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PREFACE

Dear readers,

In front of you is the Thematic Collection of Papers presented at the International Scientific Conference "Archibald Reiss Days", which was organized by the Academy of Criminalistic and Police Studies in Belgrade, in co-operation with the Ministry of Interior and the Ministry of Education, Science and Technological Development of the Republic of Serbia, National Police University of China, Lviv State University of Internal Affairs, Volgograd Academy of the Russian Internal Affairs Ministry, Faculty of Security in Skopje, Faculty of Criminal Justice and Security in Ljubljana, Police Academy "Alexandru Ioan Cuza" in Bucharest, Academy of Police Force in Bratislava and Police College in Banjaluka, and held at the Academy of Criminalistic and Police Studies, on 3 and 4 March 2015.

International Scientific Conference "Archibald Reiss Days" is organized for the fifth time in a row, in memory of the founder and director of the first modern higher police school in Serbia, Rodolphe Archibald Reiss, PhD, after whom the Conference was named.

The Thematic Collection of Papers contains 168 papers written by eminent scholars in the field of law, security, criminalistics, police studies, forensics, informatics, as well as members of national security system participating in education of the police, army and other security services from Spain, Russia, Ukraine, Belarus, China, Poland, Armenia, Portugal, Turkey, Austria, Slovakia, Hungary, Slovenia, Macedonia, Croatia, Montenegro, Bosnia and Herzegovina, Republic of Srpska and Serbia. Each paper has been reviewed by two reviewers, international experts competent for the field to which the paper is related, and the Thematic Conference Proceedings in whole has been reviewed by five competent international reviewers.

The papers published in the Thematic Collection of Papers contain the overview of contemporary trends in the development of police education system, development of the police and contemporary security, criminalistic and forensic concepts. Furthermore, they provide us with the analysis of the rule of law activities in crime suppression, situation and trends in the above-mentioned fields, as well as suggestions on how to systematically deal with these issues. The Collection of Papers represents a significant contribution to the existing fund of scientific and expert knowledge in the field of criminalistic, security, penal and legal theory and practice. Publication of this Collection contributes to improving of mutual cooperation between educational, scientific and expert institutions at national, regional and international level.

The Thematic Collection of Papers "Archibald Reiss Days", according to the Rules of procedure and way of evaluation and quantitative expression of scientific results of researchers, passed by the National Council for Scientific and Technological Development of the Republic of Serbia, as scientific publication, meets the criteria for obtaining the status of thematic collection of papers of international importance.

Finally, we wish to extend our gratitude to all the authors and participants at the Conference, as well as to all those who contributed to or supported the Conference and publishing of this Collection, especially to the Ministry of Interior of the Republic of Serbia and the Ministry of Education, Science and Technological Development of the Republic of Serbia.

Belgrade, June 2015

Programme and Organizing Committees

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Topic III

CONTEMPORARY SECURITY STUDIES

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SECRET INTELLIGENCE AND TECHNICAL AND TECHNOLOGICAL PROJECTS – ENDANGERING NATIONAL AND WORLD SECURITY[1]

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Sasa Mijalkovic[3]
The Academy of Criminalistic and Police Studies, Belgrade

Abstract: We are witnessing accelerated development of technical and technological, as well as information and communication innovations that are being applied in carrying out the intelligence and counterintelligence activities, highly visible and low visible covert actions, as well as other forms of special warfare. In the area of intelligence activities, a 'technical method' has been developed (*Technical Intelligence – TECHINT*), based on the application of sophisticated technical and technological as well as information and communication achievements. One of the global projects of electronic spying based on *TECHINT* is 'PRISM'. On the other hand, the target of those carrying out covert actions and new forms of special warfare has also been the environment, ie certain countries and whole regions along with their flora, fauna and climate, the ultimate goal being endangerment of both national security of those countries and their overall development in all areas of life. The project that is to be blamed for the sudden climate changes and numerous natural disasters that have befallen the world throughout recent years is 'HAARP'. The aim of this paper is to describe and illuminate new forms of the violation of sovereignty and security of countries , as well as inhumane methods of endangering nature, especially harmful artificial influences on climate changes in the world, through the description of the secret program 'PRISM' and alleged American scientific project 'HAARP'.

