its borders, be it civilian (emissaries) or peacekeeping missions sent abroad.

Euro-sceptics, as the opponents of EU ideas and concepts are called, note often enough the reason why the EU institutions can not function properly, consequently, the EU's foreign policy is not effective, is due to the fact that there is not a single EU foreign policy or action. Conversely, this can be disputed with a series of new and enhanced treaties that entered into force, which created and introduced a new and more sophisticated system of Common Foreign and Security Policy.

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[183] European Election Database, European Union, in *a short history of European Union, the European Coal and Steel Community* http://www.nsd.uib.no/european_election_database/election_types/ep_elections/introduction.html

[184] Ibid.

[185] Karen E. Smith, "The outsiders", in *The European neighbourhood policy*, p. 7610 http://www.eunp.tu-chemnitz.de/bibliothek/Dokumente%20und%20Literatur%20Kapitel%20V%20-%20Fazit%20und%20Ausblick/The_outsiders-the_european_neighbourhood_policy.pdf

As such, the progress made 'constituted a significant breakthrough" [186] in the institutional development of the Union with regard to the foreign policy. As a result, "the most innovative aspects of the TEU are the establishment of the single institutional framework"[187], something that before the TEU quite truthfully did not exist.

FOREIGN POLICY FROM MAASTRICHT TO AMSTERDAM, INTRODUCTION OF HIGH REPRESENTATIVE OF THE CFSP

With the aim of advancing the foreign policy concepts, the Treaty of Amsterdam was approved. The treaty contained improved versions of common foreign and security policy principles. . The new accord or provisions resulted in "enhancing the consistency and effectiveness of external action, the Treaty introduced the office of the High Representative for the CFSP/Secretary-General of the Council, which was entrusted to Javier Solana"[188]. The result of the new treaty was that for the first time the post of the High Representative of the EU was introduced, something that the EU did not have in the past, and as such this was an imminent move towards a unified voice in the EU with regard to foreign policy and decision making processes.

The issues of principles, matters of defence, common strategies, objectives, joint actions and common positions where set and the need to "consult one another within the council on maters of foreign and security policy of general interest"[189]was finally regulated. A successful shift with regard to the implementation of the Amsterdam Treaty with regard to the CFSP where also the tasks given to the policy planning and early warning unit who's responsibilities where to analyse developments and provide assessments for the EU interest and future focus and direct support to the High Representative, which was a step forward the unification of the foreign policy. The institutional development with regard to the CFSP was a notable success with regard to the "constructive abstention"[190], which in fact "allows some member states not to participate in a joint action, thus making it easier to adopt initiatives which have a broad measure of support (two thirds of the weighted majority)"[191].

The constructive abstention element/concept has enabled the member states to take decisions on behalf of the Union without endangering the foreign actions or interventions. As a result of these reforms enhanced cooperation of the EU with regard to the joint external action has been achieved.

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[186] European Parliament, 'Foreign Policy' in *Aims, Instruments and Achievements*,http://circa.europa.eu/irc/opoce/fact_sheets/info/data/relations/cfsp/article_7190_en.htm
[187] Ibid.
[188] Republic of Slovenia, Ministry of Foreign Affairs, in *Common Foreign and Security Policy* http://www.mzz.gov.si/en/foreign_policy/slovenia_and_the_european_union/common_foreign_and_security_policy_cfsp/
[189] Europedia, in *Decision-making in CFSP Matters* http://europedia.moussis.eu/books/Book_2/3/8/2/2/?all=1
[190] Ibid.
[191] Ibid.

TREATY OF NICE, ESTABLISHMENT OF EURO CURRENCY, DRAFT EUROPEAN UNION CONSTITUTION

Moreover, in 2002 the Treaty of Nice was signed, and as a result, the "possibility of establishing enhanced cooperation within the second pillar, the common foreign and security policy"[192] was further enhanced. As such, the Treaty of Nice was packed with new provisions that have enhanced the CFSP, with elements such as: "the principles, objectives, general guidelines and consistency of the CFSP, the powers of the European Community and the consistency between all the Union's policies and its external activities"[193].

The institutional development with regard to the Treaty of Nice was as a result and response to the new challenges with regard to the security threats and the need to further enhance the EU foreign policy in the world. This was made possible by major changes introduced in the Treaty of Nice which were linked to the decision making process, agreements between states or international organisation and last but not least, the creation of the Political and Security Committee, responsible for political control and crisis management operations.

Just before the Treaty of Nice was signed, another important development took place: the introduction of the joint currency (Euro). Thus, the Euro became the currency used by majority of EU members. Consecutively, the joint currency became an important world currency for the use in commercial transactions and already serves as reserve currency in many central banks.

The use of the common currency by the EU has had a successful impact on the policy making and influence outside its borders, all this through trade and financial transactions. The use of Euro, and the increased ability of the EU to grant or restrict access to the EU market, has served the EU a great deal of leverage in foreign policy making. The reason why the EU foreign policy was flourishing owes credit to its giant economical potential.

DRAFT CONSTITUTION, MINISTER OF THE FOREIGN AFFAIRS OF THE EU

A major step toward the future success of the EU as an institution in the field of foreign policy was the attempt to have the Draft Constitution, and the creation of the Minister of the Foreign Affairs of the EU. The aim or the "purpose of introducing such a role was to make the European Union's external action more effective and coherent, the Minister of Foreign Affairs becoming in effect the voice of the Union's common foreign and security policy" [194].

An important development took place in 2004, when the enlargement, (getting eleven new members on board), automatically increased the global weight of the EU in numbers and financial terms. This meant that EU ambitions to gain more influence in the global affairs were about to be realized. Thus, "despite opposition from those who feared that expansion of the EU would stifle consensus and inhibit

[192] Europa, in Summaries of EU Legislation, *Enhanced Cooperation*
http://europa.eu/legislation_summaries/institutional_affairs/treaties/nice_treaty/nice_treaty_cooperations_en.htm
[193] Ibid.
[194] Europa, The Institutions of the Union, *The Minister of Foreign Affairs*
http://europa.eu/scadplus/european_convention/minister_en.htm

the development of Europe-wide foreign and security policies"[195] the enlargement served a great deal of weight.
Having a single voice and powerful currency with the institutional legal backing, the EU strength in political and economical terms was enhanced yet further. The European foreign policy has enabled the extension of the EU's borders, responsibilities and made the EU an important global player with a more unified voice in international arena. Christopher Hill argues that," the extension of the EU's borders is the most important of all foreign policy implications of enlargement"[196]. By growing in numbers, the EU's role and credibility had risen in figures and by this the "EU is the largest economic block by any measure, and collectively o has the greatest voting power in all multilateral institutions"[197]. Consequently, the EU obtained the power to impact the foreign policy decisions through soft power or diplomatic/economic influence.
However, the real impact made on EU's foreign policy was only seen with the creation of the Common Foreign and Security Policy instrument, embedded in the Maastricht Treaty. The Maastricht Treaty was successful in terms of the foreign policy because it advanced the SEA and it deepened the European Political Union, a must for a successful foreign policy making in the EU. The new Treaty basically" created a new model for the Community based around three pillars, broadly speaking, covered economic relations, foreign affairs and home affairs"[198]. The EU has used the foreign relations/policy successfully in order to impact the democratic changes in the region and elsewhere in the globe, and quiet effectively took a leading role as a democracy and human rights promoter within Europe and beyond.

COPENHAGEN CRITERIA, ACCESSION PRINCIPLES AS MEASURE OF FOREIGN POLICY

The use of the well known "Copenhagen Criteria" set in place a policy instrument for the aspiring countries who wanted to become members of the EU, and that had a positive effect in countries aspiring accession and in EU foreign policy itself. Many countries have referenced these provisions (enhancing their domestic legal infrastructure) by abiding the basic principles in order to reach a sustainable development in three areas (democracy, rule of law and free market economy).
The "Copenhagen Criteria" were thus extremely important tool in the EU foreign policy, for the aspiring countries wanting to join the EU, and this can be noted with the development and involvement of the EU with regard to the Balkan countries. The fall of Yugoslavia resulted in the violent turbulences across many republics and even beyond borders of Yugoslavia, thus, impacting the overall stability and security of the Eastern Europe.
At the same period of time, just before the failure of the draft constitution, the EU sent its first foreign military mission in Balkans, followed by missions in Middle

[195] European Election Database, European Union, *A Short History of the European Union* http://www.nsd.uib.no/european_election_database/election_types/ep_elections/introduction.html,
[196] Christopher Hill, '*The geopolitical implications of enlargement'*, in Jan Zielonka, ed., Europe unbound: Enlarging and reshaping the boundaries of the European Union (London: Routledge, 2002), p. 97.
[197] EU Global Player, in The *North-South Policy of the European Union*, http://www.euglobalplayer.org/globalplayer/globalplayer-index.htm
[198] Civitas, EU Facts, in *Treaty of Maastricht* http://www.civitas.org.uk/eufacts/FSTREAT/TR3.htm

East, Africa and Asia. After these violent conflicts ended, the EU, through its foreign policy implementation tools such as Association and Stabilisation Pact and the "Thessaloniki Summit" guidelines, set clear course of action for stabilisation if Balkan countries wish to join the EU. These documents that were communicated officially to countries in Balkans and other aspiring countries, have impacted tremendously the process of state consolidation, fight against corruption, drugs, human trafficking and all other illicit activities, thus not only impacting positively the region but also the success of the EU foreign policy as well.

CONCLUSION

By using foreign policy, EU is well prepared in the process of building capable and viable institutions, by using the "carrot and stick" policy in the process of accession for those seeking membership, even by setting policy agendas for states if wishing to be part of the EU (especially for countries of western Balkans) . Moreover, the attempt to endorse the new Constitution for EU enhanced further the strengthening of the EU external action in regard to foreign policy. Even though the treaty establishing the constitution of EU failed, "most provisions relating to the CFSP, which should improve the effectiveness of the EU's external action in compliance with the mandate of the European Council in June 2007 for a new intergovernmental conference, were included in the new Reform Treaty[199]".

The original aim of the treaty was to introduce several new instruments such as Union's Minister for Foreign Affairs, President of the European Council, and the creation of the European External Action Service, bodies and authorities that did not exist in the past provisions or treaties of the EU. Consecutively, the failure of the EU constitution did not stall the process and just after a while, the Treaty of Lisbon has entered in to force, with many improvements and elements in its provisions that were also foreseen in the EU's constitution document. The Treaty of Lisbon introduced important changes in the EU's foreign policy, like the introduction of the High Representative for Foreign Affairs and Security Policy, European External Action Service, thus improving, codifying and institutionalising the EU's external action.

Therefore, the establishment of the High Representative institution was to make sure that there is a single voice of the EU especially with regard to the foreign policy. All these actions resulted in a legal and credible personality that will make sure to "head the political dialogue with international partners and become the key EU representative in relations with the rest of the world"[200]. As a result, the consistency and continuity of the "work in the field of foreign affairs and consequently the effectiveness and visibility of the Union's functioning in the international arena"[201] was significantly improved.

The creation of European External Action Service, whose primary responsibilities would be to support and advise the EU's High Representative,

[199] Republic of Slovenia, Ministry of Foreign Affairs, in *Common Foreign and Security Policy (CFSP)* http://www.mzz.gov.si/en/foreign_policy/slovenia_and_the_european_union/common_foreign_and_security_policy_cfsp/

[200] Ibid.

[201] Ibid.

represent the common European diplomatic service , and establish the EU's Legal personality made the EU an "indisputable actor under the international law"[202], able to "sign international agreements and play amore visible role in the international arena"[203]. Another important provision in the Reform Treaty is the establishment of the office of permanent President of the Council " who will ensure the continuity of work of the European Council and external representation of the Union at the highest level (together with the High Representative) "[204]. The endorsement of the Treaty of Lisbon opened successfully the path towards the creation of the "Foreign Affairs" and formulation of common/joint foreign policies of the EU towards the outside world.

All these important provisions not only enhanced the institutional setting of the EU, but also impacted and shaped the manner that the foreign policy was conducted; this enabled the EU to have a more unified voice as a union outside its borders. Despite the difficult path encountered in the process of the EU foreign policy convergence, it can be said that the EU foreign policy has been successfully marked over the year with institutional development and success. Despite the criticism, the successful expansion that took place in years of enlargement, common foreign affairs and security actions have been more harmonised in recent years, making the EU a global player. In the past few decades we have seen undisputable evidence that the EU became a mayor global player, both in military and financial terms, a path that was marked by continuous struggle in overcoming of by much different interest, divisions and compromises on its path of development. Whilst, someone might also comment that the recent Brexit has been marked as a major blow to the EU foreign policy, and its consequences might not only impact the external relations but also the future of the EU enlargement. Further, Brexit might also be followed by few nationalist agendas in EU, and initiatives forcing member states in leaving the Union.

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[204] Ibid.

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ONLY YES MEANS YES

Mojca Rep
PhD candidate at the European Faculty of Law, Associate judge at the District Court Celje, Mediator in criminal cases at a Higher court in Ljubljana
mojca_rep@yahoo.com

Abstract
The Slovenian Criminal Code perceives rape as a criminal offense only if violence, threats or coercion are used. The Court of Koper last year ruled that an act of sexual assault of a male upon a friend, was not considered rape as he had done so while the victim was awake. The decision upset both the professional and the general public and led to the preparation of a proposal amending the Criminal Code. Slovenia must clearly define that sexual intercourse without consent is rape. In 2013, ECHR ruled that the absent of consent, not the evidence of the use of force and resistance, was a decisive factor in determining whether the offense is a crime of rape. Eight European countries already define rape on these grounds. We should be interested in whether the person said "yes", not "no".
Keywords: offense, rape, Criminal Code, legislation, court ruling

INTRODUCTION

Criminal law and the connection with sexuality and related physical pleasure and the apparent revealing of human intimacy, present the latter through the history as extremely emotionally colored and irrational (Korošec 2008). Thus, both in theory and in case-law, we are faced with incriminations and judgments based on highly unfounded, irrational interpretations and attitudes. Sexual criminal law is a reflection of a certain culture, as well as the mentality of each society, which play an important role in normative regulation of the law, as well as in the interpretation of individual sexual incriminations. Sexual criminal law has been related to morale from the very beginning, which is persistently involved in sexual incrimination and their interpretation. Morale is still an obstacle to the more appropriate naming of chapters of modern penal codes and sexual incriminations, which would make it more appropriate to express the content of sexual incriminations and key criminal law norms (Piani 2018). Slovenian sexual criminal law is said to be old-fashioned, since, with the exception of some amendments in 2009, it has not undergone a more substantive liberal reform since 1995, when the Republic of Slovenia as an independent country adopted the Criminal Code (hereinafter CC).

SEXUAL CRIMINAL LAW

A phenomenon of "sexual self-determination" as a criminal law norm represents a turning point in modern criminal law on sexual offenses. Individual rights and assessment, whether certain sexual behavior has affected the individual's sexual freedom, are made to the forefront. Sexual self-determination as a personally legally recognized right has two sides; the first is related to the right to freedom of action

(if, when and with whom the individual will develop sexual relationships), and the second is connected to the protection of active interference in one's own sexuality by someone else (or the possibility of making a decision whether one wants to face with sexuality of another individual (Korošec 2008). It is essential that sexual self-determination is not morally depicted and aimed at the forced limitation of active sex life (the persecution of compromised same-sex behavior ceases, while at the same time it sets limits to broad moralist interpretations), as well as protects the people (temporarily or permanently) unable to give consent, i.e. the children, weak individuals. Sexual self-determination as a criminal law norm protects an individual, his/her personality and, consequently, the dignity that must be protected from any humiliation, regardless of the "point of entry", and regardless of which part of the body or object it was attacked with. Sexual self-determination should thus be the main guideline in theory as in practice, which, unfortunately, still considers sexual vaginal intercourse dominant and neglects the rest, invasive acts that also violate the victim's dignity. The Slovenian CC in the part relating to sexual offenses carries the meaningful title "Crimes against sexual integrity". Piano (2018) thinks that the term is inadequate, leaving too wide of a field for interpretation and may cause problems, but is not particularly in the spirit of contemporary sexual criminal law. While contemporary sexual criminal law tends to abandon morale-related concepts, including their use in the titles of the chapters of the penal codes, since they do not accurately reflect the content of the regulation or the criminal lawfulness that the incrimination should protect, the Slovenian law still clings to it. According to the Slovenian CC-1, sexual delicts protect sexual integrity. In the decision by the Supreme Court Criminal department Kp 315/2008 as regards sexual inviolability, the Supreme Court has taken the following position: "The supreme court prosecutor is right in saying that the Criminal Code in the chapter on criminal offenses against sexual integrity intensifies and classifies individual acts of execution in such a way that at the lower threshold of criminal law protection of these values sexual integrity of people under the age of 15 is affected, while the incidence of sexual inviolability of weaker persons is somewhat higher. A somewhat more intense intervention is a sexual act that is not encompassed in the crime of rape, which affects the victim's sexual freedom the most." So the Supreme Court considers sexual inviolability, or more precisely, the negative effect on sexual inviolability as one of the enforcement acts, which represents a less intensive intervention in sexual freedom. In this case (perhaps unconsciously), the Court puts sexual freedom at the forefront as a protected criminal right, whereas the effect on sexual inviolability remains only one of the implementational practices that affect this norm. Piano (2018) also believes that it is necessary to consider changing the title of the Slovenian Criminal Code, thus contributing to a more clear and modern regulation.

RAPE v. SEXUAL COERCION

Modern criminal justice systems are divided according to the relationship between sexual coercion and rape on systems that regulate the crime of rape within the incrimination of sexual coercion. Germany has a special and, at the same time, fundamentally qualified criminal offense, i.e. rape as an example of a severe case of

sexual violence, which can be found in most European criminal justice systems. In Germany, for many years, rape has traditionally been viewed as an independent criminal offense; this is an independent form of heavy sexual coercion. In the 1980s, however, the tendencies and demands for the fusion of sexual abuse and rape into a single delict appeared, arising mainly from victimological research and those that traditionally cling to sexual intercourse and the special importance of what is traditionally understood as rape. Slovenia regulates rape in a traditional sense, as a qualified form of criminal offense of sexual coercion. In 1995, in contrast to the old CC Socialist Republic of Slovenia 77, the Slovenian legislator in the new CC-1 decided to introduce a new, broader definition of rape in the Republic of Slovenia; in the crime of rape, he stated that it is possible to force "a person of another or the same sex to sexual intercourse" (CC -1 2017), whereby (at least at the legal level), he also equated innocent sexual practices with sexual intercourse. However, Slovenian theorists did not share the same opinion. According to Deisinger (2017) the new definition of the crime of rape was still to be regarded as reserved for heterosexual intercourse only. In 2008, the amendment to the CC brought a more liberal and open definition of rape to the Slovene territory, but this crime still maintains its independence. In the first paragraph in the valid CC-1, incrimination is seen as: "Whoever forces a person of the same or opposite sex to sexual intercourse by using force or provoking a direct attack on a person's life or body shall be punished by the imprisonment of one up to ten years." With this, Slovenia finally abandoned the traditionalist view of rape as only vaginal intercourse, as it treats equally sexual intercourse with sexual acts. This stance is finally approved by a theory based on Deisinger's new commentary to CC-1 from 2017. In the light of the above, we could conclude that we finally started in a more "European" direction, but the case-law is the one that will need to provide answers to some questions.

SEXUAL CONDUCT

According to the Slovenian CC-1, the offense of sexual coercion or rape is a criminal offense (Deisenger 2017). It consists of two essential elements; forced behavior by the perpetrator and sexual behavior. It is essential to know that sexual conduct is not a criminal offense and it becomes criminal only when combined with forced or quasi-forced behavior (Piano 2018). Sexual conduct is therefore an integral part of sexual offenses. According to modern theory (Germany), sexual behavior also becomes a criminal offense if there is no forced behavior, but the victim is still against it. Sweden also no longer demands coercion and introduces a requirement of "willingness" for sexual intercourse, which must be expressed (explicitly or implicitly). Sexual conduct requires the physical conduct, but not necessarily physical contact, unless required by the legal sign of any sexual incrimination (Korošec 2008). To satisfy the physical criteria, contact through body secretions (seminal fluid, contact with the skin) is sufficient, or objects (vibrator, etc.). The importance of a role of sexual behavior in sexual offenses, especially in rape and sexual violence, was revealed by the decision of the Higher Court in Maribor. no. II KP 9473/2009, which ruled on a sexual assault on a person under the age of 15 years. The Higher Court in Maribor acquitted the accused S.Š., who was convicted by the District Court in Ptuj of being guilty of four criminal acts of

sexual assault on a person under the age of 15, according to the third paragraph of Article 183 of the CC. The reasons for the cited judgment are summarized in the judgment of the Supreme Court, opr. no. I Ips 9473 / 2009-104, of 14 July 2011, which rejected the request for protection of legality in this case: "According to the Court of Appeal's position in the evidence, there is no reliable basis for the conclusions of the first-instance court that the described acts (touching the victim's thigh in the car while driving in the presence of two girls; a touch in the area above the victim's chests and a grip on the thigh during the religion class) the accused committed sexual acts to satisfy his sexual urge and that the victims were touched in intimate parts of the body. Therefore, it considered that the evidence of the court of first instance was erroneous and, in its consequence, it accepted incorrect evidence of the defendant's guilt. "The Supreme Court upheld the decision of the second instance court and rejected the request for the protection of legality. From the point of view of the theory of sexual behavior, the decision of the court is totally unreasonable and, above all, arouses fear that such acts will continue to go unpunished (Korošec 2008). Sexual behavior is a morally neutral term, according to data so far known, it is best developed in Germany, where theory and case-law have been concretized. In one of the leading judgments in this field, German Criminal code puts forward one of the basic characteristics of sexual behavior, namely that it stems from objectivity of sex. "The subject of sexual behavior are the sexual needs of a person who, in the broadest sense, satisfies oneself with each individual sexual act, gets aroused, and structured. It is necessary for such an outward appearance to make it possible to recognize its connection with satisfying sexual needs " was an opinion of Supreme Court in 2011. From the judgment, the essential characteristics of sexual behavior can be derived. It is important, however, that the availability of sexuality is expressed (explicitly or implicitly) (Piano 2018).

FORCED BEHAVIOUR

In modern criminal justice systems, we have at least two types of (classical) forced acts of the perpetrator: force (historically referred to as violence) and a minor threat. Additional forms of coercive practice with regard to the criminal codes of some European countries are use of surprise (France), taking advantage of the victim's helplessness (Germany), deception (Poland), deprivation of liberty (Austria), psychological pressure on the victim (Switzerland), the threat that the perpetrator would harm the victim or its loved ones or negatively affect its honor or good name (France, Slovenia, Serbia) (Korošec 2008). It is essential that coercive conduct is in the end considered sexual conduct, i.e. in a case of a completed form, and causally linked to it. This does not mean, however, that the requirement is that a perpetrator must commit sexual acts by oneself or that it is considered a personal delict as was emphasized by the Slovenian theory in relation to rape. Violence has traditionally remained the leading legal sign of rape in Europe. The latter, however, was abandoned by Germany as a necessary element of sexual coercion (which was kept only as an accusatory circumstance), thus putting Slovenia as a loyal follower of German legislation before the task of radically amending its sexual legislation (Piano 2018). However, with regard to force, it is considered that at the level of the criminal offense even little force leading to sexual conduct (not necessarily of its

own except when the law explicitly requires it), is enough and it does not need to be direst. Behaviour leading to sexual behaviour happens when the perpetrator consciously lays out pressure of sexual behavior against the victim. Verbal or at least conclusive maintenance of the effect of violence is necessary, thus violence-related threats are not enough. (Korošec 2008). In the crime of rape, Slovenia still clings to the legal signs of force or threat, and thus the model of coercion (G. K. 2019, while in Sweden all relations without consent are equalized with rape . Deisinger in the commentary CC-1 from 2017 claims that sexual intercourse reached with some kind of a fraud is not considered a criminal act. Sweden, unlike Germany, has adopted the model "Yes means yes" (Rosell 2018). The offense of rape is provided if a person expressly or implicitly does not express the will for sexual intercourse or involuntarily engages in it. Thus, Sweden has ensured that acts, which result from a fraud or a trick or by using a method of surprise, or perhaps (more often) with making use of the victim's fear are also considered rape (The guardian 2018, Delo 2018). According to the existing legislation, Slovenian theory and case-law could interpret in such cases that, although it is not force that allows sexual behavior, but the rapidity and trickery connected to it, it is essential whether the victim perceives such behavior as "a forced effect on the victim's body" (Korošec 2008). Logic could be derived from the use of narcotic substances as coercive practices, which also do not represent the force in the most classical sense of the word. "The use of medicine (sleeping, tranquillizers, etc.), alcoholic beverages (ethanol) and illicit drugs without the consent of the one who uses them is now considered the use of violence everywhere" (Piano 2018). Eight of the 31 European countries already define rape on the basis of the absence of consent, such as Germany and Sweden, Ireland, the United Kingdom, Belgium, Cyprus, Iceland and Luxembourg.