Keywords: technical method of security sector, TECHINT, SIGINT, PRISM, HAARP, national security, international security.

INTRODUCTION

The technical method (*Technical Intelligence – TECHINT*) implies collecting intelligence data by electromagnetic, electromechanical, electro optical or bioelectronics sensors from the space, earth, sea and atmosphere by using audiovisual recording, ie applying *Remote Sensing* and cutting and recording signals emitted by communication systems of foreign countries and other entities.[4]

To be more specific, TECHINT implies: 1) discovering, collecting, analysis, processing, evaluating, using and storing information about enemy technologies, especially enemey materials (*captured enemy material-CEM*), in supporting technical intelligence demands[5] and 2) technical research and evaluation, identification and exploitation of sensitive sites (*Sensitive Site Exploitation-SSE*); exploitation and assessment of damage caused by combat activities of foreign armed forces, and analysis of the success of the operations

1 This is the result of the realisation of the Scientific Research Project entitled "Development of Institutional Capacities, Standards and Procedures for Fighting Organized Crime and Terrorism in Climate of International Integrations". The Project is financed by the Ministry of Education, Science and Technological Development of the Republic of Serbia (No 179045), and carried out by the Academy of Criminalistics and Police Studies in Belgrade (2011–2014). The leader of the Project is Associate Professor Saša Mijalković, PhD; This paper is the result of the research on project: "Management of police organization in preventing and mitigating threats to security in the Republic of Serbia", which is financed and carried out by the Academy of Criminalistic and Police Studies, Belgrade - the cycle of scientific projects 2015-2019.
2 mladen.bajagic@kpa.edu.rs
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4 Waltz, Edward. (2003). *Knowledge Management in the Intelligence Enterprise*, Artech House Boston & London, pp. 38–39; FM 34–54: Technical Intelligence, US Department of the Army, 30 January 1998, p. 2–1; Bajagić, Mladen. (2010). *Metodika obaveštajnog rada*, Beograd: Kriminalističko-policijska akademija.
5 Hastedt, Glenn. (2003). Espionage: A Reference Handbook, Santa Barbara, California: ABC CLIO, p. 54; Techint: Multi-Service Tactics, Techniques, and Procedures for Technical Intelligence Operations, (FM 2-22.401, NTTP 2-01.4, AFTTP(I) 3–2.63), US Army, Marine Corps, Navy, Air Force, June 2006, p. vii; Detaljnije o terminima CEM (*Captured Enemy Documents-CED* i *Captured Enemy Equipment-CEE*) u: Bajagić, M. (2011). Uloga i značaj tehničkog metoda (Technical Intelligence) u prikupljanju obaveštajnih informacija (kumulativna vojnotehnička informacija). Beograd: Vojno tehnički institut, Vol. 46, Br. 3, str. 1–108.

carried out with the help of the researched equipment.[6] Because of the massive usage of TECHINT methods, certain secret police forces have been given the label 'electronic intelligence services'.[7]

Within the technical method a subspecialty has been developed and special terms have been adopted for labelling certain technical intelligence collecting diciplines : 1) *Signals Intelligence* (SIGINT), 2) *Imagery Intelligence* (IMINT), 3) *Measurement and Signature Intelligence* (MASINT), 4) *Information Technology Intelligence* (ITINT), 5) *Geospatial Intelligence* (GEOINT) i 6) *Telemetry Intelligence* (TELINT). The scientific and technical basis of most mentioned collecting disciplines of the technical method (MASINT, SIGINT, COMINT, IMINT i GEOINT) is, above all, Remote Sensing.

SIGINT is a generic term used to denote *wiretapping operations*- interception and analyses of intelligence communications and other electonic emissions (telephone connections and systems, etc.)[8], as well as collecting strategic intelligence knowledge of the diplomatic, military, economic, scientific and other plans and events, foreign radars, various aircraft and weapons systems.[9]

SIGINT operations are used to follow, intercept and decode the traffic of foreign means of communication (radio connection; satelite, radar and telephone connections; terrestrial and optical connections and other audio and visual signals). To be more specific, SIGINT analysis includes: 1) sorting and scanning intercepting messages and signals that have intelligence significance; 2) initial analysing with the aim of identifying enemy equipment and operational schemes; 3) storing intercepted electronic intelligence information; 4) cretaing data basis out of those information and locations/ facilities whence they have been collected; 5) application of developed technical procedures for analysing information from intercepted communication and non-communication systems; 6) information processing through automated equipment for detection and analysis of signaling information; 7) making technical and tactical intelligence reports, etc.[10]

SIGINT includes various forms of the technical method, primarily the two key subdisciplines: 1) collecting intelligence data from the means of communication –connection (*Communication Intelligence/ Interception – COMINT*) and 2) collecting intelligence data by recording electronic means (*Electronic Intelligence – ELINT*). COMINT covers gaining intelligence information through intercepting communication systems, including radio and TV programs, whereas ELINT involves gathering electronic intelligence knowledge through intercepting noncommunication signals (signals emitted by radars).[11]

The significance of SIGINT can be most thoroughly understood through the analysis of the *Echelon system,* the central part of the UKUSA agreement (*United Kingdom – United States Agreement*) in the area of electronic intelligence activities, the first global example of intelligence cooperation after The Second World War[12]. Furthermore, in the beginning of the XXI century, other bilateral agreements were reached among the UKUSA members, such as Australian American agreement 'AUSMIN', which includes antiterrorism and counterterrorism intelligence cooperation. Also, Norway, France, Germany and Sweden have contributed to the globalization of electronic intelligence activities and UKUSA agreement through the '*Multinational, Multiagency, Multidisciplinary, Multidomain Information Sharing - M4IS*' project.

Also, the UN, NATO, and EU have turned to the improvement of electronic intelligence capacities through their own security and intelligence capacities and in coopreation with technologically most powerful countries. [13] However, since a lot is already known about the projects UKUSA and ECHELON, we have decided this time to devote more attention to the less known project 'PRISM'.

At the same time, natural disasters and catastrophes are indisputably becoming serious threats for the national and world security. [14] In that sense, the technical method is being misused for the new forms of special warfare, which primarily threatens the environment of certain countries and whole regions. More specifically, the targets are flora, fauna and the climate, and the ultimate goal is endangering the national se-

6 Odom, William E. (2004). *Fixing Intelligence: For a More Secure America*, New York: Yale University Press, p. 65.

7 For example, the British service GCHQ (Government Communications HQ) and American NSA (National Security Agency). Read more in: Mijalković, Saša; Milošević, Milan (2013). *Savremene obavještajne službe: organizacija i metodika obavještajnog, bezbjednosnog i subverzivnog djelovanja (Contemporary Intelligence Services: organization and methodology of intelligence, security and subversive activities),* Banja Luka: Visoka škola unutrašnjih poslova (High School of Interior), pp 96–101, 419–420, 411–413.

8 Johnson, Loch K. (ed) (2007). *Strategic Intelligence* (Volumes 1–5). Westport, Connecticut, London: Praeger Security International, Prefeace (x); *Signals Intelligence*, US Marine Corps, MCWP 2–22, Washington, DC: Department of the Navy, Headquarters United States Marine Corps, 2004.

9 Richelson, Jeffrey T. (2007). The technical collection of intelligence. In: Johnson, Loch K., *Handbook of Intelligence Studies*, New York: Routledge, p. 108; Hastedt, Glenn. (2003). *op. cit.,* pp. 14, 210.

10 Compare: Bajagić, M. (2011). *Uloga i značaj tehničkog metoda* (*Technical Intelligence*) *u prikupljanju obaveštajnih informacija (The Function and Importance of Technical Method –Technical Intelligence- in Collecting Intelligence Information*, *op. cit*.

11 Lerner, K. Lee, Lerner, Brenda Wilmoth (eds) (2004). *Encyclopedia of Espionage, Intelligence, and Security*, Volume 3 (A-Z). USA Farmington Hills: The Gale Group Inc, p. 79; More about ELINT operations and other technical collecting disciplines (TELINT, MASINT, HACKINT i dr.) in: Bajagić, M. (2011), *op. cit*.