CONSENT – FACTOR TO MAKE DECISIONS

In 2018, the Higher Court in Koper issued a court decision Case No. II Kp 46668/2015 that disturbed the professional and the general public. The perpetrator had sexual intercourse with a victim that was asleep and drunk. The perpetrator undressed the victim, taking off the victim's trousers and underpants and began to engage in sexual intercourse. The perpetrator did not stop with the rape, despite the fact that the victim had woken up and started to push him away. The perpetrator used hands to cover her mouth, holding her body until sexual intercourse was completed. "When the perpetrator uses force only after the sexual intercourse occurs or to finish sexual intercourse, as in the present case, then the crime is not considered rape. Such a case is undoubtedly also in a given situation, when the accusation itself asserts that the defendant began to sexually associate with the victim, and used force against the victim only after the victim had woken up and begun to push the defendant away" (Higher Court of Koper 2017). The Court held that in the case, the crime of rape was not committed. The Court proceeded from the completion of the crime of rape. According to the Court, the act was completed when the male sexual organ began to penetrate the sexual organ of the victim. This means that when a perpetrator uses force only after a sexual intercourse or a sexual relationship is completed, as is the case in the present case, then the crime of rape is

not specified. Such a decision is controversial and irrational, because, as the theory states, in practice, it often happens that the victim of sexual behavior does not want to have sexual intercourse, whereas the perpetrator does not want to quit. The latter case is even more extreme, since the victim was asleep, showing her own will or rejection at the moment when the victim woke up and could express it. The Courts could thus follow in their decisions the findings of a theory that violence can begin simultaneously with sexual conduct (in practice, very often, when the victim does not want to have sexual intercourse and the perpetrator does not want to quit). The mere fact that force has already occurred during the conduct of sexual activity should not affect the reporting of the crime of rape. In the event that the victim does not wake up, such a reasoning of the court could be dealt with in the absence of a legal sign of force, which would also lead to the conclusion that the crime of rape was not committed. All of this is what calls for urgent changes in sexual criminal law in Slovenia. As regards consent to sexual behavior, which is at the forefront of sexual incrimination, it is generally necessary to verify the consent of the victim when assessing whether or not the victim has been forced, and thus the criminal offense of sexual coercion has been commited (Korošec 2008, Korošec 1999). The modern doctrine of the victim's consent in criminal law derives from the theory of the declaration of will or no will. "Impartial rejection of a particular interference with the criminal law proceeds available under the modern criminal law doctrine of the consent cannot consider the victim’s consent even if the true will of the beneficiary of consent would be directed to permission of intercourse, i.e. when the victim, with concrete sexual behavior, intimately genuinely agreed, or even hugely desired the intercourse. Amnesty International (2019) also believes that rape without consent is rape. As mentioned above, Slovenian criminal legislation perceives the act of rape as a criminal offense only if violence, threats or coercion are present, which is not in line with international human rights law and standards and the practice of the European Court of Human Rights. That is why NGOs called on to the Justice Ministry in early 2019. The Ministry responded with an invitation to define concrete proposals (G. K. 2019). Consent may be given by words or actions as long as these words and actions clearly show permission and the desire to engage in sexual activity. Consent is not automatically given, solely because the person does not express opposition. Just because one keeps silent or does not say no, one does not give consent. The European Court of Human Rights ruled 15 years ago that a decisive factor in determining whether the offense is a crime of rape was the absence of consent, and not evidence of the use of force and resistance (Piano 2018). In accordance with the Council of Europe Convention on preventing and combating violence against women and domestic violence, known as the Istanbul Convention, which has been ratified by Slovenia, the definition of rape should include all vaginal, anal or oral sexual penetration into the body of another person with any part of the body or object without the person’s consent.

CONCLUSION

The increase of sex offenses in Europe raises questions about whether the legislation of European countries is appropriate, in particular, whether it is capable of ensuring the successful hearing and prosecution of sexual offenses. While the

number of thefts and murders decreases, statistics show that the number of sexual offenses steadily increased by 23% between 2013 and 2016 (Eurostat). The Istanbul Convention requires that States Parties adapt their criminal legislations on sexual violence and rape and focus on the lack of consensus as an integral part of sexual offenses and depart from the still-expanding requirement for the use of (physical) force (Amnesty International 2019). With the rise of sexual offenses, European countries face the problem of inadequate legislation, and therefore they have been forced to pay more attention to sexual criminal law and approached its amendment. The most striking are the changes in criminal sexual law in Germany and Sweden, which they renounced traditionally understood rape. At the forefront is the consent or consent to sexual behavior. Traditionally, rape is understood as a violent act, which requires a certain rebellion from the victim. This traditional understanding can most likely be attributed to the Roman law, which shaped the rape as a particularly violent delict. Germany has "done away" with the history in such a way that only "no" is enough for the crime of rape. The Swedish model is based on the principle "Yes means yes". This solution should also be followed by Slovenia, which is often criticized for its archaic nature of criminal legislation related to sexual offenses, as it still clings to the traditional model of coercion. Precisely because of the model of coercion (the incrimination of the crime of rape involves the legal signs of "force or threat"), according to the theory, it still holds true that rape cannot be done in a tricky manner, which is not appropriate. It is of significant importance to consider at least the inclusion of surprise as a quasi coercive behavior, if not the complete abandonment of the model of coercion. It will be necessary to expand the definition of rape in Slovenia so that any sexual behavior that is contrary to the explicitly expressed will of the victim is considered rape.

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THE PHENOMENON FUNDING OF POLITICAL PARTIES AND THE RELATION WITH PARTY SYSTEMS IN EUROPE

Nikola Gjorshoski
Faculty of Law"St. Kliment Ohridski" University – Bitola
ngjorshoski@gmail.com

Abstract
In contemporary party systems in Europe, the connection between party funding and party systems is very strong as a result of increasing costs for electoral campaign, expert's analyses, permanent political marketing etc. In this paper the author analyses the causality between party systems and party funding in contemporary political systems in Europe. Also, the general differences between party funding models, the spectrum of depending on current party systems, the factors for design such models, the areas of financial misuses and party investment and the electoral results are assessed in this paper. The aim of this paper is to present how and to what extent the party funding and party systems in Europe context are, and whether and what kind of changes are possible.

Key words*: Political parties, Party systems, Party funding, Party investment, Party corruption, Europe*

INTRODUCTION

The subject of study of this paper is a category that is of particular importance for the socio-political existence. The models of financing the political parties i.e. differences regarding similarities in the instant access, constitute the frame of the foreseen subject through previous overture to the generic understanding of the concept political parties and party system. Consequently, upcoming paper aims to show a double-sided causality between financing the political parties and the entire party system in Europe or in other words, to show how and to what extent expressed influence is. Several key issues are imposed and this paper will try to give answers to them, taking into account the relativity in the qualification as well as in the performance of general conclusions that are dependent on the type of political system, political culture, tradition and practice of functioning which are different in each country. In fact, the primary thesis actually give answer to the imposed issues. How does the financing of the political parties influence the party system and whether differences depending on the type of the financing have been registered in Europe? To what extent are the political parties dependent on different models of funding and whether their size is proportional to such a relationship? What changes could be caused by various financial abuses in the party system in Europe? What accounts for the increasing dependence on the financial resources? Can it be argued that the party system actually determines the access to possible legal solutions in

Europe? Finally, can it be said that the party's success or decline from the political scene has been largely dependent on the sources of funding in Europe?

MODELS OF PARTY'S FUNDING IN EUROPEAN COUNTRIES

The stable democracies distinguish three models of financing. *The first model* considers the political parties as private organizations without treating them as having a special position in political life, hence financial revenues come generally from private sources. Typical example for this is Switzerland, while in the UK only the opposition is funded by the state budget; in the Netherlands the budget expenditures are intended for research development policies, and according to the referendum in which citizens voted against that regular budget funding in Italy only campaign expenses in proportion to the number of votes are funded. *The second model* is called mixed model. According to this model for this purpose part of the funds are allocated from private sources, and part from the budget. This model is found in Germany, in most countries in Central and Eastern Europe, France (1998), Turkey etc. The state recognizes the role of political parties as the cornerstone of democracy and democratic processes and by providing financial resources with specific budget lines which are provided for this purpose it can be said that the parties almost become semi-state entity. Despite acclimated conclusion about guaranteeing democracy, the financing of budget funds is intended to provide additional effect in terms of reducing corruption activities of domestic business elites, and the dependence of the party leadership from fees. And finally, *the third model* can be labeled as funding (or helping) indirectly the political parties by the state. Here we need to take into consideration the free media presentation during the election campaign, professional assistance in parliament, the release from expenses for election correspondence, reducing taxes in donations by individuals and legal entities etc.

Public (budget) financing

Now let us look at the key aspects that are preserved in this direction:

a) *The amount of budget funds*. This issue is resolved variously in different countries, but it refers generally on the percentage of the projected budget for one fiscal year. For example, in the Republic of Macedonia, this annuity is 0.06%, in Slovenia 0.0017%, in Romania 0.04%, in Russia 0.05%, in Croatia 0.056%, in Lithuania 0,1%, in Serbia 0 15%, and in Montenegro 0.4% (which leaves additional opportunity for favoring the already dominant DPS party and uncontrolled spending) etc.

b) *Parties who have access to budget funds*. In Central and Eastern Europe this issue is resolved differently. It is about the so-called minimum threshold of the votes in parliamentary elections. For example, in Macedonia the parties which gain at least 1% in the last parliamentary or local elections (for members of municipal councils) have the right to budget funds, in Poland only parliamentary parties have the right to budget funds, in Bulgaria they have 1 lev for at least 1% of the votes, in Slovenia the parties which win 1% of the electorate votes, in Romania the parties which win 5% of the electorate votes, in Albania all registered parties (which led to the emergence of so-called phantom parties), in Serbia the parties that passed the

threshold of over 3% and finally in Montenegro have right to vote the parties which win 4% of the electorate votes etc. (Goati 2007, 206).

c) *The formula in which funds are allocated*. Here are also cited two conceptual approaches. The first approach divides the amount proportionally to all parties that passed the threshold, depending on the number of the votes or seats (Sweden and France), while the second approach one (smaller) part distributes equally to all the parties that have the right to budget funds, while the other part divides proportionally depending of the seats won. Thus, in the Republic of Macedonia the first rate is 30% and the second 70%, and an identical decision is adopted in Bosnia and Herzegovina, Montenegro, Romania and Serbia, while in Croatia the ratio of equally and proportionately allocated funds is from 20% to 80%, in Slovenia from 10% to 90%, in Hungary from 25% to 75% etc. (Goati 2007, 206).

Funding from private sources

Despite there is considerable trend of decline in some categories such as membership fees or income from commercial activities, which vary from country to country and are determined differently, the private sources of financing are very important. However, the donations play very important role in the overall financial potential of political parties.

a) Membership fees. Membership fees are the oldest and it can be said that these are the most uncontroversial party income. Logically, depending on the socio-economic structure the amounts of fees also oscillate from one country to another or from one party to another. But the fact that the membership fees have become part of the so called legal colonization, so states tried to regulate the amount of this amount also should not be neglected. For example in Macedonia amount of the annual fee should not be higher than the average net salary in the previous year which is published in the statal statistical office. However, more important to realize here is what is the amount (expressed in percentage) of the the total party membership fee income and what is the difference from party to party in the same state. Furthermore, serious oscillations have been noted. In Spain such amount does not reach more than 3% in most of the parliamentary parties, in Germany it reaches about 40% (56% SPD, CDU 35%) due to the large number of disciplined party membership, in the Netherlands it reaches around 60% (Nassmacher 2006, 8). However, in the UK the Labour Party which significantly relies on the union membership in its ranks (Trade Union) that amount reaches 17%, while in the Conservative Party it reaches about 13%, in Bulgaria the Bulgarian Socialist Party (BSP) reaches over 23 % in 1995, and in 1999 there was noted drastic decline and it reached only 4%. The situation is even more dramatic in the Union of Democratic Forces (UDF), one of the biggest parties that suffered a catastrophe in 2001. The revenue from fees which reached the amount of 6.87% in 1995 fell to 0.07% in a period of two years. (Walecki, 2001, 78). The general conclusion is that on the European level membership fees decreased and make up less than ¼ of the total party revenue.

b) Party impost. This rate, also known as party tax or duty, applies to holders of public and state functions (local, state and federal level in the US, Germany etc.), and also to MPs (lawmakers) elected in national or regional parliaments (eg. the

European Parliament) regardless of the electoral system, which they have to pay it on the expense of theirs party as an extra fee. For example, of the total party revenue in "Netherlands it amounts 2%, in Germany almost 15% in France and Italy in Communist parties it amounts around 20%, in Romania it is also 20% and in Estonia it varies from 5-10%, while in the UK in the Labour Party it amounts 3% etc. In Serbia the it oscillates from 3% in Serbian Renewal Movement (SRM) to 20% in the Socialist Party of Serbia (SPS). In Montenegro in the Democratic Party of Socialists (DPS) it amounts 10%, in the Social Democratic Party (SDP) 30% and the Serbian National Party (SNP) 10%". (Goati 2007, 196). In the mid 80's in occurred severe tremors in intra-party ranks because of this provision in the Socialists.

c) Donations. Donations are of course among the most suspicious party transactions. So in that way it is noted a general intention for transparency. In some countries it is not allowed funding of legal and physical persons from foreign countries or external physical and legal persons and also it is the case in our country. Many countries limit the amount of private donations, but there are countries where there are no limits, such as in the UK, Czech Republic, Sweden, Germany etc. Of those countries which contain restrictive provisions we should emphasize Poland in which the donations amount from $ 200 for individuals to $ 2,000 for legal entities, in Bulgaria they amount to 15 000 €, while the Macedonian national legislation limits the total annual amount of donations to 75 average net wages paid in the previous year for physical persons or 150 net wages to legal entities. In Bulgaria the limit is $ 500 for individuals or $ 2,000 for legal entities, as well as in Hungary, while in Bosnia it is 7 average salaries and in the US it is limited to only cash donations up to $ 100,000 and an anonymous to $ 50, in France it is 13 000 €, in Italy it is 18 000 €, and in Spain it is 6 000 €. Another important category in this direction is the ban on donations that dominant or major owner is the State to a certain percentage (20% of Macedonia, Bulgaria and 50% of Latvia while in Serbia and Montenegro they are expressly prohibited) as well as public funds, institutions and public enterprises.

d) *Party entrepreneurship*. In principle the parties are forbidden to perform economic activities. But they can realize their income from publication of books and other propaganda materials, cultural activities, interest on funds deposited in banks, legacies, rent party property etc. These provisions are contained in the laws of many countries - Macedonia, Montenegro, Bosnia, Croatia, Serbia (with a limit of 20% of the total party revenue). Many western European countries restrict lucrative activity of the parties. The exception is perhaps Britain, where the Labour party at the local level owns sport betting offices which pay daily charge while in Estonia the parties have the right to organize lottery.

Financing election campaigns

Several variables affect the financial structure on the election. *Firstly*, in most cases, as already mentioned, there is a tendency to limit the amount of funds that can be spent as well as individual donations from legal entities and individuals. So, in Macedonia the maximum amount which the parties (as well as independent candidates and candidate lists) can spend on the campaign trail is 110 denars per

registered voter in the electoral district or municipality, and the maximum amount of legal entities is 3000 euros from individuals, i.e. 5% of the total income last year of legal entities (*Electoral Code*, Article 83 and 84, SVRM 40/06- 140/18) while in Spain that limit cannot exceed more than 5% of total party allocations that year, in Italy the total is 57 000 $, in France it is more than 13 million in the first and $ 19 million in the second round of presidential elections, or $ 37,000 in the parliamentary elections (Nassmacher 2006, 12). In Bosnia and Herzegovina it amounts 20 or 30 fenings per voter for parliamentary i.e cantonal and entity elections. In Spain it is not allowed to public and private corporations that perform government public works, while in Germany and Sweden which did not contain legal limit, the political obstacles are known by the party system in terms of affirmative distancing from large corporations. S*econdly*, it is the position of political parties in the party system. Logically, the powerful business elites tend to support parties that actually have a chance to spot a good election result. But on the other side there need to be emphasized also the applications of powerful businessmen who started swimming in the political waters with greater or lesser success (e.g., Silvio Berlusconi in Italy, Bogoljub Karic in Serbia, Trifun Kostoski in Macedonia, Zoran Jankovic in Slovenia, Bulgarian Boyko Borisov etc.). *Thirdly*, it is foreseen keeping a register of donations, obligation to public disclosure and reporting in Italy, Macedonia, Croatia, Kosovo and other countries.

THE INFLUENCE OF PARTY FUNDING ON PARTY SYSTEMS IN EUROPE

Party system as subsequent branch of the political system is not independent phenomenon, but it is determined by the string players. The model of the political system, electoral system, political culture, make up only part of a long series of elements that have reflected on it. In the theoretical discourse perhaps it is emphasized the primacy of the electoral system rightly, because it reflects the quantum of the political forces which will be represented in Parliament depending on the model (proportional, majority and mixed). The party system also represents a kind of interaction that results through inter competition. Or what indicates Rose, "on the one hand, the parties create options that citizens determine for, but on the other side they operate limitedly because they decide what options the citizens will have during their choice" (Rose 1974, 8).

Designing a system of party financing

It is evident that the parliamentary parties design the model of financing on their own, and in this respect it is present the fear of the possibility of excessive access. In this direction a few moments are worth to highlight. *First*, it is obvious that in two-party system, there is a so-called "soft-law" regulating relations in this domain. For example, in the UK there are no legal restrictions on the total income and assets, except that they must be pronounced publicly during the election campaign, but only those of over £ 5,000. The proposals for reform of the Liberal Democratic Party were acutely rejected and the Labour's government in 1997 passed a law on limiting only during election period. The same applies to the United States where there is a limit for anonymous donations of 50$ and cash donation to 10,000$ for

election campaigns through Political Action committees (PAC) for this purpose etc. Obviously, the dominant parties do not want to tie their hands when it comes to funding and the absence of relevant stronger smaller parties is an additional advantage. *Second*, the multiparty system is the reverse situation. Almost all post-communist states, and most Southeast European countries – Macedonia, Albania, Serbia, Croatia, and Italy include legislation which precisely regulate the amount of donations to election campaigns and regular operation of political parties, which was discussed above. The most relevant political structures and watchful monitoring of the public make at least an imposition to stricter rules of the game. However, there dominates standpoint that the funds available to them remain very high. *Third*, the existence of so-called anti-systematic parties delayed this regulation in some states or their patron had disabling budget funding of the parties. The view that a system cannot finance the budget parties that tend to break down, as the powerful Communist Parties did in France and Italy until 1990 dominated. *Fourth*, analogous to this as the main reason, apart from geopolitical change, the transformation of those parties from anti-systematic to systematic (i.e. their fusion with the Socialists and Social Democrats) was precisely the reduction in income from membership fees and looking for new sources of revenue.

Breaking the regulation

The issue of party funding of immediate and quite lucid manner opens the issues of corruption and various types of violations and evasions of regulation. Our interest here is the effect of such irregularities by the parties and the party system in general, or whether there comes crashing of the party, or split shift in leadership positions. Moreover, the disappearance or marginalization from the political scene, as well as the division and the setting up of new entity may be designated as systemic change.

a) *Corruption.* The phenomenon of corruption is as old as politics itself. There are two kinds of political corruption. The first is bribery of public officials by other actors (legal entities or individuals) to make a decision unlawful or inexpedient, and the second kind is when the public officials extorting privileges to perform their statutory obligations. In Macedonia, we can mention the example for the sale of Telecom and electrical utility. Although both political establishment had lost the election, they are still dominant political parties in the country. In Croatia the scandals related to corruption did not significantly affected the re-structuring of the party forces in the system, except the loss of the election of the ruling HDZ after the affairs "racketeering", extortion of funds from companies with state capital for services rendered and finally in 2010, the then Prime Minister affair with Hypo Bank and INA, after which he was expelled from the party. In Slovenia, for the Green Party which is part of the government coalition broke out an affair with a tile factory and as a result of that they lost the parliamentary status. On the other hand the scandal “Tangentopoli” in Italy with the action called "clean hands" (Mani Pulite) in the period between 1992-96 when were accused of corruption over 5000 politicians from the Christian Democrats and the Socialist Party led to a complete restructuring of the party system (known as Five Party system – “Pentapartito”) and the emergence of new subjects (coalition “The Olive tree”- L’Ulivo lead by Democratic Party and coalition Citizens for freedom – Polo di liberta lead by

"Forward Italy" – Forza Italia). In Britain in 2007 broke a major scandal on the charges that the Labour Party provided aristocratic titles to their faithful financiers. Apart from the resignation of Blair and losing the election did not come to other serious changes in the party system.

a) *Administrative financing*. This term means misuse of public and state funds which is done by governing parties for making additional funding for their parties and especially for the election campaigns (Stojiljkovic 2008, 105). In the last period there are noticed numerous examples which we could mention: the Affair of Russian President Boris Yeltsin on the presidential elections in 1996. The Conservative Party in the UK was also facing serious accusations at the end of 2006 that illegally used the premises in Westminster Palace for organizing dinners that have been fundraising for the election campaign. Similarly, in Slovenia there were blamed the ruling parties for using official premises for party gatherings and payment of budget funds to NGOs close to the government nomenclature. Czech Deputy Prime Minister of the Civic Democratic Forum who was also accused of receiving suspicious transactions for which was rumored to have been drawn from the treasury and transferred to their close companies, and several prominent Romanian officials, including President Ion Iliescu were assisted in the election campaign by prominent businessman who transferred public funds to their address in the period from 1996 to 1998 and in Bulgaria state enterprises also financed the campaign of the BSP. In Estonia the "technical" help from lawmakers of the ruling Patriotic Union in 2006 instead of working for the needs of Parliament they were working for the creation and preparation of the election campaign for the upcoming elections (Goati 2007, 218). Almost nowhere fundamental change in the party system did not appear, despite the evident violation of regulations. Even in cases which have court epilogue did not reflected significantly on the parties, with the exception of Italy.

"The party venture" and election results

The fact that powerful business elites are naturally inclined towards parties that have a greater chance of success is undeniable. Pivotal parties in the system, regardless of their ideological provenance represent magnet of large business interests. But when we talk about "party venture", term in the party life that has been known since its inception we must make a distinction between two specifics. *Firstly*, there are the funds that powerful business structures allocated to parties in campaigns, distancing from the open profiling their support and *secondly*, that is when business elites themselves will resort to the political action and become an active factor in the party contest.

Plutocratic tendencies can not be ignored. It is evident the enormous amount that the parties spend on election campaigns. But as part of political scientists assessed this should not mislead us into thinking that money is crucial. Or, as Alexander states " people vote, not dollars" (Alexander 2001, 198). The best example are perhaps the first parliamentary elections in the countries of Central and Eastern and Southeast Europe. Despite the financial superiority of the Communists, the opposition won (almost overwhelming). On the elections in Serbia, again (presidential and parliamentary) in 2012 the winning coalition of the Serbian

Progressive Party (SPP) spent 562 877 916 rsd (about 5100 million), while the defeated Democratic Party (DP) spent 820 787 910 rsd (Transparentnost Srbija, 2012). On the last parliamentary elections in Croatia, the HDZ, until then ruling and on the election defeated party spent 15,509,605 hkn, while the winning SDP spent 10,719,608 hkn (Državno izborno povjerenstvo Republike Hrvatske, 2012). These few examples show that the funds for its campaign although quite important in modern political life do not always play a decisive role in the election result. It is noted that although the ruling party almost constantly spend more than the opposition, it is not always ensure electoral victory. Also it is obvious that the leading parties of the system spend a much larger amount of money compared to smaller ones (about 3 to 4 times more). In this context the finance act as a stabilizing factor in the current party system, not as a threat to drastic changes.

It is important to highlight a few features if one perceive what is the influence of powerful business structures when they themselves will swim in the political waters, compared to the current party system or how much they can contribute to drastic changes. *Firstly,* a general conclusion is that since the two-party systems such as in Britain can not be profiled out of the dominant parties, they often affiliate with them. Even this approach has not guaranteed success yet. *Secondly,* in multiparty systems, especially in Southeast Europe can be seen some ups of individuals who can fundamentally change the party system. For example, Bogoljub Karic in Serbia, famous businessman and founder of the party Movement - strength of Serbia, on the presidential elections in 2004 won about 20% of the votes (3rd place). His party 2 years played a strong role on the Serbian political scene as well, until its reduction in 2007. In Italy after the collapse of the Christian Democrats and the Socialists, Silvio Berlusconi formed center-right party called Forward Italy (Forza Italia) and also achieved victory on the elections in 1994, 1998, 2008. Bulgaria's prominent businessman in the area of private security Boyko Borisov form a political party called Citizens for European Development of Bulgaria (CEDB) which in a period of 2 years had grown into a strong political option and won on the elections in 2009. Almost identical is the current situation in Slovenia. The ruling party Positive Slovenia was founded in 2011 by the Mayor of Ljubljana Zoran Jankovic, businessman and on their first election managed to defeat the conservative SDS Janez Jansa. In Poland, in 2010 the multi-party political scene was enriched by new and anticlerical liberal movement headed by prominent businessman Janusz Palic (known as Palic movement) which after the election has become the third political force in Siem. Andrei Babin, the second richest man in the Czech Republic founded the ANO 2011 party in 2011 which won 18% of the vote in 2013 and is currently the biggest opposition party.

CONCLUSION

The political parties and their mutual actions certainly represent one of the most vital categories of the political system. It can be said that in such a constellation the ratio between the funding and the party system was not studied enough in our politicological literature. So based on what we have shown in the analytical part, we can draw several important conclusions. *First,* political parties in Europe really depend on financial inputs. Such dependence is primarily due to the rising cost of

modern election campaign and the need for permanent political marketing. The increase in the so-called "expertise" within the parties for this purpose as well as the expensive contemporary approaches to political advertising have completed the framework of such relationships. *Second*, it is evident that the major parties that are pivotal in the system (regardless whether it is a bi-partial or multi-system) play a crucial role in the selection of the funding model. In this respect, the smaller parties are significantly more dependent of the standardized model than the large one that have almost continuous stream of funds for its daily operations.

Third, the model of funding the political parties act as a stabilizing within the existing party system. In two-party system the donors are quite prone to helping the already established political parties, and in multiparty systems it is provided almost continuous stream of budget funds both for the current operations and for the adequate benefit for the actual election results. *Fourth*, it may be noted that the significant re-structuring of relations and forces may occur only in multiparty systems, if certain powerful business elites decide to affiliate in the political life which is especially case in Europe. The political scene is enriched in that way that they can earn significant places (certainly because of the opportunities offered by the electoral model) in the national parliaments or by their nomination for head of state to pass a significant election results. On the other hand it is not the case with bi-partial system. The existing electoral brakes, as well as already imposed profiliation of the dominant political parties force every aspiration for political engagement to their inclination. *Fifth*, in most cases, the misuse of funds for the election campaign, corruption and other evasions of regulations outlined by series of affairs can cause severe but short-lived blow on the existing pivotal parties. In this regard such tendencies result in defeat in the next election cycle, but the corresponding consolidation that implies a change of party leadership and a good part of the party apparatus fail to be retained as a serious player in the political party scene in the system. With certain exceptions may come to the disintegration of the party and the formation of new stakeholders, but it is more exception than rule. *Finally*, despite the increasing dependency of financing of political parties still cannot be said that this category would be the only and decisive factor in the election results. Rather it is only complementary component in the overall system of relations between the parties and the electorate. Election capacity of the parties in a system seems not to circumvent the electoral program offer, the charisma of Leadership, relative deprivation as well as the nature of political culture and societal features of a society.

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THE STATUS OF CLIENT IN THE PROCESS OF EXSPROPRIATION

Ma Katerina Vasilevska Dojcinovska
kate_vasilevska@hotmail.com

Abstract
We live in a period of construction expansion, intensive road construction, gasification etc. In order for the state to achieve its goals, it must confiscate or restrict the right to ownership of a particular real estate which is privately owned. Regardless of whether he/she agrees or not, the owner of the real estate will be seized by means of expropriation.
State appetites will be satisfied and the owner will be paid the market price of the real estate, which is not the real price of the real estate, without taking into account the psychic element of the owner, brought in a state where there is no way out. He/she was forced to give up the right to property in public interest. The expropriation procedure together will all positive and negative sides, the well-known examples of expropriated real estate, will be thoroughly elaborated in this paper.

Key words: ownership, procedure, expropriation, state interest, compensation

INTRODUCTION

The right to property is an absolute right. Regardless it is a movable or immovable item, the owner has full authority over the item, while the owner has the right to keep the item in use and dispose, unless it is contrary to the law. The right to ownership is also guaranteed in Article 30 of the Constitution of the Republic of Macedonia. Despite the legal and constitutional proclamation of the right to ownership, this right can be restricted or confiscated by means of expropriation. It is a mechanism that the state has foreseen in order to be able to realize its interests and all that at the expense of the private property of the individuals and legal entities.

DETERMINATION OF THE PUBLIC INTEREST OF THE EXPROPRIATION PROCEDURE

In modern legal systems, there is no country in which expropriation is not introduced, a legal mechanism that foresees the deprivation or restriction of the right to ownership for the benefit of the public interest.
In the Republic of Macedonia, the expropriation is rooted in the Law on the basics of own-legal relations in SFRY. In that period, expropriation was defined as the exercise of the right to property.[205]

[205] Commentary on the Law on Expropriation, Rodna Zhivkovska, Tina Przheska, Valentina Dimitrovska, Skopje 2013, Art.18

In the last few years, expropriation is on the rise. The number of initiated expropriation actions is increasing. However, what nobody is asking is the position of the owner of the real estate that is being expropriated. Namely, whether he/ she wanted or not, whether the real estate would be expropriated either in a faster way or in the shortest time.

The Law on Expropriation lists the cases when a real estate is expropriated and which is the public interest.

1) Public interest is determined for:

building objects and performing works of importance for the Republic of Macedonia and

building objects and performing works of local significance.

Public interest is also determined for the seizure of construction land for which the right to use is owned by individuals and which, according to the acts for planning of the area defining a construction parcel, is outside the defined construction parcel, which can not be subject to privatization, in accordance with the Law on privatization and lease of state-owned construction land.[206]

If one analyzes each and every paragraph from the previously cited article, it comes to the conclusion that the whole society had positive benefits from expropriation. When it comes to building objects of significance of the Republic, then all the citizens of the state are tangible. For example, gasification. By introducing gasification, we approach the European countries and at the same time introduce a new way of heating, etc.

When it comes to building objects of a local character, then a smaller group of inhabitants, related inhabitants at a local level, are tangled. Construction of a railway line, a treatment plant isonly an example of objects of local significance.

In the Macedonian legislative system, the state and the local self-government units can be the sole proponents, while the expropriated real estate is expropriated only for the public interest. Which is this public interest only determined by the proponents? How justified, it can only be answered by the proponents of expropriation. In such a procedure, many are not concerned about the owners of the property that is being expropriated.They are brought into a hopeless position, or they will voluntarily reach an agreement and renounce the right to ownership of their real estate, or the property rights management authority will issue a decision on expropriation and their real estate will be expropriated. The proponent is free in divulgating what is public interest, and the question remains open of how much it is worth and how long it takes to initiate the expropriation procedure on an account of a real estate that is being expropriated.

[206] Commentary on the Law on Expropriation, Rodna Zhivkovska, Tina Przheska, Valentina Dimitrovska, Skopje 2013, Art.5

The United States of America in the expropriation procedure go a step ahead in terms of the public interest.

In the legal case known Kleov.Cit New London case, ruled before the Supreme Court of the United States of America. In the procedure for resolving this case, the Supreme Court has decided that expropriation may be allowed also because of an interest that does not have to be the interest of the entire community, nor is it necessary for the beneficiary of expropriationbe the subject of public law. Exceptionally, with this case, expropriation will be considered to be in the public interest only if it thereby leads to economic development in one area.[207]

FEE IN THE EXPROPRIATION PROCEDURE

An important element in the expropriation procedure is compensation. In the expropriation procedure, an appropriate fee is paid for the expropriated real estate, which is determined according to the market price of the real estate at the moment when it is being expropriated.

(1) For the expropriated real estate, a fair compensation shall be paid which can not be lower than the market value of the real estate.

(2) The market value of the real estate shall be determined under the conditions and manner determined by this Law, and according to the methodology, rules and standards in accordance with the Law on Assessment.

(3) The right to claim compensation for expropriated real estate does not become obsolete.

The Law on Extradition allows the completion of the expropriation procedure by reaching an agreement, i.e. settlement of the compensation for the expropriated real estate. In such case, the binding nature of this procedure becomes evident when the parties in the procedure voluntarily complete it, through a process of substitute bargaining and the determination of an appropriate remuneration.

However, in practice, precisely the determination of the market price for the expropriated property is the reason for the delay of the procedure. When the parties will not be satisfied with the price offered to them for the real estate, before the body for property legal matters, the procedure here ends before the body for property and legal matters continues in front of the locally competent court in an out-of-court procedure.

FEE/ SUPPLY FOR EXPROPRIATION IN THE REPUBLIC OF SERBIA

The compensation under the positive law in the Republic of Serbia is determined according to the market price of the real estate, but it is possible to determine a greater amount than the fixed market price of the real estate, and taking into account

[207] Expropriation as a legal institute, Milosh P. Nice Nish 2016

the material and family circumstances of the owner of the real estate that is expropriated, if those circumstances are of significance for the existence the owner of the property being expropriated.
In such a situation, the court is obliged ex officio to determine whether there are really conditions, and on the basis of the personal and family circumstances of the owner of the real estate that is being expropriated, to increase the compensation of the real estate that is being expropriated.[208]
According to the Law on Expropriation of 1947 and 1957, the rule was that the compensation could also be given in bonds with long-term validity, which necessarily led to the fact that the bonds were given the value of *"so-called. Old Papyrus".*
Professor Kostic is of the opinion that it can not be expropriation without compensation, while the French case practice is the opinion that there must be compensation at least in the amount of one franc and where the real estate that is expropriated is not worth anything and when the owner of the real estate agrees to give up kindly.
According to Jelcic, who thinks that it is most acceptable to understand that the fair compensation is difficult to determine, arranged on the basis of the market element as well as the indemnification. He says that it can be concluded that the parity compensation (price and damage) is lower than the market price and the full damage.
The Macedonian and Serbian legislation also foresees the compensation of damages in certain cases, such as in the case of confiscation, ie if the limitation of the right to ownership of the land has caused damage to the owner of the real estate, he is entitled to compensation for the damage.
The German legislation applies to a fair compensation rule that can not be lower than the market value of the real estate, but which does not necessarily mean a complete compensation according to the so-called theory of convenience. The French law has adopted the view of full compensation for damage to expropriation that is actually a feature and taken over by the English legal system.

EXAMPLES OF EXPROPRIATION

In the last few years, the number of submitted proposals for initiating expropriation procedures has increased. This is the result of intensive building and monitoring of European standards, with the aim of bringing our country closer to the European metropolises. For the benefit of the public interest and with a view to the common good of all citizens, expropriation procedures are initiated for better progress.
In the territory of the Ministry of Finance, separated for property legal matters in Bitola in the period 2017, 100 expropriation procedures have been initiated. In 2018 this figure is growing rapidly by 7 times, so 709 expropriation procedures have been initiated. In 2019 to the beginning of March, they are 30.

[208] Commentary on the Law on Expropriation, Rodna Zhivkovska, Tina Przheska, Valentina Dimitrovska, Skopje 2013, Art.18

On the territory of Bitola, expropriation is most often performed where REK Bitola appears as a proponent, and due to coal mining. For the needs of REK Bitola, proposals for initiating expropriation in the vicinity of the former village Suvodol are being submitted; a place where today is the excavation of the coal mine.

In the past, most of this village was evicted, that is, their real estate was expropriated in favor of REK Bitola. Part of the population was moved to Brusnik settlement, and part in the village of Novaci. In part, the compensation was paid in cash, and some were granted real estate. Also, due to the needs of REK Bitola, proposals for initiation of a procedure for expropriation of the area on the territory of BrodGneotino are submitted.

In 2018, the biggest project in Bitola was an expropriation due to gasification, where MEP-Macedonian energy resources appeared as a proponent. In this context, the project for reconstruction of the railway line Bitola-Kremenica must be mentioned.

RECOMMENDATIONS

During the preparation of this paper, formulated recommendations appeared that would be good in the future to be a part of the legislation regulating expropriation.

When it comes to an object that needs to be built and in whose interest one real estate should be expropriated, and if it is a small square of two, three squares, it would be a quick procedure to expropriate that part. That would mean immediately passing of the expropriation decision without initiating a procedure. Earlier, only a certain notification would be delivered to the owner of the part of the real estate that he intends to expropriate, and after a certain period of 8 to 10 days, the decision on expropriation would be adopted. In such a way, that small part of several squares would soon be expropriated, and it would immediately begin building the necessary object.

This would not delay the procedure, and the administrative barriers and the waiting to expire the legal deadlines for appeals would be skipped. Of course, such changes would be appropriate only if that small part, ie that small area, is not crucial to the owner of the real estate which is expropriated and which does not violate the purpose, aim , essence, and would not call into question the survival of the real estate on which it is being expropriated. This would be the first recommendation, that is, a possible addition to the Law on Expropriation.

In addition to the compensation for expropriation, the second addition would be to be paid a certain amount called example damage to expropriation. It is a matter of certain monetary compensation, the amount of which would depend on the compensation for expropriation. This would be a kind of indemnity for the taken away real estate, that is, plus money, for the expropriation procedure. In the procedure for expropriation, the owners of the real estate that are being expropriated for the benefit of the public interest in one way, in favor of that public interest are forced to give up part or all of the real estate, and for which they had not previously thought, it was not their will. This would be related to the psychic element of the owner of the real estate that is being expropriated, and it would be emphasized how

important it is to transfer its real estate to the benefit of the public interest in a faster way.

CONCLUSION

Expropriation has its own positive and negative sides. It is positive that this procedure allows building public interest objects, from which every citizen or the majority of the citizens benefits. To build a certain object of public interest where it is most appropriate, and there is a factual obstacle because it passes through someone else's real estate, and not the proponent of the expropriation, through this procedure, and on behalf of the state, for the general good and public interest, it is allowed the mechanism of expropriation. That the expropriation in the past year is a phenomenon, speak of the large number of initiated expropriation procedures, and intensive building in our country.

Whether or not he will resist or simply agree to an agreement, his real estate will be expropriated in the name of the public interest. In the Republic of Serbia, France, Germany, we have a similar regulation and approximately the same definition of expropriation. Of course there are certain differences for which part was elaborated in this paper, adapted to the social development and the needs of each state separately.

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PRISON LIFE: LIVING IN AND LEAVING PRISON

-Rehabilitation as the leading goal and idea of the criminal sanction

Trajkovska Daniela
MIT University in Skopje
trajkovska_daniela@hotmailcom

The purpose of the prison sentence is the re-education of the convicted person, rehabilitation and re-socialization, and at the same time the person to understand the consequence of the committed crime, and to become a better person. Getting out of jail, especially for convicts of longer prison sentences, may be a shock to the prisoner.

In the penal institutions, there are a large number of convicts of different age, convicts for various committed crimes, different life stories, different educational profiles, etc.

Re-socialization is a long-lasting and dynamic process in achieving and enduring human influences, and it is a complex, complex and comprehensive phenomenon that aims to achieve a lasting change in the perpetrator's personality.

In this work I want to encompass and explain the ways, patterns of re-socialization and the principles of re-socialization, from studying the personality of the convicted person, to the approach to him, working with the convict, the appropriate manner according to the personality, etc., and to conduct a conversation with a person who serving a prison sentence and his change after exiting the prison. At the same time, to give my conclusions, attitudes, criticisms, everything I have found in the literature, which I have explored, and so forth.

Mainly my work will deal with the ways of re-socialization and preparation of the convict to come out as a new, reassuring, re-socialized person.

Keywords: rehabilitation, convicted person, re-education, penal institutions, resocialized person;

BENEFITS OF RESOCIALIZATION

Providing rehabilitation for inmates offers countless benefits to the individual inmate as well as the community that inmate will re-enter upon his or her release.

The options for rehabilitation for inmates vary by facility, offense, and sentence length. Just like the cause of incarceration varies by inmate, the type of rehabilitation an inmate might respond to can also vary.

Some inmates may benefit from multiple kinds of rehabilitation. We put together a list of five of the most rewarding types of rehabilitation for inmates below.

Education resocialization for Inmates

It has been proven time and time again that education programs in prison help to give inmates a second chance. In fact, inmates who participated in educational programs were 43% less likely to commit a crime and return to incarceration within three years than those who did not.

The statistics proving the value behind providing **education programs in prison** have helped change the landscape of educational offerings for inmates.

Positive outcomes for inmates who leave prison more educated than when they entered filter down into the community.

The extended family benefits, the local economy benefits when the ex-offender returns to work, and the taxpayers benefit when less people are incarcerated.

This, among other data, prompted President Obama to institute The **Second Chance Pell Pilot** which will open up the opportunity for about 12,000 inmates to apply for Pell grants for the first time in nearly 24 years.

Oftentimes these **inmate education programs** cover functional skills (above and beyond traditional academic programs).

For example, inmates who haven't had access to a computer or the internet in many years are at a disadvantage when attempting to return to the workforce. Computer training programs have become a crucial piece of re-entry educational programs.

Education programs in prison are helping give the power of knowledge to inmates. With this power, overcoming the past and enjoying a better quality of life are two very achievable goals.

EMPLOYMENT RESOCIALIZATION FOR INMATES

Inmates who have the opportunity to engage in **prison work programs** while incarcerated have an easier time getting work once they are released.

The inability to find and maintain work is a main factor in recidivism across the nation. When former inmates re-enter society without marketable skills, a domino effect occurs that often times leads to new offenses.

Breaking the cycle relies on becoming a productive member of society through gainful employment. Being able to support oneself is beneficial financially and mentally.

For a person newly re-entering society, the self-esteem and fulfillment that can come from working hard plays a big role in lessening criminal behavior.

During prison, many inmates are given an opportunity to participate in work programs. These programs offer a consistent way to prepare for work in society. Punctuality, responsibility, deadlines, accountability and other skills are learned through taking part.

The benefits of prison work programs go much deeper than just job training

COUNSELING RESOCIALIZATION FOR INMATES

Prison Counselors play a significant role in rehabilitation for inmates. These criminal justice and mental health professionals provide guidance to inmates throughout the duration of their sentence.

The support a Prison Counselor provides will range by inmate. Most counselors can offer hands on counseling covering the following topics:

- vocational
- academic
- social
- personal

The goal is to provide rehabilitation for inmates that will help them consider new skills and new insight into their goals and motivations.

Additionally, inmates can seek counseling on issues like depression, stress or substance abuse. Sometimes this may come in a group form, or one on one.

In addition to the support provided by the staff, counseling for inmates can be obtained through many non-profit organizations.

For example, **The Lionheart Foundation** program offers prison inmates "encouragement and the necessary support to take stock of the life experiences that have propelled them into criminal activity, take responsibility for their criminal behavior, change lifelong patterns of violence and addiction, and build productive lives."

This organization trains counselors, chaplains, volunteers and others to visit prisons and provide counseling services. Their work extends into youth prisons and the community as well.

Taking advantage of the counseling offered during prison is a positive step towards rehabilitation.

4. Wellness Resocialization For Inmates

Physical and mental wellness bring clarity and purpose to many inmates during their sentence.

Depending on the offerings in an individual facility, an inmate may be able to participate in programs like yoga, tai chi, or meditation. Practicing these kinds of mental and physical exercises are proven to provide long term benefits including stress/anger management among others.

Positivity can be a difficult trait to maintain during a prison sentence, but some prisons are offering programs to help bring a positive light into an inmate's life. Programs like dog training, culinary classes, gardening and more offer inmates opportunities to practice fulfilling skills that make a measurable difference.

Making good nutrition choices with **meals in prison** can also be difficult. But with effort, a healthy diet can also be maintained.

Community resocialization for Inmates

Rehabilitation for inmates continues throughout an inmate's life, even after they have left the system. Re-entering society and taking steps to join the community is a necessary piece of the rehabilitation process.

Adjusting to life after prison successfully has many variables. Having a support system within the community helps an ex-offender stay an ex-offender.

Getting involved in the community creates accountability in the form of communal obligations. Feeling a sense of belonging is invaluable, whether it be through:

- church
- volunteering
- social groups
- or another form.

The newly built support system relies on the ex-offender as he/she relies on it. This leads to more positive interactions and less opportunity for criminal behavior. Additionally, the relationships built within these community groups can lead to job opportunities—a crucial step for reentry to society and elimination of recidivism.

EIGHT SIGNIFICANT CRIMINAL RISK FACTORS

- ***Antisocial Personality.*** Displays impulsive, exploitative, aggressive, or manipulative behavior.
- ***Criminal Thinking.*** Attitudes, values, and beliefs that can lead to crime.
- ***Antisocial Relationships.*** Association with other criminal actors and isolation from noncriminal actors.
- ***Family and Marital Status.*** Poor relationships with family and/or spouse.
- ***School and Work Status.*** Low performance, involvement, and satisfaction with school and/or work.
- ***Leisure and Recreational Activities.*** Low involvement or satisfaction with activities that are not associated with criminal involvement.
- ***Substance Use.*** Problems with alcohol and/or other drugs.

Research shows that rehabilitation programs can be designed to address these factors. For example, substance use disorder treatment programs can help reduce or eliminate the criminal risk resulting from an offender's problems with alcohol and/or other drugs.

Various Fiscal Benefits From Reducing Recidivism. If rehabilitation programs are successful at reducing recidivism, they not only can reduce crime but also can result in both direct and indirect fiscal benefits to the state. Direct fiscal benefits include reduced incarceration costs—as offenders will not return to prison—as well as reduced crime victim assistance costs. Indirect benefits could include reduced costs for public assistance, as some offenders may receive job training that leads to employment, thereby reducing the level of public assistance needed. If rehabilitation programs are operated effectively, these benefits can exceed the costs of providing the programs and result in net fiscal benefits to the state.

Other Program Goals. In addition to reducing recidivism, rehabilitation programs can also serve other related goals, such as making it easier to safely manage the inmate population, improving overall inmate wellbeing, and improving inmate educational attainment. These secondary goals can also result in direct and indirect fiscal benefits. For example, an easier-to-manage inmate population could result in fewer inmates needing to be housed in higher security units, which could minimize the need and costs for additional security staff.

STATE FUNDS VARIOUS IN-PRISON RESOCIALIZATION PROGRAMS

Upon admission to prison, CDCR assesses inmates' rehabilitative needs and assigns them to programs. The state funds six categories of in-prison rehabilitation pograms within CDCR. These programs can be operated by CDCR employees, other governmental employees, private entities, or nonprofits. These categories are:

- ***Academic Education.*** Academic education programs include adult basic education, General Education Development (GED) certification, the high

school diploma program, and various college programs. State law requires inmates with low literacy scores to attend adult basic education programs.

- ***Career Technical Education (CTE).*** CTE programs provide job training for various career sectors, including masonry, carpentry, and auto repair.
- ***Cognitive Behavioral Therapy (CBT).*** CBT programs are designed to help offenders change the patterns of behavior that led to criminal activity. Specifically, these programs provide various forms of therapy to address rehabilitative needs—such as criminal thinking and anger management—that, if left unaddressed, can increase the likelihood of recidivism.
- ***Employment Preparation.*** Employment preparation programs provide employment skills, such as job readiness and job search techniques, for inmates up to six months prior to their release in order to aid their transition back into society.
- ***Substance Use Disorder Treatment (SUDT).*** SUDT programs focus on helping inmates treat their substance use disorders, avoid relapse, and successfully reintegrate into society. Unlike for other rehabilitation programs which inmates generally attend on a voluntary basis, CDCR requires certain inmates who are caught using alcohol or illegal substances while in prison to attend SUDT programs.
- ***Arts-in-Corrections.*** Arts-in-Corrections programs focus on providing inmates with arts programs ranging from theatre to creative writing.
- ***Innovative Programming Grants.*** Innovative programming grants provide limited-term funding to support various volunteer-run programs—such as prison gardening programs and mentorship projects—at certain prisons.

Resocialization institutions

A total institution refers to an institution in which one is totally immersed and that controls all the day-to-day life. All activity will occur in a single place under a single authority. Examples of a total institution can include prisons, fraternity houses, and the military.

The goal of total institutions is resocialization which radically alters residents' personalities through deliberate manipulation of their environment. Resocialization is a two-part process. First, the institutional staff try to erode the residents' identities and independence.

Strategies to erode identities include forcing individuals to surrender all personal possessions, get uniform haircuts and wear standardized clothing. Independence is eroded by subjecting residents to humiliating and degrading procedures. Examples are strip searches, fingerprinting and assigning serial numbers or code names to replace the residents' given names.

The second part of resocialization process involves the systematic attempt to build a different personality or self. This is generally done through a system of rewards and punishments. The privilege of being allowed to read a book, watch television or make a phone call can be a powerful motivator for conformity. Conformity occurs when individuals change their behaviour to fit in with the expectations of an authority figure or the expectations of the larger group.

No two people respond to resocialization programs in the same manner. While some residents are found to be "rehabilitated", others might become bitter and hostile. As well, over a long period of time, a strictly controlled environment can destroy a person's ability to make decisions and live independently. This is known as institutionalisation, a negative outcome of total institution that prevents an individual from ever functioning effectively in the outside world again. (Sproule, 154-155)

Resocialization is also evident in individuals who have never been "socialized" in the first place, or who have not been required to behave socially for an extended period of time. Examples include feral children (never socialized) or inmates who have been in solitary confinement.

Socialization is a lifelong process. Adult socialization often includes learning new norms and values that are very different from those associated with the culture in which the person was raised. This process can be voluntary. Currently, joining a volunteer military qualifies as an example of voluntary resocialization. The norms and values associated with military life are different from those associated with civilian life. (Riehm, 2000)

Sociologist Erving Goffman studied resocialization in mental institutions. He characterized the mental institution as a total institution—one in which virtually every aspect of the inmates' lives was controlled by the institution and calculated to serve the institution's goals. For example, the institution requires that patients comply with certain regulations, even when compliance is not necessarily in the best interest of the individual

RESOCIALIZING IN PRISONS

Prisons have two different types of resocialization. The first type is when the prisoner has to learn the new normal behaviors that apply to their new environment. The second type is if the prisoner has to partake in rehabilitation measures to help fix their deviant ways. When the individual violates the dominant society's norms, the criminology system subjects them to a form of resocialization called criminal rehabilitation.

Rehabilitation aims to bring an inmate's real behavior closer to that of the majority of the individuals' behaviour that make up the dominant society. This 'ideal' societal behaviour is highly valued in many societies, mainly because it serves to protect and promote the well being of the majority of that society's members. In rehabilitation, the system will strip the criminal of his prior socialization of criminal behavior including the techniques of committing a crime and the specific motives, drives, rationalizations and attitudes. Criminal behavior is learned behavior and can therefore be unlearned.

The first step towards rehabilitation is the choice of Milieu. This is the type of interactions the deviant will have with the people around him while in custody. Usually this is determined after psychological and sociological screenings are performed on the criminal. The second step is Diagnosis. The diagnosis is a continual process influenced by feedback from the individual's behavior. The next stage is treatment. Treatment is dependent on the diagnosis. Whether it is treating an

addiction or redefining the values of a person, the treatment is what will resocialize the criminal back to societal norms.