12 Johnson, Loch K., *op. cit*., p. 122.

13 Svendsen, Adam (2008a). The Globalization of Intelligence Since 9/11: Frameworks and Operational Parameters. In *Cambridge Review of International Affairs*, Volume 21, Number 1, pp. 129–144.

14 Mijalković, Saša (2011). *Nacionalna bezbednost (National Security)*, Belgrade: The Acadamy of Criminalistic and Police Studies, pp. 195–197.

curity of the given countries and their overall development in all areas of life. The surprising climate changes and numerous natural catastrophes that have stricken the whole world are attributed to the 'HAARP' project. It is a super secret project that has been developed by the USA within the SIGINT operations.

'PRISM' PROJECT

In the beginning of 2013, the world public was shocked by the 'Snowden' affair that revealed an ultra secret project NSA for the surveillance of electronic communication under the code name *'Prism'(PRISM).* According to the data revealed by the former member of CIA and NSA Edward Snowden, currently the most famous intelligence defector, *Prism* is primarily used for collecting electronic data of private users of large internet service. In the realization of *Prism*, almost all world IT leaders cooperate with NSA : 'Microsoft', 'Yahoo', 'Google', 'Facebook', 'Paltalk', AOL, 'Skype', 'Youtube' and 'Apple', and also private mails, photographies, messages and correspondence on Facebook, attitudes on Twitter etc., are kept track of.[15] It is the latest evolutionary generation of secret wiretapping programs of the US government dating from 11th September 2001, which started working under President George Bush Jr. By adopting the *Patriot Act* , and it was expanded by the *Foreign Intelligence Surveillance Act of 1978 Amendments Act of 2008*" or the "*FISA Amendments Act of 2008*".[16]

Since 2007 the PRISM program has allowed the US electronic services, NSA primarily, to monitor hundreds of millions of people around the world on the Internet in real time. Through these activities, a huge number of people in foreign countries is being monitored, and also all Americans that make contact to people abroad via Internet can be under surveillance. According to the official Washington, the PRISM program has been approved by the US Federal Court, and it has also been known to the members of the Committee on the Intelligence of the Congress, who have been in obligation to strictly keep this biggest US state secret.The US Government insists upon the attitude that NSA is allowed to collect data in this manner with the permission of the Court. Still, both the US public and the whole world have been apalled by the evident violation of human rights and the right to privacy of citizens and their communications, guaranteed by the Constituition , especially by the Fourth Amendment to the US Constitution. [17]

The legal basis for launching the 'Prism' program can be found in the '*Protect America Act*' of 2007, through which the secret NSA program was conceived under the title SAD-984KSN (PRISM)[18], which is later specified in detail by the above mentioned amendments of 2008. The Foreign Intelligence Surveillance Act (FISA) was significantly applied by The Act of 2007, and the most important changes concern the following:

– Changing the conditions for getting the order for surveillance by the NSA, where it is provided that the NSA is allowed to carry out surveillance of communications during 72 hours without anyone's permission, while the NSA keeps secret and protects the contents of the intercepted communications, except in the cases when the legal basis for the initiated action must be determined;

– Wiretapping in the USA (*Domestic wiretapping)*, that, without a court order, allows monitoring electronic communications of the US citizens who make contact with foreigners who are the targets of the US investigations on terrorism;

– Foreign wiretapping, which is regulated by the law in such a manner so that it can be carried out without a court order for any kind of foreign electronic communications, even if the communications include the US locations, etc.;

– Data monitoring about Americans who communicate with persons who are not the USA citizens, and who are the intelligence targets of the US Government;

– Declarations of a foreign agent, that is, by this Act it is not necessary for the persons under surveillance to declare themselves as foreign agents and, with the permission of a court, be wiretapped. In other words, the NSA now has freedom to wiretap any individual abroad without a court order, what was necessary according to the FISA[19];

15 Google, Facebook and others have vehemently denied to have been giving the NSA Agency 'direct access' to their servers, although that has been completely confirmed through the 'Snowden' affair. Sometime later, Face book has made an announcement on its blog that in the second half of 2012 it got between nine and ten thousand such requests, which related to 19.000 users of this social network (AFP).