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PUBLIC INFORMATION AND DEMOCRATIC SOCIETY

Kijevčanin Ružica, PhD Student
Faculty of Law, University of Kragujevac, Republic of Serbia
ruzicakijevcanin@yahoo.com

Abstract
The presumption of every modern and civilized state is a democratic society, the right to free access to information of public importance and transparency in the work of the leading authorities. In order to make progress in a country, it is necessary to make the citizens happy and to provide them with information on all issues important for their personal needs as well as for common interests. These are the most common issues for the holders of the state authorities and of general interest. The availability of the information should be an inclusive factor, given that they are the consequences of the work of the bodies elected by the citizens as their representatives. This work will examine in detail whether this is practical and what the relationship between the right to free access to information of public importance and democracy is.

Key words*: information of public importance, democracy, state, government.*

INTRODUCTION

There has always been a desire for a society to influence decisions that directly or indirectly concern the quality of the people's lives, by means of inclusion and domination of power in the state. The earliest forms of this tendency were manifested in the 5th and 6th centuries BC, when the first assembly of free citizens of Athens, known as ecclesiastics, were formed. The ecclesiastical assembly was united by all three state authorities (legislative, executive, and judicial), so the numerous issues of importance to the citizens and the entire state communitywere discussed and resolved. The progress of civilization brought with itself the advancement of society and, consequently, the way of regulating the state function. Direct democracy embodied in the ecclesiastical assembly was replaced by representative democracy, which has evolved into a semi-independent democracy nowadays. Semi-independent democracy is the goal of every modern and civilized society. It means that the heads of state and government have to be representative bodies, the individuals chosen and most trusted by the people and who are responsible for the current and leading issues of acommunity. However, people can have a say in resolving the most important issues, and, together with the state authorities, they lay the foundations of their own country.

Along with the principle of democracy, there are a lot of aspects of familiarizing citizens with reality, objective facts, i.e., the truth itself. As such, it represents the

basis of every state but also in the life sphere. The citizens must be informed and involved in a state system at any time, since they are its basic and constitutive element. In accordance with the said, it can be concluded that the media is one of the main instruments of democracy. Media law is a special branch of law whose norms regulate the production and distribution of media content, i.e., attitudes, ideas and opinions distributed through the media. Every form of media content is media information. There are several types of media information, but the essential one, which is, after all, the subject of this work, is information of public importance. Information of public importance is the fundamental unit of the structure of a democratic society. In addition, the media distribute private and public information. All of them together make a complete media image suitable to different types of audiences. In this way, the audience is given the possibility to choose, which presents an other contribution to the preservation of democracy in a society.

1. THE NOTION OF INFORMATION OF PUBLIC IMPORTANCE

The development of civilization has raised people's awareness of the importance of the right to free access to information on a higher level, and in the last decades of the 20th century this issue was framed and regulated by numerous European countries. By the Law on Free Access to Information of Public Importance, consisting of 50 members, the Republic of Serbia has regulated this right in detail, and defined the notion of information of public importance. The information of public importance is any information that is available to the public authority, whether it is created in the work or in relation to the work of the public authorities, contained in a particular document, and related to the aspects of the justified public interest to know. We will present the definition in order to understand it completely.
The first element to differentiate is the fact that information of public importance is the information that is in disposition of the public authority. Any information available to the public authority is information of public importance. It is important that information is available to the public authority, not its source, the date of publication, how did you get access to it, and the like. The Law of Free Access to Information of Public Importance was more closely defined by the concept of public authorities. For the purposes of this law, a public authority is defined as: 1) any state authority, territorial autonomy authority, local government body, as well as organizations entrusted with the exercise of public authority; 2) a legal entity founded or financed by a state body as a whole or a majority.
The second element is the fact that the information was created in the work or in relation to the work of public authorities. Information can be a product of an activity, a performance of a public authority, but also a product of inactivity, i.e. skipping activity.
The third characteristic concerns the question of where the information is placed. The law does not contain provisions which precisely determine the type or nature of the document, because the document is of a public- law character.
The fourth feature is the answer to the question of what does information of public importance refer to, and that presents everything regarding the justified public interest to know. The justified right of the public to know refers to the situations

which contain specific, privileged information, being available to the public authority. The privileged information is about public safety, health protection, warning of danger, clarification of serious misconduct, prevention of public misconduct, etc. If the need to know the important information is met without revealing one's identity, the journalists will not provide information that could reveal one's identity. In this case, it is an absolute and irresistible legal presumption of the interest of the information seeker to know. However, there is the justified public interest to know other situations that display all of their formation available to the public authority. Then we are talking about a defective legal presumption of the existence of the justified public interest to know, so the public authority has the opportunity to challenge the existence of a justified public interest to know. The authority can derogate from the legal presumption, but only in the already prescribed cases, such as when some other interests, public or private, would prevail over the public interest to know.

Based on this analysis of the definition of information of public importance, a crucial question arises, and that is: How to reach the realization of rights and knowledge of information of public importance? It can be concluded that it is necessary for a civilized, advanced and democratic society to prescribe the right to free access to information of public importance in its legal acts so as to keep the country safe, and make citizens equal and satisfied.

THE RIGHT TO FREE ACCESS TO INFORMATION OF PUBLIC

Fundamental rights on which one state rests are an indispensable content of its constitution. Many countries have explicitly envisaged the right to free access to information of public importance with their constitutions. As for the others, they do it in a more subtle, indirect manner, prescribing related, broader rights that also contain the right to free access to information of public importance. Representatives of the first method of standardizing the right to free access to information of public importance are Canada, Albania, Austria, Belgium, Slovakia, Portugal, etc., while the Republic of Serbia applies the second method.

Article 50. of the Constitution of the Republic of Serbia prescribes the principle of freedom of the media, while art. 51. refers to the right to information. Further, the Constitution guarantees freedom of opinion and expression in art. 46., and the right to the protection of personal data in art. 42. Through this constitutional paragraph, the right to free access to information of public importance has been singled out as a special and elaborated right, occupying a significant place and position in the media sphere, and in the entire social community, too.

The right to free access to information of public importance means that everyone has the right to seek and obtain relevant information of public interest from the state authorities, i.e. public authorities in order to effectively obtain the insight into the work and activity of the subjects entrusted by the citizens on the free and democratic elections to perform the functions of the authorities on their behalf and for their account, and for that matter, to manage the other public affairs. This right, as already mentioned, evolved from the fundamental freedom and rights which together constitute media law. It concerns the freedom of thought and expression,

the right to be informed, and the freedom of public information. They are prescribed in the highest legal act of our state, and they form the basis of a democratic society.
Early in the 13thcentury, when the first written documents, the Constitution's predecessors, were starting to appear with the purpose to limit the unlimited government power, its abuse, and arbitrariness, the citizens tended to have a say as much as possible in the state life and making crucial decisions. The advancement of technology and society has changed the objective reality and state regulation of many countries. Democracy becomes the undisputed and highest goal of every society, and elections are the mechanism by which are achieved. In direct elections, the citizens always elected their representatives, i.e., individuals which they thought they would lead their country to a better and happier future, in a conscientious, honest, professional, and responsible manner. During the election the citizens should not be neglected, forgot, or oppressed. Their satisfaction is the ultimate result to which both the authority and citizens strive, and the struggle is everybody's. In order for the struggle to be successful, and the final result to be achieved, it is necessary that the work of the public authorities is open and transparent, and that citizens are informed about their activities and the general ones. The right to free access to information of public importance, as the main instrument of creating a civilized, equal, well-regulated society, was formally reported in Sweden for the first time, in the mid-18th century as a result of civil revolutions. At that time, the citizens' rights to the access of documents and data in the domain of public authority were recognized and legally framed. Public authorities perform public affairs that are public goods, and, therefore, the citizens ought to have information about them which is available in a complete, accurate, and prompt form. In this way, they control all of the three state authorities (legislative, executive, and judicial), supervise their work, but also exercise their rights and maintain a democratic order in their country. The citizens enabled the holders of government to enjoy their positions they were entrusted with, so as to effectively carry out their tasks and achieve common goals. Therefore, the least they can do is to provide them with information they need.
A law that precisely regulates the right to free access to information of public importance in the second chapter clearly states cases in which this right is restricted or excluded. The public authority shall not allow the claimant to exercise the rights if:

- endangers one's life, health, safety, or any other important goods;
- endangers, obstructs or aggravates the prevention or detection of a criminal offense, accusation of a criminal offense, conducting a pre-trial proceedings, conducting a courtproceedings, execution of a judgment or enforcement of a sentence, or any other legally regulated procedure or fair treatment and fair trial;
- seriously threatens the defense of the country, stateor public security, or international relations;
- significantly reduces the ability of the state to manage the economic processes in the country, or significantly impedes the realization of justified economic interests;

- makes an information or document available which a statutory determined to be kept as a state, official, business, or in some other way secret, or which is available only to a particular circle of persons, and,if disclosed,there mightensue heavy legal or other consequences for interests protected by the law that prevail over the interest in accessing information;
- denies the right to privacy, reputation, or any other one's right to whom the requested information personally relates to, except: 1) if aperson agreed to that; 2) if it concerns a person, occurrence, or event of interest to the public, especially if it is about a holderof a state and political function, and if the information is important regarding the function that the person performs; 3) if it concerns a person whose behavior, especially private one, was a motive for requestingthe information;
- if it concerns information that has already been published and available in the country or on the Internet;
- if the requester abuses the right toaccess to information of public importance, especially if the requestis unreasonable, or, often, if the request is for the identicalor already received information, or iftoo much information is requested.

If the requested information of public importance can be separated from other information in a document in which the authority is not obliged to provide the requesterwith the information, the authority will allow the requester to inspect the part of the document containing only the separate information.The rules envisioned here provide legal certainty and exclude any ambiguity or doubt.Interestingly, in this field of law public figures and holders of the leading state functions are also treated more strictly thanprivate persons, which is reasonable regarding their nature, function and role in a society.

The right to free access to information of public importance is guaranteed by legal acts, and, as such, it enjoys legal protection.In cases where a public authority rejects a request for access to information or does not act upon it, the citizens are provided with legal remedies in the form of a complaint to the Commissioner for Information of Public Importance, Court Protection in Administrative Matters, or Misdemeanor Protection. The administrative procedure can be special and general.The disputes in the media sphereare initiated by a special administrative procedure,which is modified and adapted for specific rights, i.e. media rights.Lately, there is a tendency to establish political protection, too. It is reflected throughthe use of various mechanisms within the framework of constitutional and legal texts in order to establish a democratic and legal state.

The Commissioner is a person elected by the National Assembly by a majority of the votes of all deputies, and on the proposal of the National Assembly Information Committee.The Commissioner can be a person who meets the requirements for work in state bodies, has graduated from the Faculty of Law, has at least ten years of working experience, and possessesa respectable reputation, and expertise in the field of protection and promotion of human rights. The Commissioner is elected for a period of seven years, with the possibility of re-election. His/her headquarters are stationed in Belgrade. The Commissioner, as an independent state body, can be

compared with a specialized Ombudsman, who is responsible for the protection and realization of the right to free access to information of public importance. More over, it is under its jurisdiction to submit a report to the National Assembly on the activities of the authorities, but also on its own activities and expenditures. The Commissioner submits to the National Assembly another reports if needed. We will analyze some of them in order to have some idea of what the work is about, but also of the state of the Republic of Serbia, when it comes to law that is directly reflected on the principle of democracy.

Report on the implementation of the Law of Free Access to Information of Public Importance and the Law of Personal Data Protection of 2015:

In 2015 the activities of the Commissioner were significantly increased both in scope and complexity of the cases. He had 11,880 cases in his work, including 9,012 cases in the field of free access to information and 2,868 cases in the field of personal data protection. If we look at year 2014, we can notice an increase in work by 4.3%. In this year, the Commissioner has completed the procedure in 8,016 cases, which is 3.2% higher than in 2014. This right was used the most, as evidenced by the number of 30.000 requests that citizens, as clients of the public authorities, submitted most often because of suspicion about the regularity of the work of public authorities, the usage of adequate rules for solving specific cases, public funds disposal, "silence of administration", treatment of the environment, human health, animals, etc. Also, in this year, even in 115 cases, the assessment of the legality of the Commissioner's decisions with the filing of the claim to the Administrative Court has been requested, and none of the contested decisions has been annulled. The Constitutional Court resolved 8 constitutional complaints submitted by the parties regarding the implementation of the Law on Free Access to Information of Public Importance. All lawsuits were dropped. On the basis of the presented statistical data, we come to the conclusion that the work of the Commissioner in this period was of high quality, honest, conscientious, but insufficiently up-to-date. Because of the accumulated, unresolved cases, now there are yet under developed service, few employees, and the lack of adequate space for work. The Commissioner's Office made significant progress when the competent government services provided the necessary work space.

Report on the implementation of the Law on Free Access to Information of PublicImportance and the Law on Personal Data Protection of 2016:

The continuous increase of the cases under the competence of the Commissioner is constantly increasing, as it wasrecorded in 2016, too.With the transferred cases from the previous period for which the procedure was not completed (3,864), in 2016 the Commissioner had a total of 12,101 cases, out of which new cases were: 5,291 from the area of the right to free access to information, 2,464 from personal data protection, and 482 from both areas.

Significantly, thedifferent ways and methods for improving the professionalism of employeesand, thus, the efficiency of the authorities have been taken.Some various trainings have beenconducted this year, as well as seminars, and congresses,whose goal was to provide the best staff,prepare for the upcoming challenges, and pay tribute tothe most successfulparticipantsin the form of certificates.

Fromthe adoption of the Law on Free Access to Information of Public Importance (2004) until 2015, there was a constant progress in the realization of this right.However, in 2016, certain situations happenedwhere we were confronted with different practice and denied the required information. Public authorities deprived citizens of information of public importance, andthe Commissioner did not have them either, even though he had performed his duty in accordance with law and morality.One such case, nowwidely known, refersto the demolition of buildings in Hercegovackastreet in Belgrade, in theSavamala district.It happened on April 25th 2016,and even today there has been no disclosure of information of interest to society, especially since behavior was vandalistic, violent, arbitrary, and carried out in late night hours.Even though this seems to be forgotten,the citizens still remember what happened that night, and, as time passes by, their desire to know thetruth does not disappear,yet has grown into dissatisfaction and anger.This is an excellent example of connection and conditionality between the right to free access to information of public importance, on the one hand, and democracy, on the other.

Report on the implementation of the Law on Free Access to Information of PublicImportance and the Law on Personal Data Protection of 2017:

In 2017, the Commissioner received 10,832 new cases, which is almost three times more than in 2016.Out of that, 5,193 cases are from the area of the right to free access to information, 4,607 cases relate to the protection of personal data, and 1,032 cases refer toboth fields of activity of the Commissioner.Considering the significant number of transferred cases from the previous years, the Commissioner was faced with a comprehensive and complex work that he managed to master, and prove that the efficiency of his work was raised to an even higher level.In 2017, he completed 10,797 cases, three times more than the previous year. The next year 2018, 4,107 cases were transferred, according to which the procedure was not completed.The commissioner, as an institution, but also a trustee, received numerous awards from the professional and general public for his work (16 formal awards and recognitions).In 2017, the Commissioner received the recognition of Online Media "Balkan Insight" for his work on transparency of the authorities and assistance to the media.It is a prestigious ceremony that gathers investigative journalists to the Balkan Investigative Reporting Network (BIRN) in all countries of the Western Balkans, and the Commissioner Rodoljub Šabicwas included in itsannual list of "Heroes of the Balkans - People Who Saved 2017".On this list, in addition to the names of the prominent people in2017, thereisa concise explanation of their merits, thereupon, for the Serbian Commissioner it was stated that he was a great fighter for the rights of journalists, and it was noted thathe received more than 287 lawsuitsin the area of the right to free access to information only in January. Šabic submitted a request for the execution of his decisions to the Government more than 60 times, but he often encountered this executive body being ignored.He also criticized the prosecutors and other authorities that did not perform their jobs in a conscientious and honestmanner, so he regularly remindedthe public ofthe mysterious demolition of the district of Belgrade at night, as well as of the issue of checking the property status of Belgrade Mayor Siniša Mali. These are just some of the praises attributed to the Commissioner Rodoljub Šabic, but they are certainly enough for the public to recognize a sacrificedand quality work that directly reflects

on their basic rights and ways of life. Also, it pays tribute to such individuals so as to incite them to continue working in this efficient way.

The above mentionedreports are public, and theycan be foundon the Commissioner's website.They contain a number of other issues concerning the contemporarysituation, as well as the assessment of the quality of currentstrategies and recommendations forcertain changes in order to improve the current ones and eliminate deficiencies.

Although the right to free access to information of public importance is an active right whose realization implies the initiative and access of citizens to subjects that have the information they want, and, in some cases, the dynamic behavior of citizens can be replaced by the media.Such cases are of general interest, and affect the broad or entire audience.One of these cases, for example, is the electoral process that the media closely follows.The media in this case have a complex role that consists ofinforming the public, creating confidence in the electoral process, and providing assistance in the realization of some basic human rights.Theyfollow and minutely transmit the flow of the electoral process from the earliest stages to the end of the election, andafterwards, theyreportthe atmosphere, satisfaction or dissatisfaction of the public, the opposition, etc.The citizens must be informed on time where, when, and how to vote, as well as of the importance of participating in elections, and the appeal to avoid electoral abstention. Electoral abstention means the absence of voters on elections.At first glance, it seems that we are talking about exercising the right to free access to information of public importance, but we have tobe very careful. This right is very specific and is easily connected with similar media rights.The media have become a part of the reality without which we cannot imagine life, whereforethey are a very interesting field for analysis and study.

The Law on Free Access to Information of Public Importance (Article 7) stipulates that a public authority must not put any journalist or public mediain a favourable position when several of them make a request, in a way that only she/he is given, or is the first one given, the right to access to information of public importance.The public authoritymay also refuse to provide information to the public if it is published and available in the country or on the Internet. Then it will refer her/him to the information carrier where information can be found, as well as the date of its publication, and, if the information is widely known, itis not obliged to give a response.

If media representatives get between citizens and authorities, they need to work professionally, objectively, neutrally, and in a balanced way, which means the exclusion of subjectivity in order to provide the media with the opportunity to choose the option that is adequate for them, and take the position that will help in making future decisions.The media have always been a well-informed source that provided the audience with information on current events, but also onpast onesif there was interest or it concernedissues of greater importance that could affect the later events.Being available with numerous and varied data, and closely following the society and turbulence in it, the media representatives have become part of the system. Therefore, many things in the future can be predicted by them and with a certain level of security depending on the amount of information, the experience in similar things, as well as the possible existence of legality. Indicating what could be

the nextmoves of the ruling authorities,and preparing the public for imminent events,the media are characterized as an excellent prophet.
The modern age implies knowledge, information, general culture, and an active way of life.The accelerated flow of information and itsmultiplication makes people want to constantly work on themselves, study the new and unknown things, and be trained to provide their own contributions to their own country, and the world, too.Nowadays, information is considered to bean oxygen necessary for the life of democracy.It achieves equality, but it also desires to participate in the changes for a better future.As long as this desire exists, there is ahope for astate, its citizenship, i.e., for the world andhumanity. Only a few decades ago, the image ofSerbian society was completely different.In the 70sof the last century radio and television were the most widespread means of mass communication,which was not affordable forevery household.Out of 10 households, 4 of them had radio as well as TV.The factors that primarily influenced the level of resources in families concerned the cultural and creative degreeof development of the environment in which they lived, as well as the economic and social opportunities of that time.The cultural transformation of society, changes ofthe way of life, and the importanceof education followed soon, all thanks to the initial forms of media resources.Today, although being advanced, society is continually setting new standards as a result of the fast and interlaced information network that transmits experiences not only onnational but also on global level. Therefore, an individual can have free access to different cultures, traditions, characteristics of other countries and nations.

CONCLUSION

Information of public importance, the right to free access to information of public importance, the media, and democracy presentfour informativeconcepts that make up the unbreakable unity and foundation of a modern state and advanced society. Information of public importance is the best way to prove the citizens that they have chosen the right people to rule the country. They are reflected in the right to free access to information, and form basic links in a circular democratic society. We use the term circular, because these elements are mutually dependent, complementary, intertwined, and together can achieve the goal of each state community. Their significance is confirmed withthe positionthey have in the national, as well as in the international legal order. There are numerous international document foresee these rights as being basic principles. Taking everything into consideration, it could be said that one cannot imagine a comfortable, civilized and cultural lifewithout having the basic rights and principles necessary for a person to work on oneself, and such possibilitiesinevitably lead us to a better future, and enable us to have constant control of results and achievements.

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INSTITUTIONAL ELDER ABUSE

Dragana Kostevska, PhD Student
Faculty of Security – Skopje, "St. Kliment Ohridski" University – Bitola, Republic of North Macedonia
Draganakostevska@gmail.com

Olivera Docevska, Lawyer
M.A. candidate in politic - Diplomacy and International relations, International human rights law (Certificate, 2-years education and training UN& OHCHR&ICGO)
Republic of North Macedonia
Olivera.docevska@hotmail.com

Natasa Todorovic MPH
Red Cross of Serbia, Belgrade
Republic of Serbia
Natasa@redcross.org.rs

Milutin Vracevic MD, MPH
Red Cross of Serbia, Belgrade
Republic of Serbia
Milutin@redcross.org.rs

Abstract
Elder abuse is a violation of human rights and it is the duty of the government and its institutions to address it through prevention and protection of older people. The main types of elder abuse are: physical, psychological, sexual, financial as well as neglect and self-neglect. Due to the seriousness of the injuries and the consequences of these abuses, appropriate mechanisms are needed for protection, early detection and their criminal sanctioning. On the other hand, the structural abuse itself contains, where, among other things, it is manifested through: discriminatory abuse, financial abuse, neglect, physical abuse, psychological and emotional harassment, sexual abuse, as well as verbal abuse. The main issue concerns the following: what happens when elder abuse is part of the structure of legislation and public policies and is built into the institutions and how this can be challenged and changed to ensure that older people are protected.

There is no consensus on the definition of structural/institutional abuse, so different aspects of structural elder abuse will be analyzed.

Keywords: Institutions, Elder Abuse, Prevalence, Program Abuse, System Abuse, Risk Factors.

One of the fundamental challenges which modern society is facing with is the problem of demographic aging. Demographic changes as a result of demographic aging are caused primarily by the declining birth rate / fertility that reduces the number of young people as a working population, thus contributing to an increase in the number of old population. In such a constellation of social relations, biological aging comes into play, which primarily refers to the extension of the lifetime, the improvement of the living standard, the progress and the application of modern achievements in health hygiene conditions. United Nations estimates for an age group above 60 years indicate a steady increase from 16.5% in 2009 to 33% in 2050 and to the age group above 80 years from 2.0% in 2009 to 6.8% in 2050.[209] In addition to this, we will emphasize that if in the fifties the average life expectancy of the population in the Republic of North Macedonia was about 60 years, today we have a significant difference of 76 years for women and 72 years for men.

Despite the growing number of old people, this vulnerable category faces an increased risk of human rights violations, discrimination and social exclusion. Unless concrete steps are taken to prevent these phenomena, this tendency will contribute to an increasing number of old people who are frail and more dependent on care and assistance from others who are more likely to abuse and neglect.

Many studies on abuse and neglect of older people focus on the prevalence, causes, risk factors and family interventions, with less attention being paid to those old people people accommodated in appropriate institutions (Comijis, Pot, Smith, Bouter , & Jonker, 1998;[210] Loewenstein, Eiskowitz, Bend-Winstein and Enosh, 2009;[211] O'Kief et al., 2007;[212] Sanmartin and Iborra, 2007;[213] Thomas, 2000[214]). The first case study of institutional abuse was developed by Peter Townsend and published in Last Refuge in 1962.[215]

There is no clear definition of institutional abuse; however, the division of this type of abuse into three categories has been made:[216] *open abuse* is most similar to

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physical, sexual or emotional abuse of children by a foster parent or foster care worker; *program abuse* refers to acceptable conditions under which one institution must operate; *system abuse* involves an entire care system that is stretched beyond the capacity and causes maltreatment through inadequate resources. In this paper we will deal with the issue of abuse of old people in institutions where there is poor or inadequate care for these people within: care homes, nursing homes, hospitals or outpatient clinics. Characteristic of institutional abuse is that it manifests itself through all kinds of abuse: financial, emotional, physical, sexual, verbal abuse, and disregard for the old people.

The World Health Organization defines the abuse of the old people as "A single or repeated action or lack of appropriate action that appears within any relationship where there is a pending trust, which in fact causes harm or anxiety to an old person" (WHO , 2002). Abuse of old people can occur in the following forms:

Mental abuse involves attempts at dehumanization and underestimation of the old people, including: threats of using violence, threats of being abandoned and left alone, deliberate intimidation, lying, mockery, insulting, inappropriate treatment, social isolation, denial of right to choose, ignorance and criticism.

Financial (economic) abuse is very common in old people, when people in their immediate environment abuse their financial assets and property, and are manifested by: theft of money, values or pensions, sale of property without consent, forcing old people transfer of property or money to a third party, misuse of power of attorney, change of will, signing of documents instead.

Physical abuse is manifested by inflicting pain or injury, physical force or physical limitation, or preventing taking drugs through: hitting, pushing, slapping, spitting, forcing appropriate actions against the will of the old person, inadequate*Sexual abuse* includes various forms of sexual behavior, harassment (sexual harassment, assault and embarrassment) without their will and without their consent: touching against the will of the old person, as well as all kinds of sexual violence such as rape, sodomy, nudity and photography.

Neglect and self-neglect is the failure of caregivers to fulfill their obligations to provide the necessary protection. Ignorance may or may not involve conscious and deliberate attempts to inflict physical or emotional pain towards the Many times the personal characteristics of the old people are in fact a risk factor that predisposes abuse to the old people like as: age, gender, worsening health, dependence on care and care by another person, low level of self-esteem, at increased risk are the old people who have already encountered or reported abuse, social isolation, aggravated the health condition of the old people, where access to health and social services is aggravated, so the old people are forced to stay in Institutions and in this way increase the risk of abuse.

Regardless of the type of abuse suffered by the old people within the institutions, there is a high number of high-risk factors for institutional abuse: disregard of the right to choose; lack of care centers for the old people; inadequate care in the centers such as: non-hygienic conditions, inadequate beds, deliberate awakening, lack of personal clothing, lack of food or improper diet, especially in

old people patients with chronic digestive diseases, abuse of personal financial resources not provided in a program that does not have the qualifications to work in those centers, poor communication skills, increase or decrease the prescribed dose of drugs that do not fit into the treatment of the old people, restriction of freedom of movement and transfer to another place of residence (cheaper state institution where the person is on a waiting list for years) and accommodation of an old person and threats to the family for causing damage to custody, contrary to the Contract for accommodation of a protégé - old person (from law practice). Due to the forms and ways in which institutional abuse is manifested, it can be carried out by more than one abuser, and on the other hand there may be more old people who face the same type of abuse.

From 1998 to 2000 in the United States, an analysis of complaints related to the care and abuse of the old people was conducted, based on the data from the Ombudsman's reporting system in Connecticut and all nursing homes in the state. The following categories were analyzed: physical, sexual, verbal, financial abuse, and other incidents (for example, an overdose of drugs). The results indicated the following findings: out of nearly 4,000 complaints received, 122 complaints were against homes for the old people, which concerned the following categories: physical abuse (N = 50), neglect (N = 23), verbal abuse (N = 23), financial abuse (N = 16), sexual abuse (N = 15). The credibility of these data was questioned, because the sample was very large, but also biased, because the analysis was done only on reported cases, but not all old people are prone to reporting abuse in the institutional settings. On the other hand, applications apply only to the territory of Connecticut.[217]

Weatherall in 2001 investigates the extent of abuse in nursing care facilities in New Zealand. On the basis of conducted interviews with 26 managers from 27 facilities, the study found that almost all managers (92%) in the previous year identified at least one abuse against an old person who stayed at the institutions. In eight institutions in the last six months, at least one person was victimized for abuse. Psychological abuse committed by staff or a healthcare worker has dominated the abuse most commonly.[218]

Due to identification problems, stigmatization and institutional systems, very often old people have negative experiences for detecting abuse. There are many reasons why abuse is still private, family work that passes unauthorized and far from the public's eyes. Not reporting can result from a situation where *the old person did not know - or did not want - report the abuse or because the old person may not have been physically able to do so due to some form of cognitive impairment. The reliance on self-reporting is problematic. Older people who have suffered abuse may not feel comfortable talking about this problem primarily because of fear of retaliation. On the other hand, it takes a high level of moral compassion among staff members to recognize their own disgusting behavior or their colleagues for fear of retaliation, including the possibility of criminal sanctions. Similar*

[217] Allen, P. D., Kellett, K., & Gruman. C. (2003). "Elder abuse in Connecticut's nursing homes". Journal of Elder Abuse & Neglect, 15(1), 19–42.

[218] Weatherall, M. (2001). "Elder abuse: A survey of managers of residential care facilities in Wellington, New Zealand." Journal of Elder Abuse & Neglect, 13(1), 91–99.

conclusions can be drawn from old-fashioned data related to reporting abuse by care staff (Jogerst et al., 2005).[219]
Due to not reporting the abuse to the relevant authorities for investigating these cases, when it comes to abuse in the old people, it is characterized by a high darkness of criminality in this population.

Institutional care for the old people in the Republic of North Macedonia
The total number of retirees in the Republic of North Macedonia is 296,000 where the aged homes in this country account for 0.5 per cent of the total number of old people, although European standards recommend that they be covered up to 5 per cent. At present, 31 nursing and retirement homes with a total capacity of 950 beds are owned by the state and pensioners' associations. Five hundred and 70 beds are in the four nursing homes: in Skopje, the Gerontology Institute "13 November" and the department "Mother Teresa" with a capacity of 111 beds, and the home for the old people "Sue Ryder" in Bitola have 140 beds. The home "Zafir Site" operates in Kumanovo and has the largest capacity - 165 beds. The House "Kiro Krsteski-Platnik" in Prilep has 151 beds. Of the total of 567, 215 are old materially unsecured persons and are placed through the Center for Social Work, which means that the state participates in the settlement of the costs of their accommodation, food and medical care through the Ministry of Labor and Social Policy.[220]
In the Republic of North Macedonia there is almost no research on institutional abuse of the old people. Namely, several research has been undertaken on specific forms of abuse, such as: Community survey of elder maltreatment: *A report from the former Yugoslav Republic of Macedonia;*[221] Prevalence of Elder Abuse and Neglect: *Findings from First Macedonian Study*;[222] Relationships and community risk factors for elder abuse and neglect: *Findings from the first national prevalence study on elder maltreatment*.[223] Therefore, in this direction, we will refer to the analysis of the Ombudsman for keeping the general situation in the Homes for the old people and exercising their rights.[224]

For the period September-October 2014, representatives of the Ombudsman visited the following institutions: Public Municipal Institution - Zafir Sajto Home

[219] Jogerst, G., Daly, J., & Hartz, A. (2005). "Ombudsman program characteristics related to nursing home abuse reporting." Journal of Gerontological Social Work, 46 (1), 85–98.
[220] Sveto Toevski. Available at: Business with nursing homes "blooms". Accessed on 03.03.2019
[221] Marijana Markovik, Dimitrinka Jordanova Peshevska, Dinesh Sethi, Marija Kisman, Eleonora Serafimovska. "Community survey of elder maltreatment: A report from the former Yugoslav Republic of Macedonia". Available at:https://www.researchgate.net/publication/322338883_Community_survey_of_elder_maltreatment_A_report_from_the_former_Yugoslav_Republic_of_Macedonia. Accessed on 04.03.2019
[222] Dimitrinka Jordanova Peshevska, Marijana Markovik, Dinesh Sethi, Eleonora Serafimovska, Tamara Jordanova. "Prevalence of Elder Abuse and Neglect: Findings from First Macedonian Study." Available at: https://www.researchgate.net/publication/285212669_Prevalence_of_Elder_Abuse_and_Neglect_Findings_from_First_Macedonian_Study. Accessed on 10.03.2019
[223] Dimitrinka Jordanova Peshevska, Marijana Markovik, Dinesh Sethi, Eleonora Serafimovska. "Relationships and community risk factors for elder abuse and neglect: Findings from the first national prevalence study on elder maltreatment." Available at: https://scholar.google.com/citations?user=Dg955U8AAAAJ&hl=en. Accessed on 10.03.2019
[224] The Ombudsman is a body that protects the constitutional and legal rights of the citizens of the Republic of Macedonia

for the Old People in Kumanovo, Public Municipal Institution - Kiro Krsteski-Platnik's Home for the Old People in Prilep, Public Municipal Institution - Sue Rider Home for Old People in Bitola and PHI Gerontology Institute "13 November" - Mother Theresa Department in Zlokukani-Skopje. *The categorization of users in old people's homes is done by gender, and depending on the health condition, the beneficiaries are deployed in the group of mobile and immobile persons, individuals who can independently and without help fulfill their needs, as well as seriously ill persons who need help in fulfilling the needs, that is, people who cannot self-care.*[225]

Table 1: Capacity of nursing homes, with number of beneficiaries[226]

Name of the nursing home	Total capacity	Number of users
Nursing home „Zafir Sajto“ – Kumanovo	199	165
Nursing home „Mother Tereza“ – Skopje	111	88
Nursing home „Kiro Krstevski-Platnik“-Prilep	150	137
Nursing home „Sju Rajder“ - Bitola	150	147

The visit to these homes indicated the following shortcomings regarding the institutional protection of the old people:

• Public Municipal Facility Old people House "Zafir Sajto" –Kumanovo

The five nurses, caregivers, social workers and physiotherapists do not fully meet the needs of the old people in this institution. Social workers are not involved in education organized by the Ministry of Labor and Social Policy. The lack of an employed doctor and a psychologist is a big problem for the old people, especially for those who are accommodated in the Geriatrics Department. Living and hygiene conditions are not satisfactory, especially on the ground floor where an odor is felt. The care of other socially vulnerable groups (victims of domestic violence, homeless people, street children, etc.), and especially adults with psychological problems in this institution, points to a problem regarding the social functioning of these persons in the institution.

• Public municipal institution - Home for the old people "Kiro Krsteski-Platnik" in Prilep

[225] OMBUDSMAN. Information for the General Condition and the Realization of the Right of the Old Persons in the Houses foe Old Persons in the Republic of Macedonia. Available at: http://ombudsman.mk/upload/documents/2015/Predmetno%20rabotenje-Informacii/Informacija%20starski%20domovi-2015.pdf. Accessed on 15.03.2019

[226] OMBUDSMAN. Information for the General Condition and the Realization of the Right of the Old Persons in the Houses foe Old Persons in the Republic of Macedonia. Available at: http://ombudsman.mk/upload/documents/2015/Predmetno%20rabotenje-Informacii/Informacija%20starski%20domovi-2015.pdf. Accessed on 15.03.2019

In this institution, patients do not have sufficient visits by a doctor, as well as insufficient care by the nurses. In terms of therapy, patients receive one-off therapy. Namely, the photo static stand is the medicines taken from the original packaging, which indicates that the drugs are without a name / name and the validity period of the medicine cannot be determined. Hygienic conditions are not satisfactory. The rooms on the ground floor are not renovated, the walls are old with moisture, and some of the users use old and worn blankets, which they store in old and partially broken wardrobes. Characteristic for this institution for the old people is that it is the only non-institutional form of protection of temporary care for other socially vulnerable groups (victims of domestic violence, homeless people, children on the street and others).

• Public Municipal Institution - Older House "Sue Ryder" – Bitola

The old people in this institution live in clean and pleasant conditions. Hygiene is at a satisfactory level, with warm and bright rooms. Ensuring user privacy implies respect for the dignity, integrity and human rights of the old people. In this institution, the users are satisfied with the attitude with the employees, their care and respect as individuals. Due to the waiting list, it is necessary to increase the accommodation capacity for the old people.

• JZ Gerontological Institute "13 November" - Skopje, Department "Mother Teresa" in Zlokucani

Due to the five decade existence of this facility and without any reparative measures taken, the living conditions of the users are not satisfactory. However, the poor conditions arising from the old temporary construction of this facility do not hinder hygiene to be at a satisfactory level despite the small number of staff, which is not sufficient. Apart from hygiene and staffing services, they are at a satisfactory level. The old people in this institution are cared for and respected as individuals.

CONCLUSIONS AND RECOMMENDATIONS

The analysis of Homes for the old people points to a number of irregularities and inconsistencies in the way of functioning in relation to: lack of necessary and appropriate care and care staff, unhygienic conditions, inadequate medical care, inadequate treatment of the old people, indicates that the old people often face forms through which institutional abuse is manifested.

It is therefore necessary to carry out a large number of surveys in this area, which will provide data on the real situation in the institutions in which the old people live. Considering the fact that very often the abuse, regardless of the type, is undeclared, it is necessary to engage experts in the area who will be able to see whether it is a matter of individual acts of abuse or neglect in the institutions or it is an institutionalized abuse that relates to unsuccessful work program in the institution itself. Namely, abuse in institutions is often a result of individual acts encouraged and supported by a poor institutional program for working with the old people. On the other hand, it is necessary to increase the awareness of the old people about their rights and education in order to recognize the forms and ways of violation and abuse of their rights. It is necessary to raise public awareness about the size and prevalence of the problem of abuse of the old people in the institutions, as well as

the difficult psychosomatic, physical and social consequences that the old people are facing with.

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RUSSIAN FOREIGN AND SECURITY POLICY. IMPLICATIONS ON THE BALKAN PENINSULA AND IN EUROPE

Ma Blagojche Petrevski[227]

Abstract
The indirect involvement of Russia in the Ukrainian crisis, as well as the annexation of Crimea, represented two major steps in Russian foreign, but also as well as security policy. European leaders and institutions seemed as they were surprised by the way of how Russia reacted to these two issues as a state.
But, what further attracts the attention of the European public and politicians from Europe in general, is the presence of Russia, primarily in the Balkan Peninsula, but also wider in Europe.
The aim of the work is basically a modest attempt to analyze Russia's activities on the external political scene, as well as the security implications that the practice of this type of policy has on the everyday relations of the Balkan Peninsula countries, but also from Europe. In addition, the NATO-Russia relation will also be of interest to this paper. According to these guidelines, the most serious military risk that Russia faces is the expansion of NATO. There is more reason why we are approaching an attempt to explain these relations. We justify in the fact that many future state decisions will definitely depend on this relation.

Key words: NATO, Russia, crisis, relation, policy, influence.

DEFINING THE RUSSIAN FOREIGN AND SECURITY POLICY.

Russia is a country that, in terms of today's international relations as well as in the direction of defining and pursuing a global policy, plays a very important role. Its "force" at the international level does not appear to be, that is, it does not arise only and only during Vladimir Putin's reign, but that that state, that is, that epithet of a global and significant international force and factor, Russia had and in the past. What is Russia today, its significance, its influence, is only one logical connection with the past and maintaining the country in a position of constant force on the international level.
Often, the scientific public asked and questioned the source of Russia's power, its positions, its strategic interests, and the policies it pursues in pursuit of the set goals. And, to this day, it seems that no final decision has been made, that is, a definition of how Russia defines its strategic interests, how it seeks to achieve, that is, the factors that contribute to the process of building external, and in that context, the country's security policies.
The geographical position of Russia, the fact that part of its territory is in Europe, and the rest in Asia, of course, should be considered as a position in those moments

[227] PHD CANDIDATE FACULTY OF SECURITY – SKOPJE. *blagojcedugal@yahoo.com*

when Russia's foreign policy is discussed, and in concordance with this the security policy of the country itself.
If we engage in a historical debate about Russia's role through the years and centuries in the past, perhaps for a moment we will get to a position to have a clearer position for the country in the past, and there in that space to try to find a parable, today's Russian political establishment is trying to implement it as an external and security policy.
Russia had and maintained contacts (influence, common policies and interests) with Balkan countries in the past. But the purpose of this paper is not historical analysis and presentation of Russia's historical positions. On the contrary, through this effort we want to come to a point where we will be able to find and define the main components of which Russian foreign policy arises. Additionally, in this direction, we will try to find out whether these components have, ie, they contain certain connections with Balkan countries, and if they contain, how they are implemented. When we use the term connections we want to emphasize that we do not mean the connection of peoples on the basis of religion, language or any similar component, but primarily in the minds of whether in the projections of Russia, especially in its strategic projections, planning and activities, have envisioned and defined the Balkans as a field where they want and strive to implement their policies and achieve their own goals and interests in this part of Europe.
In the approach to this paper, it is understandable that the historical development of Russian foreign policy cannot be completely eliminated, that is, the influence that certain Russian leaders had on that policy from the end of the 20th and the beginning of the 21st century. As the most prominent Russian leaders in the above-mentioned period, we distinguish Boris Yeltsin, Dmitry Medvedev and, of course, the incumbent President of Russia, Vladimir Putin. All of the aforementioned political actors have left their mark in the way that Russia led, in the conduct of foreign policy, in positioning Russia in the world as a military force, The incumbent President of Russia remains an enigma for the Western world today and rarely attempts to define and predict it, that is, to give a certain forecast for his rule, his possible future steps, as well as the manner in which he is pursuing the Russian interest beyond the borders of the country.
No matter which political leader we are talking about, when it comes to Russian foreign and security policy in the process of their adoption and implementation in real life, two documents[228] are of crucial importance: the Concept for Foreign Policy and the Concept for National Security. The above concepts in their character are strategic documents in which i.e. through which define and define the main external and security challenges of Russia, but also present the ways i.e. policies how to overcome the major political and security challenges. Immediately after the crisis that engulfed Russia in the late 1980s and early 90s of the last century, all the major political factors that led the Russian foreign, and in certain segments and security policy, tried and sought to consult and apply guidelines deriving from the aforementioned documents.

[228] *Russian Foreign Policy: The Return of Great Power Politics*. Mankoff Jefry. 2009. Page, 12.

Russia's geographical position does not allow a country to conduct only one-dimensional foreign policy, that is, focus and focus exclusively on achieving a strategic foreign policy or security goal. On the contrary, the epithet of global power and a factor on which a number of processes depend on its immediate neighbors, as well as in the region, but also on a global level, "carries" Russia in a position in the process of defining the foreign policy (strategic interests) as well as in the definition of security policies to approach multilaterally.

Two political leaders (Presidents) of the Russian Federation have emerged in the process of applying multilateralism in building foreign policy and defining the country's most important security segments. It's about Boris Yeltsin and Vladimir Putin.

Perhaps the best definition i.e. the best explanation for what Russian political leaders understood as a multilateral approach to foreign policy is found in the 2009 book of Elana Wilson Rowe and Stina Torjesen, The Multilateral Dimension in Russian Foreign Policy, where multilateralism is based on Putin's approach, and previously of Yeltsin implies: "By 'multilateralism' we refer to institutions and issue areas that involve multiple countries (three or more) working in concert on a sustained manner. Multilateralism can be distinguished from integration, which involves pooling certain aspects of state sovereignty and authority to a supra-national government body (such as the European Commission in the European Union)[229].

When and how Russia returned to the big stage as an important political and security factor and whether foreign policy played a role in the process of revival of the conditionally speaking Russian empire. The answer to this dilemma is undoubtedly the name of Vladimir Putin, the man who, according to most of the indicators of the power of a state, is best served by the re-emergence and taking of the old - new role of Russia as a global force. But whether Vladimir Putin was guided by an ideal, whether he had previously defined goals and ways to realize his ideas and how much he has managed to date, are also questions that undoubtedly do not have one and only answer, but towards the same is towards the attempt to unmask Putin's policies seem to approach each country differently. But in this paper, we will not go in the direction of defining how other countries perceive it, i.e. how they embrace Russian foreign policy, but we will try to find the most important points that Putin leads in the process of defining and managing foreign and security policy.

It is not surprising to conclude that one of Putin's approaches to defining his country's foreign and security policy is pragmatism. Namely, perceiving the moment i.e. the growth of revenues that Russia realizes as a result of the exploitation of its resources, Putin carefully and strategically approaches the utilization of those funds in the process of building its foreign policy and in its attempts to implement it in the form i.e., in the form of achieving a certain influence on foreign (foreign) countries, most often through acting in the political processes in the targeted countries.

[229] *The Multilateral Dimension in Russian Foreign Policy*. Elana Wilson Rowe. Stina Torjesen. 2009. Page 1.

But in the process of policy implementation, although the President has the main role, he is not alone in implementing the policies himself. There is a certain place for the Ministry of Foreign Affairs, and when it comes to foreign policy of Russia, here we can not in any case expose or marginalize the role of the Russian Orthodox Church. Its impact is strongest and most pronounced especially in the policies related to the countries of the Western Balkans (those countries that are predominantly Orthodox).

Legitimately, the question is whether foreign policy can be implemented without proper internal policy, i.e. whether these two different policies, on which any country depends, analogous to that of Russia, have some relations and connections, i.e., whether they are in a certain cohesion or a collision process is in question when it comes to Russia. Of course, if we approach a process of historical analysis of Russian foreign policy in the past, it is certain that we will find an example where there was a certain situation of the discontinuity of the external with internal politics, surely there was a position where internal political goals were in a position of a different discourse with the country's external political goals. But in this paper we want to talk about Putin, his approach to these equally important and important segments in the process of running a state. So, it is no coincidence that we will give way to the appearance of the Russian right that seems to be closely connected with the beginning of Vladimir Putin's rule.

When he conquered power, Vladimir Putin became involved in the process of creating official patriotism as a condition for mobilizing people, something that would later be much needed in the process of defining foreign political goals and obtaining support for their realization. To achieve this end, the political power elites in the Kremlin have worked to mobilize the population behind the state enterprise while at the same timerestricting the political freedoms of individuals. On the one hand, they have successfully improved the living standards of the Russian people, making it plain to the citizenry that the Putin path will lead to material advantages. Positive changes to the everyday lives of Russians have produced growing grassroot ssupport and enthusiasm for Russia's current trajectory. On the other hand, Putin and most politicians have increasingly turned to patriotic rhetoric in an attempt to enlist the population to rebuild a Great Russia. In return for opting out of politics and leaving such matters in the hands of the current power brokers, the Russian people will receive material well-being and be able to be full of pride intheir country[230].

RUSSIA – NATO RELATIONS.

The attempt to build a critical mass that would be patriotic and hostile to Mr. Putin was unquestionable in what Russia means - NATO relations. Especially the moment of admitting the Baltic countries to the Alliance has increased the need for patriotism among Russian citizens, which would thus be transparent or publicly and transparently support Putin's policies regarding NATO. The Crimean annex in 2014 does not appear to be a real reality if Putin did not enjoy the support of the population of Russia.

[230] *Russian Nationalism and the National Reassertion of Russia*. Laruelle, Mariel. 2009. Page, 25.

When Russia basically ‘lost’ the Baltic[231] states, the next geographical ‘buffer’to Europe and NATO became all the more important, i.e. Belarus, Ukraine andMoldova. By the end of the Yeltsin era, Russia’s neglect of the problems in thisregion was slowly remedied, and Russia’s main strategic problems (nuclearweapons and the Black Sea fleet) were basically solved by the time Putin cameto power. On the other hand, Ukraine, Russia’s most important neighbour by far,opted for closer relations with NATO and the EU, which caused another roundof negative security spiralling. Belarus was another story, the safest and mostfaithful ally of Yeltsin’s Russia, seen first and foremost in the extensive militarycooperation and the political unification process of the two countries. Belarus had its own security problem worsened by the westward drift of Poland and theBaltic states. The dilemma for Belarus was to create a Belarusian nation at thesame time as it was trying to remedy these new threats from the West by allyingwith Russia. Russia, in turn, hesitated to become too involved in the plans for aunion with Belarus since the Russian elites did not see a win–win situation, andPutin would look at Belarus with very different eyes than Yeltsin. Moldova,finally, has been yet an altogether different story. Torn by secessionist forces,mainly in Transdniester, and early Romanian claims on its territory and with noevident international ally, it was forced to accept the continuous Russian mili-tary presence in Transdniester and economic dependence on Russia. There wasno comfort to be sought in Ukraine or in Europe either; Moldova was left on itsown and basically forced to accept whatever Russia did in the region.

Russia and NATO do not have the same strategic priorities, a direct consequence of their competitive world views: while NATO functions as a supranational organization guaranteeing the imperatives of collective security, Russia places state sovereignty and the primacy of national security as a ferment of his conception of the world. In the same way, the notions of national sovereignty and the intangibility of borders, the foundations of the international system as understood by the West, are no longer of equal importance in the eyes of a Russian country which is oriented towards the militarized protection of its "close vicinity" and the exploitation of the right of peoples to self-determination.

From the point of view of the Atlantic Alliance and the United States, it took two years - since the Wales Summit in 2014 - for NATO's techno-administrative machinery to take stock of its reaction vis- à-vis Russia and passes from factual reassurance to deterrence against what the organization considers to be "the enemy of the moment". In terms of institutional inertia, after an initial stage of stupefaction following the Russian invasion in the Crimea, two years represent a short period of time to move a structure like the Alliance. Officially, Russia is now part of the "arc of insecurity and instability" on the periphery of NATO8 . In terms of NATO perceptions, Russia would be able to invade the eastern flank states of the Alliance (especially the Baltic States) "quickly and efficiently"9 because of its military power perceived as far superior in the Region10. These estimates, certainly based on serious analyzes, reinforce the Russian perception that NATO is a defensive

[231] *Return of the Balkans: Challenges to European Integration and U.S. Disengagement.* Janusz Bugajski, May 2013

entity fighting against the perception of a Russian threat analyzed as unjustified (but legitimate from the Russian point of view), security dilemma[232].

RUSSIA AND THE BALKANS – CONECTIONS AND INFLUENCE.

For the first time in its modern history, the entire Balkan Peninsula has the opportunity to coexist under one security and developmental umbrella combining the North Atlantic Treaty Organization (NATO) and the European Union (EU). Unfortunately, European and American leaders have been unable to complete such a unique historic vision, while the progress of several Western Balkan countries continues to be undermined by a plethora of political, social, economic, and ethno-national tensions and disputes. This monograph focuses on the escalating security challenges facing the Western Balkans, assesses the shortcomings and deficiencies of current international engagement, considers future prospects for U.S. military involvement, and offers recommendations for curtailing conflict and promoting the region's international institutional integration.

The EU's limitations as a hard power have been evident for many years in its disjointed foreign policies and restricted military capabilities. However, its political and economic model may also be fading as an instrument of attraction if it closes its doors to further enlargement or indefinitely delays prospects for new members. A sentiment of skepticism within the EU toward further enlargement has grown among EU publics during the era of austerity and as the budgetary and debt crisis have propelled several Mediterranean countries toward prolonged economic uncertainty that generates social and political turmoil. Even more ominously, if the Union itself begins to splinter in the midst of its protracted economic crisis, the possibility of institutional closure may leave the Western Balkan states stranded[233].

It seems that NATO-Russia relations have the biggest challenge for and around the Balkans, i.e. who controls this space and who has bigger ones. More pronounced influence between the Balkan countries. We do not want to marginalize the relationship between Russia and NATO, and when it comes to Ukraine and the crisis surrounding this country, as well as the Moldovan issue and Georgia, at the moment the Balkans seem to have the primacy.