16 A BILL To amend the Foreign Intelligence Surveillance Act of 1978 to establish a procedure for authorizing certain acquisitions of foreign intelligence, and for other purposes, 110TH CONGRESS, 2D SESSION.

17 See: The fourth Amendment to the US Constitution: "*The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized*".

18 *Protect America Act of 2007*, Public Law 110–55, 121 Stat . 552, August 5, 2007,

19 Elekronske komunikacije stotina stranih državnika je prisluškivano kroz ovaj program, o čemu govore otvorene afere u dve poslednje godine i širom Evrope. I nemačka kancelarka Angela Merkel bila objekt američke elektronske špijunaže.

– Application of all antiterrorism laws and legal regulations in the area of collecting intelligence data through this program (The Terrorism Suppression Act, The US Protection Act, etc.), that is, gaining certain intelligence information for an indefinite period. The only condition is that it has to be the geolocation outside the USA. The application of the directive in this area can be carried out within or outside the USA. All it has to be asked for is that the aim is related to the official request for collecting intelligence information about operations of the persons involved in the surveillance
– Authorization power is vested in the NSA director and the prosecutor who can authorize surveillance of all communications, including the communications of the individuals outside the USA (US citizens and non-US citizens) without the permission of the Foreign Intelligence Surveillance Court.

The final goal of the project is, as officially stated, gaining foreign intelligence information, with drastic reduction of legal procedures. Also, according to this Act, each person or company can be ordered to necessarily offer help to the NSA in gathering intelligence information within the Prism project. Gaining implies gathering foreign intelligence information from or with the help of a communication provider, a guardian, or any other person (an official, an employee, an agent, or another person employed at the provider's) who has access to the communications, both when they are transmitted or stored, or to the equipment that can be used for the transmission or storage of such communications. Comparing the FISA, within this Act, the term 'electronic surveillance 'has been replaced by the term 'gaining intelligence knowledge', so this does not require any longer the permission of the competent court. In this manner, the work procedures has significantly been accelerated, although the law provides for the subsequent permission of the competent court, and the obligation of the prosecutor to inform the Congress about the actions undertaken two times a year, particularly on persons who refuse to cooperate with the NSA.

„HAARP" PROGRAM

Within the SIGINT operations, the US has developed in recent decades a super secret program and system HAARP (*High Frequency Active Auroral Research Program).* HAARP involves a system/ network of radio transmitters of almost incomprehensively vast power and suitable detection instruments. HAARP has over 180 antennas located near Gakona at Alaska[20] . These powerful transmitters / antennas send over 3 600 000 watts continuously on a daily basis using six generators of 3.6 thousand horsepower in volume.[21] It's one hundred times more powerful transmitter than those used, for example, by BBC TV in Europe. The pulse energy that is generated by HAARP can be greater tens of thousands of times, and the first HAARP heater was successfully tested in Alaska in 1996.[22]

The US Senate approves about $20 billion each year for the improvement of the HAARP system that has multiple functions: studying the phenomenon of northern lights and radio communications and classical intelligence operations. HAARP has evolved through three phases:

– *Development Prototype-DP* had 18 antennas organized in three columns with six rows. The output power of the transmitter was 360 MW, and antennas had power only for the basic testing of the ionosphere;
– *Filled Developmental Prototype – FDP* had 48 antennas in six columns with eight rows, and a transmitter of 960 MW. It was capable for more powerful ionospheric heating, and used for several successful scientific experiments in ionosphere, and
– *Final Ionospheric Research Instrument/ IRI – FIRI*[23] which has 180 antennas in 15 columns with 12 rows, with the output power of the transmitter of 3.6 MW, and the overall radiated power will be able to reach the value of 3,9811 MW. There are plans for further development of these capacities.[24]
– According to the US official documents, strategic goals of the HAARP system are the following:
– scientific research, especially the research of ionosphere (the upper layers of the atmosphere); therefore, it owns a high voltage transmitter and the system of antennas that operate on the high frequency principle. HAARP scientific instruments are used for observing ionosphere and the effects produced during the active research by using the transmission system