Regarding the influence of Russia on the Balkans, it should be emphasized that the relations and connections that this country has with almost all Balkan countries, primarily with Bulgaria, Serbia, Albania, and to a certain extent with Greece, are relations that in themselves have i.e. contain deep historical moments.

We all know very well the role of Russia in the process of gaining Bulgaria's independence and in the formation of San Stefano (Greater Bulgaria).

Today's relations between Serbia and Russia, the strategic partnership in the field of security and the economy are only proof plus the close and historical relations of these two countries.

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[232] *The new NATO – Russian Relationship*. Marius-Iulian BADIU Ph.D, National Defense University "Carol I" badiumarius80@yahoo.com

[233] *Return of the Balkans: Challenges to European Integration and U.S. Disengagement.* Janusz Bugajski, May 2013.

The connection of Russia with Albania has drawn the roots of the communist era which, as a social order, was dominant in both countries in the period after the end of the Second World War. There is a certain view that there is nothing stronger than the ideological connection of two countries. This is exactly the case with Russia.
Russia's relations with Greece are relations that are primarily of economic character, and much less i.e. with a lower intensity we can talk about the existence of relations along the ideological line. The moment Greece falls into a severe economic crisis that threatened to cause a state of economic (financial) bankruptcy, Russia was one of the countries that offered "unreserved" assistance and support. But the economic injection Greece received from Russia is of course not to be seen as one-way assistance and support. On the contrary, it should be realistic and above all objective in the assessment of Russian-Greek relations and to recognize that today in Greece there are elements of increased Russian influence, especially in the part of political life and decision-making of the country itself.
Macedonia as a Balkan country cannot be forgotten in the process of analyzing Russian influence in the Balkans. Special attention should be paid to the current political situation in the country, the processes related to the Prespa Treaty and the future membership of Macedonia in NATO. From the manner in which the process itself was linked to the Prespa Treaty, as well as from the position of the international factor in Macedonia (especially the US and the EU), we came to a situation today in this small country to speak of a pronounced clash of pro-Russian and pro-western opinion among the population itself. Russia as a country certainly does not "spend" even from the funds invested by the western fencers in the country through various programs and projects, but still the public pro-Russian opinion and orientation seems to be greater day by day. There is a great influence here both on the spiritual connection of the two peoples and on the belonging to the Orthodox faith.
This brief analysis short essay does not allow wider elaboration of Russia's influence in the Balkans, especially in the above mentioned countries, but it is a good opportunity to note, i.e. to repeat certain moments and to accent them and treat them as serious political challenges

CONCLUSION

No one can predict the future steps of Russian foreign policy, especially its maneuvering moves when it comes to the area of the Balkan Peninsula. And this position is not a new conclusion. On the contrary, it is just one of a series of repetitions of attempts to analyze Russia's moves in the foreign and, consequently, security policy. Although there is no theory that can consistently indicate the steps that are likely to occur in the upcoming period, certain assumptions can be defined and noticed. Namely, from our perspective, we believe that the future foreign policy decisions of Russia (especially of a strategic character) will primarily depend on:
The final solution to the Ukrainian crisis and the uniqueness of the EU and the United States on this issue

- **Resolve the Kosovo issue and its consequences**
- **Serbia and its future as an EU member state or as a country strategic partner of Russia and outside the EU**

- **Bosnia and Herzegovina and its future**
- **The Albanian issue in the Balkans and the possibility of forming a large Albanian state (outside or in the context of the EU as a political creation)**

We do not want to override certain conditions and eventual consequences from them, but at the end of this paper, as part of the conclusion, we want to share a thought-based hypothesis that is valuable for thinking. It refers to one, "the imagined situation of a possible war on NATO-Russia relations". Can we expect ,,partisans'' to emerge under such a condition? The appearance of fighters (soldiers) who will primarily be driven by some ideological closeness to Russia (complemented by a strong presence of Orthodoxy as a religion?). And does Russia play precisely on this map with all its activities that are taking, and which apply only to Balkan countries, with particular emphasis on the countries of the Western Balkans?

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MEDIATION IN CRIMINAL PROCEDURE IN CHILDREN'S JUSTICE IN THE REPUBLIC OF NORTH MACEDONIA WITH SPECIAL FOCUS ON THE AREA OF THE COURT OF APPEAL-BITOLA

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

Nikola Tuntevski, Professor
University of St. Clement of Ohrid, Faculty of Law-Kichevo, Republic of North Macedonia
niktun@t.mk

Abstract
Mediation in criminal procedure is an alternative method for solving conflicts, meant to ease the work of the courts and prosecution and to achieve satisfactory settlement between the opposed parties in the criminal dispute. In many of the developed countries throughout the world this method is successfully implemented bringing many positive results. In the Republic of North Macedonia, mediation in child justice was implemented in 2013 with the Children's Justice Law, but its implementation in practice had pour results.
In this research we got data from the courts and prosecutions from the municipalities from the area of the Court of Appeal in Bitola about mediation in criminal procedure in child justice which will give an exact picture about what is happening in this field. This research is of great significance in locating the weaknesses of the implementation of mediation in child justice in practice.

Keywords: Mediation in criminal procedure, children justice, prosecutors.

INTRODUCTION

Working with children as offenders and victims is a very delicate matter. The approach towards the children in criminal procedure must be different from the approach to adults, because adults as developed persons, psychologically, mentally and physically can take their responsibility for their actions on their own, while children are still in the development and their family and social environment have a very large influence for their behavior. The children must have a chance to develop into adults with good behavior. Professor Jill L. Rosenbaum in her research found that those youth whose bond to their parents is weak, are more likely to be delinquent, while the youth who are more attached to their parents have greater direct and indirect controls placed on their behavior (Jill L. Rosenbaum, 1989, 31-44).

Some findings from the study of Finkelhor et al. showed that children exposed to violence are more likely to abuse drugs and alcohol; suffer from depression, anxiety, and post-traumatic disorders; fail or have difficulty in school; and become delinquent and engage in criminal behavior (Finkelhor, D et al. 2009).

In Macedonian legislation, a child is every person under the age of 18.

There is no doubt that children as offenders and victims need special treatment so they can be set on the right path. Once a child has shown a criminal behavior, it is a red flag that the child is headed in the wrong direction. It is very important part of the criminal procedure to focus more on the child, and not only on the crime that the child has committed. Mediation in criminal procedure is meant to give that exact focus on the child. Both offender and the victim are active participants in finding the solution for the crime that has been committed. In that way, the child can not only be more understood, but it can understand what effects it had triggered in the victim with its criminal behavior. In this way, the child can more easily connect to the victim's emotions and even feel empathy. If this is achieved, there is large possibility that the child offender will not be recidivist.

In the Republic of North Macedonia, mediation in criminal procedure in child justice is implemented in 2013 with the Children's Justice Law. This kind of mediation was meant to deal with the children in conflict with the law, to be set as alternative way for solving a criminal case that should end up in front of the Court. It is meant to bring the children offenders and victims into the center of the problem by giving them opportunity to find a resolution on their own for the crime committed, with guidance and help from a professional – mediator. By solving the criminal case by mediation with interaction of the both child offender and the victim, instead in front of the Court, the child offender has possibility to speak about what made him/her to the crime, to listen and understand the effects of the crime he/she did on the victim's live, to suggest possible solutions and to avoid a criminal record.

In this Law it is stated that after a report for a crime for which is predicted by law a prison sentence to 5 years, the prosecutor with authority after previous inform and writing consent of the child and its legal representative, its attorney and the victim, can direct them to mediation (Children's Justice Law, 2013, Article 79 Paragraph 1).

In cases when the court procedure has already started, until the end of the main hearing, the appropriate court for children can stop the procedure and direct the parties to mediation if they are all consent and had given their consent in writing Children's Justice Law, 2013, Article 79, Paragraph 2). Yet, for crimes against sex moral, sex freedom and gender based violence on females, mediation is not possible (Children's Justice Law, 2013, Article 79, Paragraph 4).

In the Republic of North Macedonia, mediation in criminal procedure in children's justice has a very low practice. In 2014 in the framework of the project "Support of the implementation on the concept of restorative justice" by the Ministry of Justice of the Republic of North Macedonia and the Norwegian office for mediation, which was conducted in the Municipality of Tetovo, the first three mediation cases in Children's justice were directed (Jovanovska A, 2018, p.24).

In the area of the Court of Appeal Bitola, there were no mediation cases in Children's justice (Jovanovska A, Tuntevski N, 2018).
So, it is obvious that mediation in criminal procedure is still not in practical use.
In recent research in 2018, Jovanovska searching for data from the Ministry of Justice about conducted mediation procedures in criminal cases found that at the state level these data are very poor and in the area of the Court of Appeal Bitola are no such cases. The Ministry of Justice explained that the biggest reason for this was that there are no finances in the Public Prosecutions and in the Courts so they can direct the parties to mediation. This was confirmed also by the experience with the project for restorative justice in children which was financed by Norway. Pilot area was Municipality of Tetovo and the results were visible only while this project was financed. After the end of this projectand closing the office in Tetovo, the mediation in criminal procedure in Children's justice was ended too (Jovanovska A, 2018, p.119).
What is known is that mediation in criminal procedure in Child Justice has zero practice in the area of the Court of Appeal Bitola, and very little practice in the Republic of North Macedonia. The financing of the mediation in criminal procedure is a big unsolved problem. In the research of Jovanovska and Tuntevski from 2018 there were results that the Public prosecutors who are working with children are never suggesting mediation as alternative choice (Jovanovska A, Tuntevski N, 2018). But, what else can be researched in order to find more about mediation in Children's Justice and its unsuccessful implementation in practice? It is of great importance to know if judges and public prosecutors think that they need more training about mediation in criminal procedure and their opinion on the question is mediation sufficiently promoted for the public to know about it from the implementation of the mediation in criminal procedure in Children's Justice?

MATERIALS AND METHODS OF THE RESEARCH

In order to get answers to some questions about the opinions of the judges and public prosecutors concerning mediation in criminal procedure in Children's Justice, a survey was conducted on the area of the Court of Appeal Bitola. Respondents were all the judges who work criminal cases from the Primary courts on the area of the Court of Appeal in Bitola and one public prosecutor of each Primary Public Prosecution on the area of the Court of Appeal in Bitola, only those who are working with children. The survey consisted of the following questions:
1. "Do you think that judges and public prosecutors need more trainings about mediation in criminal procedure in children's justice (like to recognize cases suitable for mediation procedure)?"
2. "Do you think that from the legal implementation of mediation until the present day it is made enough to promote mediation and for the public to know about it?"

The respondents were supposed to answer the questions by choosing one of the few given answers which is closest to their opinion.

To the first question, the respondents had to pick their answer from the following given answers:

a. Yes, there are not any
b. Yes, there are very little trainings like that

c. There are trainings, but they are not high quality
d. No, there are enough
e. I don't know.

To the second question, the respondents had to pick their answer from the following given answers:

a. Yes, in every way
b. No
c. It is made, but still needs to be done much more.

Because this survey was conducted in 2018, the above mentioned "the present day" refers to the present when the survey was conducted.

In the area of Court of Appeal Bitola there are six municipalities: Bitola-with one Primary court with extended jurisdiction and one Primary Public Prosecution, Prilep - with one Primary court with extended jurisdiction and one Primary Public Prosecution, Krushevo - with one Primary court with primary jurisdiction and no Primary Public Prosecution (Prosecution in Prilep has jurisdiction for Krushevo too), Resen-with one Primary court with primary jurisdiction and one Primary Public Prosecution, Ohrid- with one Primary court with extended jurisdiction and one Primary Public Prosecution and Struga- with one Primary court with extended jurisdiction and one Primary Public Prosecution.

The Courts with primary jurisdiction (in Krushevo and in Resen) are deciding in first instance for crimes for which the penalty is up to five years of prison (Law for the Courts, Article 30, Paragraph 1).

The Courts with extended jurisdiction (in Bitola, Prilep, Ohrid and in Struga) are deciding in first instance for crimes for which the penalty is up to five years of prison and above five years of prison, and also for offences made by children. (Law for the Courts, Article 31, Paragraph 1).

THE RESEARCH AND THE RESULTS

The research was successfully conducted on the area of the Court of Appeal in Bitola in the Primary Courts and in the Primary Public Prosecutions. The results are presented first by each municipality separate and then by all municipalities together.

THE SURVEY IN MUNICIPALITY OF BITOLA

In the Municipality of Bitola the survey was conducted on the following respondents: all five judges who are working in criminal procedure in the Primary Court Bitola, and two Public prosecutors from the Primary Public Prosecution in Bitola.

Regarding the first question: "Do you think that judges and public prosecutors need more training about mediation in criminal procedure in children's justice (like to recognize cases suitable for mediation procedure or so)?" from the respondent group - Judges, the following answers were given: two respondents answered with "Yes, there are not any", two with "Yes, there are very little trainings like that" and one with "No, there are enough", and the respondents from the Prosecution answered one with "Yes, there are not any" and one with "No, there are enough".

Regarding the second question: "Do you think that from the legal implementation of mediation until the present day it is made enough to promote mediation and for the

public to know about it?" from the respondent group - Judges, the following answers were given: four respondents answered with "No" and one with "It is made, but still needs to be done much more", and the prosecutors – respondents answered one with "It is made, but still needs to be done much more" and one with "Yes, in every way".

In Table 3.1.1 are presented the answers from the respondents on the first question.

Table 3.1.1 – Answers on the first survey question in Bitola

Do you think that judges and public prosecutors need more training about mediation in criminal procedure in children's justice (like to recognize cases suitable for mediation procedure or so)?		
Answers	Judges	Public Prosecutors
Yes, there are not any	2	1
Yes, there are very little trainings like that	2	-
There are trainings, but they are not high quality	-	-
No, there are enough	1	1
I don't know	-	-

In Table 3.1.2 are presented the answers from the respondents on the second question.

Table 3.1.2 – Answers on the second survey question in Bitola

Do you think that from the legal implementation of mediation until the present day it is made enough to promote mediation and for the public to know about it		
Answers	Judges	Public Prosecutors
Yes, in every way	-	1
No	1	-
It is made, but still needs to be done much more	4	1

It is visible that most of the judges in Bitola think that the judges and public prosecutors need more training on mediation in criminal procedure in children's justice and one of the prosecutors think that way too.
Also it is visible that most of the judges and one prosecutor think that from the legal implementation of mediation until the present day it is made but not enough to promote mediation and for the public to know about it.

THE SURVEY IN MUNICIPALITY OF PRILEP In the Municipality of Prilep the survey was conducted on the following respondents: all three judges who are working in criminal procedure in the Primary Court Prilep, and one Public prosecutor from the Primary Public Prosecution in Prilep.

Regarding the first question: “Do you think that judges and public prosecutors need more training about mediation in criminal procedure in children’s justice (like to recognize cases suitable for mediation procedure or so)?” from the respondent group - Judges, the following answers were given: one respondent answered with “Yes, there are not any”, one with “Yes, there are very little trainings like that” and one with “I don’t know”, and the respondent from the Prosecution answered with “I don’t know”.
Regarding the second question: “Do you think that from the legal implementation of mediation until the present day it is made enough to promote mediation and for the public to know about it?” from the respondent group - Judges, the following answers were given: two respondents answered with “No” and one “Yes, in every way”, and the prosecutor–respondent answered with “It is made, but still needs to be done much more”.
In Table 3.2.1 are presented the answers from the respondents in Prilep on the first question.

Table 3.2.1 – Answers on the first survey question in Prilep

Do you think that judges and public prosecutors need more training about mediation in criminal procedure in children’s justice (like to recognize cases suitable for mediation procedure or so)?		
Answers	Judges	Public Prosecutor
Yes, there are not any	1	-
Yes, there are very little trainings like that	1	-
There are trainings, but they are not high quality	-	-
No, there are enough	-	-
I don’t know	1	1

In Table 3.2.2 are presented the answers from the respondents from Prilep on the second question.

Table 3.2.2 – Answers on the second survey question in Prilep

Do you think that from the legal implementation of mediation until the present day it is made enough to promote mediation and for the public to know about it		
Answers	Judges	Public Prosecutor
Yes, in every way	1	-
No	2	-
It is made, but still needs to be done much more	-	1

It is visible that most of the judges in Prilep think that the judges and public prosecutors need more training on mediation in criminal procedure in children’s justice.
Also it is visible that most of the judges and the prosecutor think that from the legal implementation of mediation until the present day it is not made enough to promote mediation and for the public to know about it.

THE SURVEY IN MUNICIPALITY OF KRUSHEVO

In the Municipality of Krushevo the survey was conducted on one judge who is the only one working in criminal procedure in the Primary Court Krushevo. Since there is no Public Prosecution in Krushevo and the Public Prosecution from Prilep is with

jurisdiction for Krushevo also, the answer from the prosecutor in Prilep referes to Krushevo also.
Regarding the first question: "Do you think that judges and public prosecutors need more training about mediation in criminal procedure in children's justice (like-to recognize cases suitable for mediation procedure or so)?" the judge answered with "I don't know".
Regarding the second question: "Do you think that from the legal implementation of mediation until the present day it is made enough to promote mediation and for the public to know about it?" the judge answered with "It is made, but still needs to be done much more".

THE SURVEY IN MUNICIPALITY OF RESEN

In the Municipality of Resen the survey was conducted on one judge who is the only one working in criminal procedure in the Primary Court Resen, but the contact was by phone. The prosecutor from the Public Prosecution in Resen was unreachable at the time when the survey was conducted, we got no answers from this Public Prosecution. From the judge only the second question was answered.
Regarding the second question: "Do you think that from the legal implementation of mediation until the present day it is made enough to promote mediation and for the public to know about it?" the judge answered with "It is made, but still needs to be done much more".

THE SURVEY IN MUNICIPALITY OF OHRID

In the Municipality of Ohrid the survey was conducted on the following respondents: all three judges who are working in criminal procedure in the Primary Court Ohrid, and one Public prosecutor from the Primary Public Prosecution in Ohrid.
Regarding the first question: "Do you think that judges and public prosecutors need more training about mediation in criminal procedure in children's justice (like to recognize cases suitable for mediation procedure or so)?" from the respondent group - Judges, the following answers were given: one respondent answered with "There are trainings, but they are not high quality" and two with "I don't know", and the respondent from the Prosecution had not answered this question.
Regarding the second question: "Do you think that from the legal implementation of mediation until the present day it is made enough to promote mediation and for the public to know about it?" from the respondent group - Judges, the following answers were given: one respondent answered with "No" and two with "It is made, but still needs to be done much more", and the prosecutor–respondent answered with "It is made, but still needs to be done much more".
In Table 3.5.1 are presented the answers from the respondents in Ohrid on the first question.

Table 3.5.1 – Answers on the first survey question in Ohrid

Do you think that judges and public prosecutors need more training about mediation in criminal procedure in children's justice (like to recognize cases suitable for mediation procedure or so)?		
Answers	Judges	Public Prosecutor
Yes, there are not any	-	-
Yes, there are very little trainings like that	-	-

There are trainings, but they are not high quality	1	-
No, there are enough	-	-
I don't know	2	-

In Table 3.5.2 are presented the answers from the respondents from Ohrid on the second question.

Table 3.5.2 – Answers on the second survey question in Ohrid

Do you think that from the legal implementation of mediation until the present day it is made enough to promote mediation and for the public to know about it		
Answers	Judges	Public Prosecutor
Yes, in every way	-	-
No	1	-
It is made, but still needs to be done much more	2	1

It is visible that most of the judges in Ohrid can't really say if trainings about mediation in criminal procedure in children's justice are needed for the judges and public prosecutors.
Also it is visible that most of the judges and the prosecutor think that from the legal implementation of mediation until the present day something has been made in order to promote mediation and for the public to know about it, but it is not enough, it still needs to be done much more.

THE SURVEY IN MUNICIPALITY OF STRUGA

In the Municipality of Struga the survey was conducted on the following respondents: two judges who are working in criminal procedure in the Primary Court Struga, and one Public prosecutor from the Primary Public Prosecution in Struga.
Regarding the first question: "Do you think that judges and public prosecutors need more training about mediation in criminal procedure in children's justice (like to recognize cases suitable for mediation procedure or so)?" from the respondent group - Judges, the following answers were given: one respondent answered with "There are trainings, but they are not high quality" and one with "Yes, there are very little trainings like that", and the respondent from the Prosecution answered with "Yes, there are very little trainings like that" .
Regarding the second question: "Do you think that from the legal implementation of mediation until the present day it is made enough to promote mediation and for the public to know about it?" from the respondent group - Judges, the following answers were given: one respondent answered with "It is made, but still needs to be done much more" and one with "No" and the prosecutor–respondent answered with "It is made, but still needs to be done much more".
In Table 3.6.1 are presented the answers from the respondents in Struga on the first question.

Table 3.6.1 – Answers on the first survey question in Struga

Do you think that judges and public prosecutors need more training about mediation in criminal procedure in children's justice (like to recognize cases suitable for mediation procedure or so)?		
Answers	Judges	Public Prosecutor
Yes, there are not any	-	-
Yes, there are very little trainings like that	1	1
There are trainings, but they are not high quality	1	-
No, there are enough	-	-
I don't know	-	-

In Table 3.6.2 are presented the answers from the respondents from Struga on the second question.

Table 3.6.2 – Answers on the second survey question in Struga

Do you think that from the legal implementation of mediation until the present day it is made enough to promote mediation and for the public to know about it		
Answers	Judges	Public Prosecutor
Yes, in every way	-	-
No	1	-
It is made, but still needs to be done much more	1	1

It is visible that the judges in think that the trainings about mediation in criminal procedure in children's justice are needed for the judges and public prosecutors, there are little training like that or there are but they are not very good performed.
Also it is visible that the judges and the prosecutor think that from the legal implementation of mediation until the present day something has been made in order to promote mediation and for the public to know about it, but it is not enough, it still needs to be done much more and one judge thinks that it has not been made enough at all.

DISCUSSION ABOUT THE RESULTS FROM THE SURVEY

In Figure 3.7.1 are graphically shown the gotten answers from all the respondents from five municipalities, (because from the Municipality of Resen we had no answer on the first question). With blue color are shown the answers from the judges, and with red color the answers from the public prosecutors. The first question was: "Do you think that judges and public prosecutors need more training about mediation in criminal procedure in children's justice (like-to recognize cases suitable for mediation procedure or so)?"

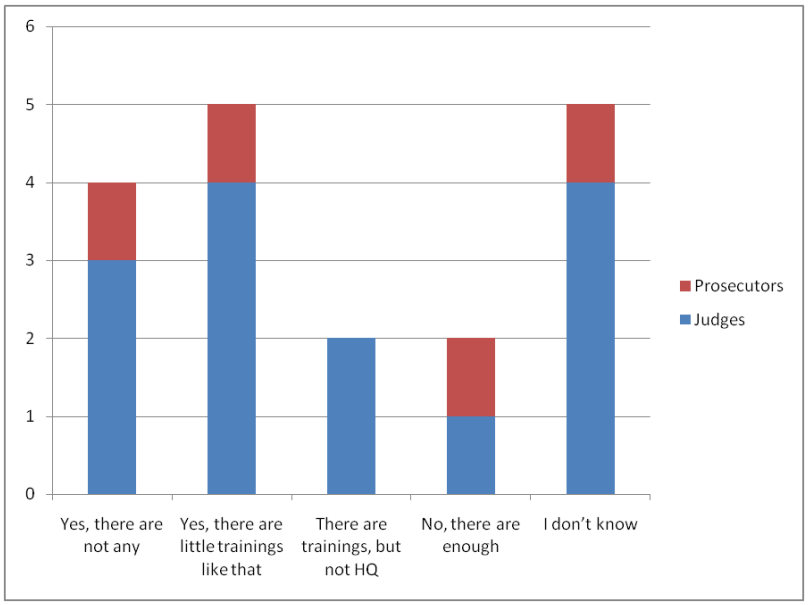

Figure 3.7.1 – results from the survey from all respondents from five municipalitites

It is clear that most of the judges from all five municipalities answered that there is need of more trainings about mediation in criminal procedure in children's justice because those kinds of trainings are rare. Just as much number of judges that had answered like this, just as that number of judges had answered that they do not know if such trainings are needed. Some of the judges even answered that there are needed training about mediation in criminal procedure in children's justice because there are not any. Few answered that there are trainings, but they do not think that they are very good performed, that they are not quality. Least answers were that there is no need for this kinds of trainings, there are enough.

The prosecutors had all different answers. Some answered that there is need of trainings about mediation in criminal procedure in children's justice, some that there is no need, there are enough and some answered that they don't know if there is need of that. None of the prosecutors answered that the trainings about mediation were not quality.

In Figure 3.7.2 are graphically shown the gotten answers from all the respondents from all six municipalities on the second question. With blue color are shown the answers from the judges, and with red color the answers from the public prosecutors. The second question was: "Do you think that from the legal implementation of mediation until the present day it is made enough to promote mediation and for the public to know about it?"

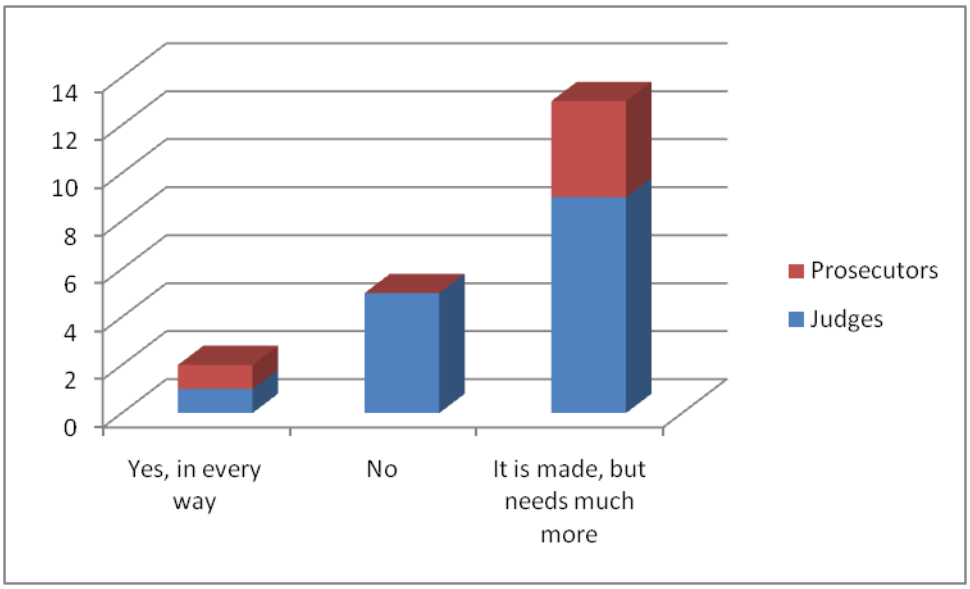

Figure 3.7.2 – results from the survey from all respondents from all six municipalitites

Mostly picked answer both from the judges and from the prosecutors on the second question was that from the legal implementation of mediation until the present day (day of the survey in 2018) it is made-but not enough to promote mediation and for the public to know about it. Medium numbers of answers from the judges were that from the legal implementation of mediation until the present day (day of the survey in 2018) it is not made something to promote mediation and for the public to know about it. The smallest number of answers from the judges was that it was made everything possible, in every way. Small number of the prosecutors also answered this way.

CONCLUSSION

Mediation in criminal procedure in children's justice is very important to start functioning. It is well known that the judges and the prosecutors are constantly having different kinds of trainings about their improvement of the work. The goal of this research was to get information of what do judges and prosecutors think about trainings for mediation in criminal procedure in children's justice. Do they find it helpful? Do they think that there is need of such trainings or do they think that that is not helpful at all for mediation practice? When looking at the answers gotten from the research, it can be concluded that most of the judges and of the prosecutors think that this kind of trainings are needed. Many of them also answered that they do not know if there is need of trainings about mediation in criminal procedure in children's justice, but since they did not answered with no, nor with yes, those answers can be considered as neutral.

Because in other study by Jovanovska and Tuntevski in 2018 was shown that mediation in criminal procedure on the area of the Court of Appeal in Bitola has no

practice at all, and that the offenders and victims are not mentioning this kind of mediation as an option in criminal cases, a question appeared that needed to be answered. The question was in order to find out whether authorities have done enough to let the public know about the choice of mediation in criminal matters in the whole period of time from the implementation of mediation in criminal matters to 2018 when the survey was conducted. That is how the second question of this research was born. In this matter, the results showed that without a doubt, the great majority of judges and prosecutors think that it is not done enough, that more has to be done.

So, in the end a conclusion can be made that there is need for the judges and prosecutors who work with children to have more trainings about mediation in criminal procedure in children's justice and those trainings need to be quality. If the judges and the prosecutors are feeling the need of such trainings, then that is an indicator of the fact that something has to be done about that. Also, whether until now something has been done or not about by authorities to let the public know about the choice of mediation in criminal matters it is not so relevant as the fact that something has to be done now and in the near future about it. Judges and prosecutors think that mediation in criminal matters is not very well known to people, so the authorities should take actions to do something to promote this kind of mediation.

Mediation in criminal procedure may be very positive alternative resolution to some criminal cases with many benefits especially in children's justice, so it is of great significance to be made efforts for making it a practice in our criminal justice system. By pointing every significant omission in failing of implementing it in practice, step by step, it can be put to common practice by correcting those omissions.

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DIGITAL FORENICS AND PROVIDING ELECTRONIC EVIDENCE

Oliver Risteski, *MSc student of the Faculty of Security*, olisristeski@yahoo.com
Mite Kjesakoski, *MSc student of the Faculty of Security*, mkjesak@yahoo.com
Adrijana Kalachoska, *PhD student of the Faculty of Security*, adrirasicka@yahoo.com

Abstract
Information technology and the Internet are deeply embedded in every segment of the information society. The rapid development of information technology and the massive use of information communication devices, create new opportunities for improving new forms of computer crime. The massive use of computer systems, information communication devices and the Internet network, on one hand, facilitates the functioning of the human being, but on the other hand, it increases the risks to information security and increases criminal offenses in the area of computer crime.
The purpose of this paper is to contribute to the identification, handling, and examination of electronic evidence, to improve the effectiveness and efficiency in the suppression of computer crime and its modern forms by applying digital forensic analysis, providing electronic evidence in accordance with the criminal procedural provisions and international cooperation.

Keywords: Computer crime, forensics, electronic evidence.

CRIMINAL PROOF

Criminal investigation covers a wide range of investigative actions that investigate computer incidents step by step in order to find the truth about the specific criminal justice event, the criminal measures and activities of the criminal police are carried out in accordance with the legal regulations and internal regulations of the Ministry of the Internal affairs and in one legal procedure provides material electronic evidence on which the proofs of the perpetrators and the criminal offense in the criminal procedure are based. In each criminal situation or criminal incident, a hypothesis for the attack is first made, which elaborates the information aspects of the unauthorized penetration into the computer system and exactly what happened. This involves analyzing all possible scenarios for the computer attack, finding the causal link between the perpetrator and the victim and allocating the memory locations to the victim and the perpetrator where there are electronic traces or electronic evidence, which is a legal procedure in accordance with the provisions of The Criminal Procedure Code will be adequately secured and lifted. Then, for more specific forms of unauthorized entry into the computer system, a reconstruction of the criminal incident is made, which implies making a simulation for the specific criminal-legal event. In this step, a forensic test computer for simulating the attacker needs to be configured as closely as possible to the actual configuration of the

computer victim (internal configuration, login, network connection, Internet connection)[234]. From the model obtained during the simulation, electronic evidence is obtained which, if they match the ones of the attacked computer with further digital forensic methods and techniques, we get the so-called. mirror (mirror) copy that will point in the direction of the potential perpetrator which paves the path from which the material electronic evidence on which the proof is based will arise.
Providing, raising and collecting digital evidence in a legal procedure. the acquisition of digital evidence is of crucial importance for the criminal procedure, because unlike the classical criminality where the material evidence is the basis of the proof, computer crime uses digital forensic methods and techniques by specialized experts from the Department of Cybercrime and Digital Forensics who legally provide, store and collect digital evidence in accordance with the Code of Criminal Procedure and the Guidelines for Electronic Evidence issued by the Council of Europe. During the criminal proceedings only the electronic evidence provided in a legal procedure is accepted by the Court as evidence, therefore it is necessary, when providing electronic evidence, to comply with the legal rules and regulations, timely, professional and legal, from the very beginning of the criminal attack in order proving the crime and its perpetrators.
The role of proof, whether it is a criminal, civil or administrative procedure, is essentially a crown of judgment. The purpose of the evidence procedure is to create a conviction in the truth of what is claimed, that is, it is brought to the burden of the defendant, i.e. the truth of the indictment, which is also the object of the charge.[235]

Expertise, criminalistic - technical expertise

Once the material and electronic evidence has been provided and properly stored, they need to be criminalized and technically processed and appropriate expert expertise in the relevant field has been prepared in order for the Court to accept the evidence in the evidence procedure to be provided in one legal procedure regulated in the Criminal Procedure Code in Chapter XVIII "Evidence", in the field of expertise, in a member Article 236 - Determination of expertise
"(1) An expert opinion shall be determined when a finding and an opinion by a person who disposes of with the necessary expert knowledge should be obtained for determining or assessing an important fact. Expertise is, as a rule, carried out by experts in the register of expert witnesses.
(2) The expertise shall be determined by written order.
(3) During the previous procedure, the order shall be passed by the public prosecutor, and in the main hearing, the court shall, in accordance with Article 394 paragraph (2) of this Law.
(4) The order shall state in relation to which facts an expert's report is conducted and to whom it is entrusted.
(5) If there is a higher education institution for a certain expert body, a scientific institution or an expert institution or an expert report may be carried out within the state administration body, such expert opinions, and especially the more complex

[234] Nikoloska, S., Computer crime research methodology - Faculty of Security Skopje, 2013, p.113.
[235] Nikoloska, S., Computer crime research methodology - Faculty of Security Skopje, 2013, p.117.

ones, will be entrusted, by rule, to such an institution or body. If an expert finding and an opinion of a state administration body are attached as evidenced by the public prosecutor, and the defense disputes it, it may propose to the court to order an expert report, which will be performed by another institution or body.
(6) As a rule, one expert will be appointed for the expertise, and if the expertise is complex, then two or more experts can be determined.
(7) Exceptionally, an expert may be appointed as an expert with a residence abroad or a foreign professional institution that, according to the laws adopted by the home country, meets the conditions for performing an expert's report, if there is no higher education institution, scientific institution or expert institution in the Republic of Macedonia, a sole proprietor - an expert or a trading company registered for performing an expert report for a certain kind of expertise.
(8) The body referred to in paragraph (3) of this Article that ordered the expert opinion upon a previously obtained opinion from the expert shall determine the deadline for the expertise and for the delivery of the findings and the opinion, and that period can be extended only upon the reasoned request of the expert.[236] "
The expert report shall be executed upon a written order issued by the Public Prosecutor, and at the request of the criminal police, the order for expert witnessing shall contain all the requests that should be performed with the expertise and give an answer to the facts that prove the criminal-legal event, for concrete material or electronic evidence. General data that the request or the expert's order should contain in order to assist them in providing electronic evidence are:

- The name and surname of the suspect;
- Name and surname of the damaged party;
- Name and surname of the person from whom the computer equipment was seized;
- The location from which the computer equipment and the condition in which it was found were confiscated;
- If the computer equipment was found to be on, specify the date and time when it was turned off;
- Date and time when the seizure of computer equipment was carried out;
- Detailed description and inventory of confiscated computer equipment (type, brand, model, serial number, type of software, internet connection, intranet, etc.);

The forensic analysis request is standardized in order to comprehensively describe the provided electronic evidence, the condition in which it was found, uploaded and stored in some memory space. The expert report contains all previously described information and the requirements on which the expertise should provide an answer to. Also, to provide electronic evidence in a legal procedure that will later be used in the evidence procedure when proving the crime. Expertise depending on the professional area it covers is usually performed by specialized physical and legal entities registered in accordance with the Law on Expertise, such in the Republic of Macedonia. Macedonia is a Department for Digital Forensics at the Ministry of Internal Affairs, Bureau of Expertise, private expert associations, higher education

[236] Official Gazette of the Republic of Macedonia, no. 150 from 18.11.2010

institutions - faculties of appropriate fields which according to the rules of the profession can perform the expert examination in accordance with the law, scientific institutes, etc. For criminal acts in the area of computer crime, expertise or criminalistic technical expertise is most often performed by the Department of Digital Forensics.

3. Digital Forensics

Digital Forensics is a branch of forensic science that deals with the collection, processing, analysis, and reporting of electronic evidence stored in computer systems, digital devices and other memory media in order to be accepted by the court in a legal procedure. Digital forensics focuses on identifying, providing, processing, analyzing and reporting data stored on a computer system, a digital device, or another storage medium.[237] In fact, digital forensics includes search and investigation, collection (acquisition), storage and storage, proofing and expert expertise, is expertise and testimony (presentation) of digital evidence before the Court in a lawful procedure in case of abuse of an information communication device, a computer incident, is cybercrime in a criminal, civil or administrative procedure.[238] The secured forensic evidence refers more specifically to electronic evidence that meets the strict standards of security and the scientific integrity of the court's admissibility in lawful proceedings. Usually, the forensic process consists of seizing, forensic recording and analyzing digital content, as well as producing a report on the collected evidence. Methods of digital forensics are:

- Collecting deleted data - finding files or parts of files in order to reconstruct a picture;
- Stenographic analysis - finding data concealed in other data;
- Stochastic analysis - a method of digital forensics where no evidence is needed, but the results of a potential effect. Perhaps the best analogy is to see the black box exit. The biggest use is in data theft;
- Live analysis - it is necessary when we have encrypted data in order to extract and copy keys for decryption or to make a copy of already decrypted sectors;
- fragmented data analysis - a method that is useful when data is scattered across multiple media, and each part does not have a function itself;

Digital forensics is divided into computer forensics, network forensics and forensics of mobile devices. Computer forensics includes:

- Postmorph forensic forensic science
- Live forensics
- Application Forensic
- Forensic on other DVR devices, routers, gaming consoles, servers, etc.

Network forensics includes:

[237] Digital Forensics**,** A BASIC GUIDE FOR THE MANAGEMENT AND PROCEDURES OF A DIGITAL FORENSICS LABORATORY, June 2017, Council of Europe, page 9.
[238] Milosavjevic M., Grubor G. Digitalna forenzika, Univerzitet SINGIDUNUM, Beograd, 2009, str.13.

- Live network forensics
- Forensics on recorded packages
- Mulver analysis

Mobile forensics includes:

- Android Forensics
- iOS forensics
- Windows phone / Symbian / others
- Other, for example, Satnav

The basic postulate of digital forensics, whether it concerns computer forensics or the forensics of mobile devices, is to guarantee the integrity of the originals from which they are "uploaded" to the media used in the court proceedings. This means that by providing and downloading electronic data a true digital copy has been made, which is then in a documented form kept in a safe place to avoid any contamination of the provided electronic evidence. For the most part, the digital-forensic research is done on a copy, except in case of live data analysis.

ELECTRONIC (DIGITAL) PROOF

Traditionally and historically, evidence procedure and proof of facts are based on evidence. Evidence is in physical form, they can be documents, photographs, objects, etc. Evidence used in court proceedings arising from electronic devices such as computers and their peripherals, computer networks, mobile phones, digital cameras and other portable equipment including data storage devices (USB memory, SD cards, etc.) .) as well as from the Internet, are forms of electronic evidence. In fact, electronic evidence is a set of data that is located or transmitted in an electronic (digital) form and as such can be used in court proceedings. The definition in accordance with the Council of Europe's Electronic Document Guidelines reads as follows:

"Any information generated, stored or transmitted in a digital form that may later be required to prove or deny evidence that is contested in a legal process is electronic evidence.[239]"

The provision, processing and use of electronic evidence in the Republic of Macedonia. According to the Law on Criminal Procedure, Macedonia is regulated in Article 250 "Demonstration with a recording"

(1) Photographs, films or other audio or visual recordings obtained by technical means can serve as evidence in criminal proceedings.

(2) Regarding the recording, it shall be handled as with other items that can be used as evidence, taking care not to be damaged or destroyed, and to preserve its contents in an unaltered form. If necessary, additional measures will be taken to preserve the recording in an unaltered form or to make a copy thereof.

(3) Unless otherwise stipulated by this Law, the content of the recording shall be determined by its reproduction. The recording is reproduced by experts.

and in Article 251 "Electronic evidence[240]"

[239] Electronic Evidence Guide, March 2013, Council of Europe, page 13.

[240] OFFICIAL GAZETTE OF THE REPUBLIC OF MACEDONIA, NO. 150 FROM 18.11.2010

For the provision of electronic evidence, the provisions of Articles 198 and 199 of this Law shall apply, unless otherwise determined by this Law.
The provisions of Article 198 concern "Temporary confiscation of computer data", and in the case of mercenary forensic, the provisions of Article 184 "Searching for computer system and computer data" shall apply.
Characteristics of electronic evidence are:
• Easily manipulated (altered or deleted);
• Can be changed automatically after the seizure;
• They are not always in the place of committing the crime "Damage and unauthorized entry into a computer system";
• Special ways and procedures are needed for securing, seizing, processing and storing electronic evidence;
• Timely, appropriate and legal handling of electronic evidence is required;

Electronic evidence sources can be electronic devices and equipment that can be connected to electronic information, such as electronic devices, equipment, software, hardware, or other IT technology that can function independently, together or connected to traditional computer systems.[241] The electronic devices used to improve user access and increase the functionality of the computer system means that the number and type of IT devices that may contain electronic evidence are increasing daily. These include: an external printed circuit board, microprocessors, hard drives, memory and connectors for other devices, a monitor or other display device, keyboard, mouse, external units, peripherals, software, printers, scanners, routers, external hard drives and other storage devices, tablets, mobile phones, digital cameras, video surveillance cameras, etc.
Electronic evidence according to the type of data they contain can be:
• Statistical data (dead box)
• Live data (memory and servers)
• Internet data

Computer Forensics
Computer Forensics is a branch of digital forensics, the purpose of which is to collect, process, store and analyze electronic evidence provided by a computer system from a particular electronic device in a lawful way in order to be used in court proceedings. Most of the digital forensics refers to computer forensics because personal computer systems are the most prevalent and most used by cybercriminals. Computer forensics actually involves the provision and collection of digital evidence (electronic evidence) from a computer, hard disk or from a device that includes a computer or is considered to be able to create or process digital (electronic) data.[242] Computer forensics is scientific research and analysis of electronic data that is stored in the so-called. hard drives, memory, system files, and

[241] ELECTRONIC EVIDENCE GUIDE, MARCH 2013, COUNCIL OF EUROPE, PAGE 18.
[242] Nikoloska, S., Computer crime research methodology - Faculty of Security Skopje, 2013, p.113

other memory locations where electronic data is stored and stored in the computer system, and in a legal procedure they are used as incalculable material evidence before the Court. The subject of research on computer forensics is the current state of computer systems and devices for storing electronic data. These include personal computers, elementary computing systems, and embedded flash drives as well as static memories (USB flash memory). Computer forensics encompasses a wide range of information that the computer system processes, such as the browser history (because it is stored on a memory location) and all permanently stored data on the disk.

Historically, in the last two decades, personal computers experience a revolution, they become available to civilian users and their commercial use grows, and hence the use of personal computers in criminal offenses. Computer forensics began to be used precisely during this period since its goal is to collect electronic (digital) evidence for use in a legal procedure to prove the trials. Today computer forensics deals with computer crime research, most commonly used in areas where the computer system is involved in the damage or the unauthorized penetration of the computer system. The process of providing and collecting electronic data takes place by first accessing the hardware and making its image, or a copy to be analyzed. Then the computer forensic user uses the recovered data with the so-called recovery software, ie computer forensic tools such as EnCase, Digital Forensics Framework, ILOOKIX, FTK, Open Computer Forensics Architecture, CAINE, Volatility, MailXaminer, Oxygen Forensic, X-Ways forensics[243]. Computer forensics has great significance in providing electronic evidence because personal computers have massive use in the human environment and they are an inseparable part of any criminal lawsuit in the area of computer crime, that is, much electronic evidence is found in a computer system. There are many ways in which certain data is stored, hidden, encrypted, allocated in hard disk sectors that are not visible to the operating system or modified or deleted; these electronic data are subject to computer forensic research. This type of data specifically for the offense "Damage and unauthorized entry into a computer system" is e-mail logs, voicemail (Skype, Viber, Facebook messenger, social networks ...), images, browser history, and various other documents link the enforcement agent to the criminal justice event and the victim. These data can be retrieved from the hard drive and if they have been deleted from the hard disk and from the browser's cache files and the operating system. The method of vomiting is usually by the principle of search by keyword or search by type of extension (.jpg, .pdf, .txt ...). Certain files have a specific set of bits on the beginning and at the end of the requested file which can be used to easily find and return those files if deleted. Software forensics tools function precisely on this principle, they actually search the sets of units and zeros on the hard disk, and when a set matches the requested one, then it determines that the requested file has previously been stored in that memory location, in fact, most of these forensic tools

[243] https://resources.infosecinstitute.com/computer-forensics-tools/ (accessed 12 October 2018)

https://www.greycampus.com/blog/information-security/top-twenty-trending-computer-forensics-tools (accessed 12 October 2018)

work on that principle - they recognize recognition of already known files for which their specific set of units and zeros is known. Therefore, electronic evidence is also called digital evidence because everything that is stored in memory is written digitally with units and zeros. After the successful return of the data, certain information is analyzed and certain events and activities that are made on the computer are reconstructed. Computer forensics covers a wide range of analysis of computer systems that are implemented in various fields (automotive, security systems, medicine, flight control systems, radar systems, etc.) in any incident, accident or criminal attack of electronic evidence which will be provided with computer forensics can be reconstructed for the particular event with the exact time and place. From the car's computer, depending on the type of car, it is possible to determine the recent destinations where the vehicle was staying, favorite locations, navigational information, even depending on the computer system can be determined and when and where the lights are turned on / off, opening / closing the door of the vehicle, where the vehicle was located when the Bluetooth device was turned on / off, and many other information[244].
Computer forensics who deal with computer forensics in criminalistic research is required to comply with the provisions of the Guidelines on Electronic Evidence and Digital Forensics issued by the Council of Europe.[245]

Network forensics

Network forensics is a branch of digital forensics that deals with the research and analysis of network traffic in computer systems for the purpose of providing and collecting electronic evidence as well as detecting unauthorized access to a computer system over a network (Internet, Ethernet, Intranet ...). The difference between network forensics and other areas of digital forensics is that network forensics deals with the research of electronic data which are not permanent or dynamic. This means that the information is variable depending on the time in which it was explored, that is, the network traffic can be active at one point, and in the next interrupted, there is no information that is subject to research.
The goal of network forensics is to identify the source of communication, that is, the source of unauthorized penetration carried out through an Internet network. Most often in the network forensics, there is a starting point, it is a log file containing the IP address of malicious communication with the computer, or the domain name and IP address of the website, or a header that contains the route of sending the message with criminal content by electronic mail.[246] From this point of departure, the forensic person will identify the relationships and relationships with other online resources so that he can identify the perpetrator of the crime "Damage and unauthorized entry into the computer system". In case if other malicious online

[244] https://www.vecernji.hr/techsci/alat-za-digitalnu-forenziku-vozila-po-prvi-put-predstavljen-u-hrvatskoj-1170438 (accessed 12 October 2018)
[245] Electronic Evidence Guide, March 2013, Council of Europe, page 18.
[246] Ibid. page 156.

resources are found, the forensic may request that they are disconnected. Secondary online resources can help in identifying the enforcement agent because they can serve as additional sources for providing and collecting electronic evidence for identification.
The primary role of network forensics is the monitoring of network traffic, analysis, and detection of a potential unauthorized attack and its detection and proving. Because the potential perpetrator is able to erase all the logs that are located on a host, therefore electronic evidence provided by network forensics may be the only evidence of a particular criminal legal event. The secondary role of network forensics is the analysis of already captured network traffic in which the transferred data can be found through networks, this involves various types of e-mail browsing and other popular social programs and chats.
The easiest way to understand some types of network forensics is to compare with the traffic control points of vehicles when implementing the ZBPS, where network forensics can analyze all the traffic that passes through a particular point on the network. Other types of network forensics include wider recording and storage of network information, analysis, and processing. According to some experts, network forensics can be divided into two categories based on one of the following methodologies:
• A catch-it-as-you-can, which means that all data from the network traffic is retained, and then analyzed. This method requires large amounts of storage space since it is about a lot of data.
• Stop-look-listen, which processes a larger amount of data, but with superficial analysis, or routine review.[247]

Ethernet is an important segment of network forensics since the research is carried out in the so-called. bit streams, that is sets of bits. The survey is usually done with listening programs. "sniffers", IBM Security QRadar Incident[248], Wireshark is software that collects data and allows the user to filter. With this program, it is possible to reconstruct web pages, data from e-mail, as well as other data for exchange from social networks. The advantage of collecting this data is that if we know the IP and MAC address of the host, all data exchanged with this address can be filtered. In order to establish a connection between IP and MAC address, it is necessary to examine in detail the auxiliary network protocols. At Network Level IP (Internet Protocol) is responsible for managing packets generated by TCP (Transmission Control Protocol) over a network. For proper routing, each networked router must have a routing table to know where to send data. These routing tables are an important source of information when investigating a criminal offense "Damage and unauthorized entry into a computer system" in case the uptake is done through a network. In order to detect the potential executor, it is necessary to monitor the sent data packets in order to provide information about the

[247] https://www.techopedia.com/definition/16122/network-forensics (accessed 21 October 2018).
[248] https://securityintelligence.com/what-are-the-best-network-forensics-and-data-capture-tools/(accessed 21 October 2018).

relationship on the opposite side, and thus the computer from which these data are derived will be found. This would also provide identification logs that connect the enforcement agent with the victim from which the communication activities will arise or electronic evidence of the perpetrator of the criminal act.
Wireless forensics is a branch of network forensics whose goal is to provide the methods and tools needed for the collection and analysis of wireless networks. The wireless internet signal, or commonly known as wifi, today is growing in line with the growth of devices using wifi technology. Electronic evidence that is collected is usually associated with communications over VoIP and social networks. wireless forensics is similar to wired networks by adding security systems that are part of the wireless network.

Mobile forensics

Mobile device forensics deals with the research and analysis of data that can be provided by mobile devices. With the emergence of smart mobile phones and the opportunities they offer, the volume of information that the forensics of mobile devices can provide is also increasing. Social networks (Facebook, Instagram, Twitter, Linkedin ...) have made a technological revolution and the number of their users worldwide is constantly growing. Most of the population of the world population uses social networks, and thus consciously and self-initially post their personal data, photos, communications, etc. which can very easily be hacked. The purpose of the forensics of mobile devices is in a legal procedure, to provide, process and store electronic evidence in order to prove the specific criminal justice event. Smartphones are at the same time a computer system with its own memory for storing data and additional memory (memory cards), which preserves a large amount of electronic information from which the forensic provides electronic evidence. With the massive use of social networks through smartphones, the criminal activities that are being carried out with mobile phones are increasing proportionally. Smartphones can also contain text messages (SMS, MMS), contacts, email messages (Gmail, Yahoo), chat data (Viber, Instant Messenger), GPS coordinates, photos and videos, web search history , information from social networks (facebook, twitter, Instagram, LinkedIn ...), data and documents stored on the phone, music, calendar and calendar, current bank account information, e-banking history, Gmail account information, my activity, etc.) and other information. Research on mobile devices is similar to forensic research on personal computers, as the mobile device is also a computer system. The onset of the forensics of the mobile devices when it appeared was limited to researching the mobile device and photographing data that could serve as evidence in the evidence procedure. This method of research proved to be ineffective due to the length of the research itself that was too long. With the advent of modern smartphones where there is a large amount of data (pictures, videos, contacts, chat, social networks ...), there is a need for a quick and efficient way of extracting information from the mobile device, while make sure they remain authentic and unchanged in further reproduction before court proceedings. Forensics for this purpose began to use specialized software for synchronization and "back up" data from mobile phones. This software could initially write and read data stored on mobile devices, but as a

disadvantage, it appeared that it could not recover the deleted information. This problem is solved by the development of new software so-called. "Flasher" and "Twister" box, which works on the principle of flipping the memory of the mobile device and recovering the deleted information, but this software had many disadvantages, that is, the returned data were not authentic. The third generation forensic analysis software for mobile devices has been refined and enables automatic search of the mobile device and computer synchronization, restoring deleted data, and unlocking passwords. Famous software applications for this purpose are iPhone Analyzer, BitPim, ForForicsics Forensics, Mobile Internal Acquisition Tool (MIAT), TULP2G, Katana Forensics' Lantern Lite Imager.[249]

International cooperation

Computer crime today is a phenomenon of global dimensions that do not know national boundaries. Its perpetrators have a multinational approach to the commission of computer crimes. In most cases of unauthorized entry into a computer system, the perpetrators commit the criminal act of one state, and the victim or the damage occurs in another state. Digital forensics provide electronic evidence in a legal procedure that constitutes a causal link between the victim and the perpetrator, but this connection is indirect, or indirect via the Internet service provider, which is usually located outside the Republic of Macedonia. Macedonia. This means that from the provided electronic evidence criminal investigation should be expanded and criminally processed by the perpetrators in accordance with international criminal law and international legislation in the area of cybercrime (national legislation - the Law on International Cooperation in Criminal Matters, the Convention on Cybercrime, European Convention on Mutual Assistance in Criminal Matters, European Agreement on the Transmission of Legal Aid Requests). International police cooperation involves the exchange of information of a security nature, but this information does not constitute evidence in the evidence proceedings, in accordance with international criminal law. International legal assistance is a legal mechanism in the process of processing the perpetrators of computer crimes, especially in the part of the criminal process matter. Forensic secured electronic evidence in the victim needs to be processed in a legal procedure to the country where the suspect is located and, if necessary, extend the criminal investigation into the provision of other electronic and material evidence that will be used in the legal procedure for proving to the perpetrators of these crimes before the Court. Usually in the crime "Damage and unauthorized entry into a computer system" in the case when electronic evidence points to the fact that the perpetrator committed the offense outside the Republic of Macedonia. For example, from forensic analysis of electronic data from the damaged, an IP address from an Internet Service Provider (ISP) located outside the Republic of Macedonia is obtained. Macedonia, then it is necessary to ask the provider in a legal procedure in accordance with the international criminal procedural law to be "frozen" the data, and then submit the information for the IP address (s), logs, time, etc. information from the suspect. Regardless of where in the world the crime was committed,

[249] https://www.concise-courses.com/security/mobile-forensics-tools/(accessed 28 October 2018).

unauthorized intrusion into the computer system by the damaged person leaves some digital trace that is a link to the suspect made directly or indirectly through the Internet Service Provider (ISP). From the information that the provider possesses, the identity of the perceived person is obtained. In all this procedure it is necessary in accordance with the legislation (national legislation - the Law on International Cooperation in Criminal Matters, the Convention on Cybercrime, the European Convention on Mutual Legal Assistance in Criminal Matters, the European Agreement for the Transmission of Legal Aid Requests) to be provided and stored these electronic evidence in order to prove in court proceedings. In cases where urgent action is required under Article 35 of the Convention on Cybercrime, all signatory States are obliged to "appoint contact persons who will be available twenty-four hours a day, seven days a week"[250]. This is necessary to ensure the provision of immediate assistance for the criminal investigation or criminal proceedings relating to criminal offenses related to computer systems and data, ie the provision and storage of electronic evidence. Each State Party to the Convention is obliged to implement a number of measures and activities if permitted by their domestic law and practice, as follows:

1. Providing technical advice;
2. Preservation of data in accordance with Articles 29 and 30 of the Convention;
3. Collecting evidence, providing legal information and locating suspected persons.

This is a very important part of the legal aspect that enables effective and efficient operation in investigations involving computer crimes that contain an element of electronic evidence in multiple jurisdictions.[251]

The request for international legal assistance, in accordance with the Law on International Cooperation in Criminal Matters, may be requested by the Public Prosecutor and the Judge of Preliminary Proceedings, through the Ministry of Justice, to a legal entity dealing with information services with headquarters abroad - Internet service provider. When submitting a request for submission of computer data, the Public Prosecutor can not directly contact an internet service provider based in the country because it is necessary for the procedure to be conducted through the Department for Cybercrime and Digital Forensics at the Ministry of Internal Affairs. Applications must be submitted in accordance with the procedure for international legal assistance. The public prosecutor needs to prepare a request for international legal assistance to the foreign ISP requesting the data and to issue an order to the Sector for Cybercrime and Digital Forensics.[252]With the request for the submission of computer data from an internet service provider based in the United Kingdom abroad, the following types of information may be requested:

• The logs and IP addresses of the suspect, the data required is to contain the exact hour, date, and time zone;

[250]LAW ON RATIFICATION OF THE CONVENTION ON COMPUTER CRIMINAL, of the Republic of Macedonia, no. 41 from June 24, 2004

[251] Electronic Evidence Guide, March 2013, Council of Europe, page 168.

[252] Marjan Stoilkovski, Jovan Cvetanovski, Providing Evidence in Electronic Form by International and Domestic Internet Service Providers, OSCE Skopje, 2017, p.22.

• Subscriber information - identification information of the user of a particular IP address used by the suspect;
• Internet traffic data - log files where the activity is recorded on the operating system of a particular computer system or other software or communications between computers, especially the source and destination of the messages;
• Content information - this includes messages, pictures, movies, music, documents, and so on.

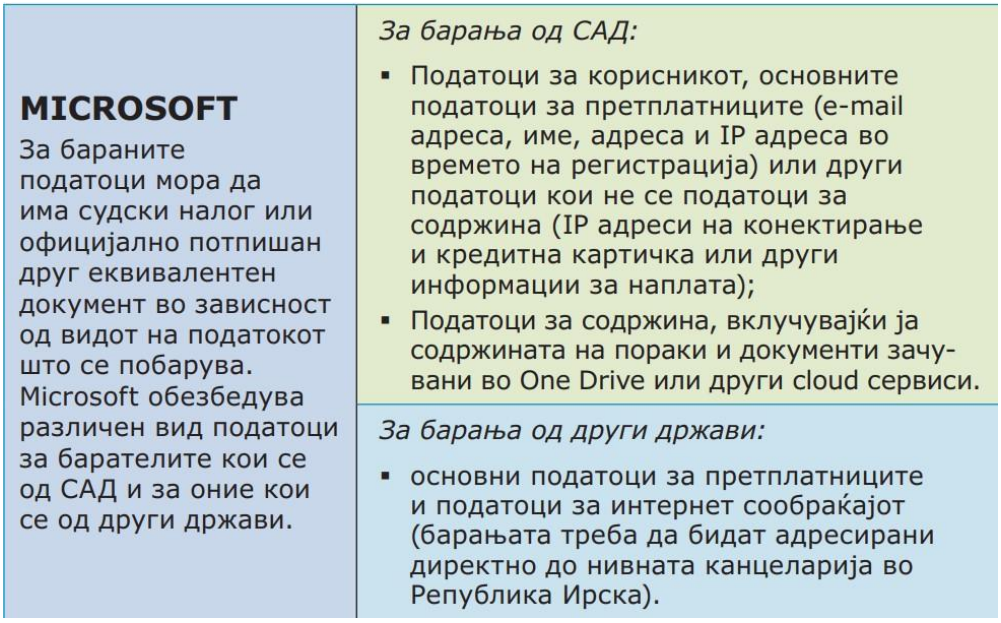
The procedure for requesting and providing computer data from foreign Internet Service Providers (ISP), depending on the provider, is regulated in their security protocols for cooperation with Law enforcement. In America as the country with the most developed information technology ISP under the current legislation has the authority to cooperate directly with law enforcement officials from other states including R. Macedonia and at the same time to provide the computer data requested by all points of the request for their users. This cooperation in the United States under federal laws is not obligatory, that is, the cooperation between ISP and Law enforcement is on a voluntary basis. Positive responses are usually received for those requests for which their expert legal teams believe that data should be provided.[253]

For other countries in the world, the mechanism for mutual legal assistance is also applied, and, depending on the national legislation and security protocols of the ISP and the attached evidence to the request for international legal assistance, the necessary computer information is returned in return. Larger foreign ISPs, most often providing computer information, have their own security protocols for cooperation with Law enforcement that publish them on official websites. The table below shows what computer information can be obtained by request of a Public Prosecutor, or by a Pre-Appeal Judge from Facebook, Google, Microsoft, and Yahoo.

FACEBOOK Врз основа на барање од јавен обвинител или наредба од надлежен суд може да ги обезбеди овие податоци.	*на барање од јавен обвинител:* ▪ име и презиме, ▪ информации за кредитна картичка, ▪ e-mail адреса, и ▪ последни IP адреси на најави/одјави, ако бараните податоци се достапни.
	врз основа на судска наредба: ▪ други информации за сметката, не вклучувајќи ја содржината на комуникациите, ▪ full header од испратените и примените пораки.

[253] Ibid, p.21.

GOOGLE Обезбедува податоци на органи за спроведување на законот од САД, а барањата од други земји, доколку се во согласност со меѓународните норми, законите на САД, политиките на Google и законот на земјата-барател можат да бидат одговорени на доброволна основа од страна на Google. Барањата мора да бидат во писмена форма, потпишани од овластено службено лице на подносителот на барањето.	*врз основа на наредба на обвинител:* ▪ Податоци за корисникот за регистрирање и IP адреси со кои е најавувано, со точен датум и време. ▪ Податоци за регистраторот на страната, профилот. *врз основа на судска наредба:* ▪ Податоци за интернет сообраќајот/логови; ▪ Податоци за фајлови и содржина која е објавена; ▪ IP адреси со време и датум за пристапување до содржини *по наредба за пребарување:* ▪ E-mail содржини и информации за отворени сметки на Google; ▪ Видео и друг вид материјал објавен на YouTube; ▪ Сочувани текстови и пораки на Google
YAHOO Бараните податоци може да се обезбедат само преку меѓународна првна помош. Само по исклучок доколку се работи за итна ситуација можен е директен контакт на барателот со Yahoo.	*За барања од САД:* ▪ Податоци за интернет сообраќајот, врз основа на наредба ▪ Податоци за содржина, врз основа на наредба ▪ Податоци за корисникот, врз основа на наредба *За барања од други држави:* ▪ основни податоци за претплатниците, за испратени барања директно до Yahoo.



Retrieved from "Providing Evidence in Electronic Form by International and Domestic Internet Service Providers", OSCE Skopje, 2017

There is also a possibility in case of urgency when it is necessary to promptly and expeditiously proceed to request the preservation of data that can serve as evidence in criminal proceedings. Depending on the service, requests for urgent action are sent by a law enforcement officer, most often a police officer from the Department of Cybercrime and Digital Forensics to the ISP, giving a detailed description of the criminal justice event and requesting it to be stored, and then completes the procedure for international legal assistance and officially requests for computer information through the Ministry of Justice.

With the development of information technology and the Internet, new forms of criminal activities have emerged proportionally, which are primarily sophisticated software solutions and utilizing the "cracks" in Internet communication among users, the shortcomings of the user software, criminals skillfully use it and there is the possibility of unauthorized penetration in the computer systems of users and thus steal personal information, bank accounts, etc. in order to be abused. International police cooperation and international legal assistance are crucial in combating cybercrime as it is a multinational crime for which there are no national borders and only by building security capabilities of a multinational character can seriously respond to international computer crime.

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THE CONVICTED PERSON - BEFORE AND AFTER SERVING THE PRISON SENTENCE

Ilija Jovanov, MA
Master of Laws in the field of criminal law
Master of Security Science
E-mail: ilija_jovanov@yahoo.com

Abstract
According to our criminal legislation, the prison sentence is the most severe criminal sanction that can be imposed on a person with criminal responsibility. It limits the freedom of movement of the convicted person. The Criminal Code provides the prison sentence as a regular punishment for all crimes. It is the basic punishment in the order of punishments and is only pronounced as the main punishment. As the main purpose of the execution of the prison sentence, the Law on Execution of Sanctions defines the resocialization, which, besides reeducation, also encompasses the social adaptation of the convicted person, his preparation for socially acceptable behavior on freedom. The purpose of the execution of the prison sentence is to enable convicts to get involved in a society with the best prospects for independent living. Supporters of the prison sentence believe that it serves as a means of reeducation, rehabilitation and successful reintegration of convicted persons in society. Opponents of the prison sentence, however, consider that the application of the prison sentence cannot be achieved any resocialization, first of all, because there is a contradiction between the essence and purpose of the sentence. This in the sense that it is not possible to reeducate a person who is isolated from society and is in the company of people who have once or more times collided with the law.
Keywords: prison, convicted person, penitentiary system, resocialization, social adaptation.

INTRODUCTION

The prison is a punishment by deprivation of the freedom of movement of the convicted person and his accommodation in a special penitentiary institution. (Marjanović 2003, 282).

The execution of the prison sentence for the convicted person is of great importance, because at the moment of execution of the convict he is stripped of what is most desirable and most expensive - the freedom. With the accommodation of the convicted person in the penitentiary institution for the purpose of executing this punishment, he is deprived of liberty, his movement is restricted, and connections with those outside the institution are interrupted. The convicted person is placed in an institution fenced with walls, grates and locked doors, provided with

a guard, with everything that symbolizes the social and psychological gap between the prison community and the outside world. (Elmer H. 1964, 517).
As the main purpose of the execution of the prison sentence, the Law on Execution of Sanctions defines *the resocialization*, which, besides *reeducation*, includes *the social adaptation* of the convicted person, his preparation for socially acceptable behavior at freedom.
The idea of resocialization as the purpose of the punishment relies on the conviction that the perpetrator may be deterred from further committing crimes by influencing him to correct and act in the future as a legally loyal citizen! (Kambovski 2004, 844).
The very idea of resocialization of perpetrators of crimes prevailed over the last century and became the basis for modern reforms of the criminal justice system. Thanks to resocialization, the death penalty was abolished in many criminal justice system, prison sentence was reformed, alternatives to prison sentences were introduced, the treatment of convicts in penitentiary institutions has improved, programs for post-penal assistance were introduced, etc.

THE PRISON SENTENCE: ADVANTAGES AND CRITICISM

Due to the prison crisis, as a sanction, there was a tendency for humanization of the penal system, especially in the part about the types and manner of execution of the sentence of deprivation of liberty, which, in turn, triggered the appearance of various forms of ***alternative sanctions*** (security measures, other measures that are sometimes described as measures for social protection), up to the development of sanctions that limit the freedom of movement of the convicted person without the use of prison sentences (such as electronic surveillance).
The prison sentence is the most often pronounced sentence by the courts in our country. This, through many years of research conducted over the years, is already a proven fact.
The prison sentence has its advantages, but also its own shortcomings. As *the advantages* I would mention: the isolation of delinquents from other citizens in society; preventing delinquents from continuing to commit crimes during the period of their deprivation of liberty; resocialization of prisoners, which assumes that after exiting the prison, they will no longer commit crimes.
At the same time, the prison sentence also has some sort of *shortcomings*, such as: the attempt to build a loyal citizen who wants to start a new life after returning to freedom in society, and all this should be done in a closed institution (in a non-free environment); then, the prison facilities themselves are a kind of "nursery for criminals", because prisoners could very easily improve themselves in the execution of crimes in the area where they previously committed crimes, causing a criminal infection; the absence of a prisoner from his family can have a serious impact on the person's development in his children. This removal from the community and family in some cases may be the easiest option and misses the opportunity to force the perpetrator to work on the reasons why he or she committed a particular crime in a structured and strict manner, while remaining within the community and family. The easiest way is to close off the perpetrator of crimes, to remove it and thus to protect society while he or she is in prison, without taking sufficient account of the

human being as part of the community from which they come and in which they will return, nor for the family and other relationships that in the future will continue to link him or her with the community and which may influence the distance from committing crimes in the future.

This complex impact of imprisonment is expressed as ***deprivation and frustration*** that determines the overall behavior of the convicted person. (Arnaudovski and Gruevski - Drakulevski 2013, 414).

The Italian criminologist **Cesare Lombroso** thought that a prison sentence should be avoided whenever that is possible and replace that punishment with compensation, corporal punishment, probation, fines, warranty or warning. Representatives of the sociological school, among which **Franz Liszt** particularly highlighted, emphasized the harmfulness of short-term prison sentences and advocated the application of a fine and probation. (Kostić 2005, 185)

All criticisms relate to the conditions for life in prisons, but also the very way of executing the prison sentence. Prison reformer **John Howard** regarded prisons as "places and seminars for sloth and all sorts of vices". (Ignjatović 2008, 233).

For the perpetrators of crimes, the prison served as a school for crime, an environment that would emotionally weaken the person and other prisoners would teach them how to become better criminals. The continuing lack of measures and activities for resocialization and overall prison treatment often makes it impossible for the prisoner to change after being released. (Karabec 2005, 131).

From that period to the present, in theory and in practice, the shortcomings of the prison sentence are obvious. First of all, the shortcomings are noted in the fact that the prison sentence is not humane, ineffective, has serious consequences for the physical and psychological health of the convicted person, and that it is rationally not worthwhile for the state. In addition to this, it is stated that "the sentence of imprisonment of up to six months, i.e. up to one year, does not allow sufficient time for starting, and not for the implementation of the treatment. It thus achieves a whole range of negative effects (separation of a convict from the family and from the workplace, by the force of law, the employment relationship can be terminated and left without work, and for the environment in which it lives, it will remain labeled for life)." (Ignjatović 2008, 233).

With the changes in penal systems in recent decades, there has undoubtedly been a new major transformation of the sentence, which means de-institutionalization, abandonment of the prison and transition to other forms of social control over criminals. At the same time, there are also warnings that point to the rational limits of their application: modern society by accepting such alternatives must not be transformed into a branched system of social control performed by various institutions, inspired by a basic disciplinary project. It is especially emphasized that their acceptance must be followed by strengthening the legal guarantees for the rights of the convicted person, because they are, however, punitive and without certain criteria for their application can result in arbitrariness and endangering human rights. (Kambovski 2011, 495).

In order to deal with the problem of punishment in the context of a complex modern society, it is clear that the fight against the commission of crimes cannot be relied upon solely on the imprisonment, that is, of the prison sentences. The criminal

justice system must constantly seek new ideas and solutions by enriching the system of sanctions and the ways in which they are carried out, and especially through internationally widely accepted alternative measures that have been developed and implemented by the probation services.

RESOCIALIZATION OF THE CONVICTED PERSON

Resocialization is a term that includes procedures and processes that lead to socially desirable changes in the attitudes, values and behavior of a person in which socialization has not led to socially acceptable behaviors, but to antisocial behavior. (Petz 2005).

Resocialization starts from the standpoint that any human behavior can be corrected or completely removed and to influence the person to whom it is being conducted the resocialization process itself, to accept other socially acceptable behaviors.

Modern views on the realization of the resocialization ideal are characterized by insisting on an individualized approach to this process. The criteria for determining the treatment under which the convict will be subjected during the serving of the sentence of deprivation of liberty depend (or should depend) on his individual possibilities and needs of (re) education. (Marjanović 2003, 288-289).

In contemporary penological science, it is repeatedly emphasized that during the process of reeducation of the person who committed a certain crime and showed deviant behavior - the emphasis should not be placed on the prison sentence.This is because the role of the prison is more in the function from the prisoner to build a person who will becomes aware of his own behavior, it should work with him on the adoption of socially acceptable norms and values, to teach him not to come into conflict with other people serving a prison sentence, which is expected, after serving the prison sentence, it does not come into conflict with other members of the wider social community.

The idea of resocialization and individualized treatment of the convicted person, which inspired the contemporary conception of this punishment, is, on the other hand, an abundant source of innovation and for the continuous improvement and harmonization of penal-legal systems.

Forms of prison treatment in their theoretical concepts represent transient opportunities for resocialization, which primarily include: the acquisition of education, the quality pursuit of leisure time, the development of moral lines of personality and the acquisition of work habits. A special form of treatment in prisons is also moral-pedagogical upbringing and education. This form has a "goal," "over the role," and is transmitted through all other forms of treatment. Namely, the ultimate goal of every job, education or quality leisure time of prisoners is primarily the development of positive, socially acceptable features of a person. Moral pedagogical upbringing and education is a key tool for developing the desired personality traits; the goal is to develop and nurture a degree of moral judgment that will enable the individual to adapt to the community inside and outside the prison. (Milutinović 1977).

The main means of achieving resocialization today, as well as the beginnings of the creation of penitentiary systems is the work. And that's not all (especially not the so-called slave labor, as a synonym for meaningless,

unproductive work), but on the contrary, productive, preferably creative work for which the convict gets a certain (not only symbolic) reward. Thus, for criminals in modern criminal justice systems, **John Howard**'s advice: "Make them diligent and they will become honest" is fully maintained. (Ibid, 289).

In parallel with the work, in the penitentiary-correctional institutions today there is a process of professional education and the deliberate organization of rest, recreation and entertainment. (Ibid).

LIFE AFTER SERVING THE PRISON SENTENCE

For most ex-prisoners, resocialization and dignified life after serving the sentence is an unsolvable puzzle. Moreover, finding a permanent job or any employment for personal existence is a real nightmare. Both the one and the other mentioned enigma, they regard former prisoners as their own personal challenge, and in many cases as an insurmountable obstacle. But such a problem is far from their only, personal. It is a much more problem for the institutions, that is, a systemic problem. Namely, the resocialization program begins with the serving of the sentence, but it does not end with the exit from prison. On the contrary. It is then that the true inclusion of former prisoners in the society should begin, which, like all other citizens, should contribute to the general, but also to its own personal prosperity. Therefore it is rightly considered that those who have made a mistake and have paid it to the state with their punishment are now equal citizens as everyone else and have the same rights and obligations as everyone else. But is that so? (Samardziev 2018).

In modern penitentiary systems, the care of the convicted person and his resocialization does not end with the expiration of the prison sentence. On the contrary, it continues, through the system of post-penal measures. They are designed to help the former convicted person re-engage in society in a way that will help him in seeking and finding work, possibly stabilizing ties with his family, establishing relationships and contacts with the environment, but also with the society itself, as well as eventual provision of short-term financial assistance and similar measures of post-penal assistance.

For the person released from serving the sentence, *the Law on Execution of Sanctions* provides, at least declaratively, ***post-penal assistance*** for the elimination of the negative effects of the prison and its reintegration into the social environment. Assistance (re-employment, completion of education, material assistance, accommodation, etc.), which in the developed countries is conceived as *an integral part of the (extended) treatment* of the convicted person, in our social conditions of increasingly limited material resources remains an ordinary theoretical set of penological Studies! (Kambovski 2004, 878).

CONCLUSION

The prison sentence is the most severe criminal sanction that can be imposed on the responsible perpetrator of a crime. It limits the freedom of movement of the convicted person. Apart from the punitive nature of the punishment, to do evil for the evil done, the goal is to educate the perpetrator of the crime, to sanction it for its

deviant behavior, and to correct its socially unacceptable behavior, as the same perpetrator in the future does not manifest such behavior and would not repeat the committed crime.

There is no doubt that the prison sentence leaves a permanent mark on the personality of the convicted person, both during the serving of the sentence itself and in the later life after completing with serving of the sentence. During the serving of the prison sentence, the convicted person is in an unnatural environment, isolated from the family and society, in an institution with a strict hierarchy and rules of conduct, in a non-homogeneous group, with members whom he has not known before and is now forced to share the same space and to respect the same rules. Because of this, the so-called *deprivations of the personality* of the convicted person are appearing.

Life at the prison institution it changes the whole way of life that the convicted person had previously had. He first interrupts intensive contacts with his family and close relatives, it disturbs intimacy that is an integral part of life, reduces or neglects the intellectual component of his personality and suffers from other restrictions resulting from the imprisonment.

There is no doubt that stay in the prison leaves permanent negative impacts and consequences on the convicted person, on his behavior and his way of thinking. And no matter how justifying the view that the strict regime of the prison facility behaves in the convicts, it is obvious that the rate of recidivism remains high. This factor indicates that the prison does not give the expected results, at least not according to the word and spirit of the law.

What can be done in this regard? It remains to work on improving prison conditions, developing programs for resocialization of convicted persons, developing post-paid assistance programs and similar programs that are familiar to developed societies, and which are more than necessary in the penitentiary systems of Macedonian penitentiary institutions.

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