20 Uporedi: HAARP: High Frequency Active Auroral Research Program, Internet 29/03/2014, http://www. haarp.alaska.edu/haarp/gen.html.
21 HAARP: High Frequency Active Auroral Research Program, Technical Information, Internet 29/03/2014, http://www.haarp.alaska.edu/haarp/tech.html.
22 See: Cohen, M. B., Golkowski, M., Inan, U. S. (2008). Orientation of the HAARP ELF ionospheric dipole and the auroral electro jet. In *Geophysical Research letters*, Vol. 35.
23 Ionosferic Research Instrument (IRI) is a transmitter of great power operating in a high frequency range (HF), and it is used for temporary excitation of a part of ionosphere.
24 : Kennedy, E. J., Kossey, P., Description of the HAARP Gakona Facility With Some Result From Recent research, Internet 29/03/2014, http://www.ursi.org/Proceedings/ProcGA02/papers/p0893.pdf.

– military testing[25];
– usage as a communication system for submarines, because it allows communication with submarines in great ocean depths using radiation of extremely low frequency (ELF);
– penetration into the ground in order to search hidden tunnels or underground hiding places of military interest;
– improvement of satellite links;
– protection of the territory from the enemy aircraft and intercontinental ballistic missiles. Namely, this system can provide turning of rockets from the flight trajectory by raising ionosphere and thus protect territory from the ballistic missiles.HAARP installations interfere with all radio communications in ionosphere, too (at an altitude from 64 to 950 km off the ground);
– destroying enemy satellites;
– identification of types of missiles approaching the US territory;
– disrupting and complete disabling communications in certain areas;
– changing the chemical structure of the upper layers of the atmosphere, that is, climate programming on the desired part of the planet;
– causing earthquakes, and
– managing human health and biological processes on the Earth. [26]

Tha last four points have aroused the most vehement opposition of the world public to this program.[27] The reason is that the powerful signals detected from the HAARP system heat the ionosphere in the upper layers of the atmosphere at the height from 100 km to 350 km, which causes the warming effect of certain areas at great altitudes.[28] The US has officially stated that the task of HAARP is, in addition to improving communications with submarines and recovery of the ozone layer, also, removing pollution caused by carbon dioxide and carbon monoxide. Still, it is thought that HAARP, considering its possibilities, should be used with more caution. The reason for concern is that the heating is done in the form of firing a controlled beam of electrons at a target at the speed of a supersonic aircraft (the mechanism is not still explained to the public). The electrons are absorbed by the lower layers of the atmosphere, but at greater altitudes the beam is spread for hundreds of miles in circles, and it is able to easily shoot down the ballistic missile. Finally, the HAARP program can be used to manipulate the climate conditions, where the warming effect is used to shift the airflow extremely subtly and create massive cumulative weather effects over a certain area, which can last for days and weeks.[29]

Namely, unlike the lower latitudes, in the areas of greater altitudes, there is a natural flow of electrical current through the ionosphere, which is associated with the emergence of the spectacular northern lights-the aurora borealis. Warming changes the conductivity of the ionosphere and affects its natural electrical currents, which is considered by some people to be the key mission of the HAARP program. In this manner, HAARP allows to change and modulate the natural patterns of low frequency radio waves emitted by the ionosphere, because the giant extremely low frequency-ELF radio transmitters heat part of the ionosphere.[30]

ELF waves have a property of literal penetration into each matter. Normal radio waves cannot penetrate deep into the water, but ELF waves can. ELF radio will soon become the only means of communication in nuclear submarines cruising the sea bottom, so that HAARP offers far more powerful means of message transmission than conventional radio transmitters and receivers. ELF waves also penetrate far deeper into the ground and rocks than radio waves. GEO radar for exploring the ground is pretty much limited by depth, but systems using ELF waves can, without problems, peek very deep below the surface of the Earth's crust, and, without exception, locate and identify all underground bunkers and shelters, they can be used to establish control of human and animal behavior, to improve radio receptions even through the walls of buildings specially reinforced by brick and steel, to block foreign electronic devices and radio waves, etc.[31]

The biggest criticism for the development and use of HAARP system is expressed because it is used, by many estimates, for the following:

25 *ELF/VLF Wave-injection and Magnetospheric Probing with HAARP*, Stanford University January 2003.
26 Ibid.
27 See: Chossudovsky, Michel. (2001). *Washington's New World Order Weapons Have the Ability to Trigger Climate Change*, Centre for Research on Globalisation: Third World Resurgence.
28 HAARP (*High Frequency Active Auroral Research Program*), Internet 20/06/2014, http://www.haarp. alaska.edu/haarp/tech.html.
29 Ibid; See: Smith, Jerry E., *Weather Warfare: The Military's Plan To Draft Mother Nature,* Kempton Il.: Adventures Unlimited, 2006.
30 Fujimaru S. and R. C. Moore, „Analysis of time-of-arrival observations performed during ELF/VLF wave generation experiments at HAARP", In *Radio Science*, Volume 46, Issue 3, June 2011.
31 Knowledge HAARP project, Internet 23/06/2014, http://us.figu.org/portal/Knowledge/HAARPProject/tabid/110/ Default.aspx.

1) as terrestrial ionospheric VHF reflector (*a source of field-aligned ionospheric VHF reflectors*)[32], that is, to heat the ionosphere, which disrupts the Earth's magnetic field, what can be used for jamming enemy's telecommunications. In addition, it is also possible to create ozone hole in the atmosphere above the territory of the enemy, thus exposing the population and the army to the deadly radiation from the space. It is argued that ionospheric testing within HAARP can completely change the magnetic polarity of the Earth [33];
2) for causing an earthquake (an earthquake machine) by using waves of extremely low frequency (ELF) which, passing through the sea, land and the atmosphere, can cause mechanical vibrations at great distances and deliberately encourage earthquakes and weather modifications with the consequences of huge precipitation, floods and droughts[34]. So, HAARP is a huge threat to the ecological security of the whole world;
3) For directing tremendous energy in the function of a powerful weapon (*a directed-energy weapon*. Namely, 3,5 million of emitted watts represents power, which, for example, allows one to focus short-wave radiation to any point of the ionosphere and its heating till the point of turning it into a high temperature plasma; this suggests that HAARP represents a giant microwave oven for global use and a devastating weapon in the range or a nuclear bomb. Since HAARP operates on the principle of strongly focused radio impulses, directed towards the ionosphere, it is heated to high temperatures and the plasma grid is formed, creating the effect of the 'microwave oven'. As this part of the atmosphere is used to maintain links, in this way, the possibility of managing cosmic systems, missiles, aircraft, etc. is lost. The aircraft that are in the zone of the directed operation of HAARP can be scorched, that is, they would be burned;
4) as a system for electronic warfare;
5) As a system for Tesla's wireless power transfer- namely, the HAARP system also generates extra low frequencies from 0, 5 to 300 Hz. The system, according to the published data, can interfere with the 'normal' brain functioning on a particular territory, through the action of the waves in the frequency range from 0, 5-30 Hz. Ionosphere research experts know that at lower frequencies the human brain/consciousness can be affected. It is the frequencies that correspond to the so called alpha or the Berger rhythm (from 8 to 12 Hz). The brain vibrates at these frequencies during mental relaxation. At approximately the same frequency range the earthquakes can be induced or their effects can be mitigated. It has been scientifically established that the frequency range from 400 to 450 MHz is the framework of true fundamental vibrations of the human organism. A signal of the HAARP system has already been 'caught' at the frequency of 435 MHz, therefore, it is considered that, with the help of it, brain wave modification is performed, and consequently, modification of mental functions and reactions of millions of people, [35] and,
6) For creating explosions of nuclear proportions.[36]

Even despite these known facts, all the information on the results of the HAARP research program are still unavailable for the world public. In addition, there is a reasonable suspicion that the program equal to the HAARP system is currently being developed in Greenland, where a heating device of the capacity of 10 million watts is being built, and the same system is being developed in Norway, thus defining contours of a powerful entity which completely covers Eurasia, including China.

CONCLUSION

It is undisputed that the technical and technological,and information and communication achievements are applied in the implementation of intelligence and counterintelligence activities, highly and low apparent covert actions, and other forms of special warfare. In the field of intelligence activities, great powers have developed electronic spying global programs. The latest one that is known to the global public is the program 'PRISM'. So far, it has been known that it is a global program for electronic spying of private users of large Internet service.

32 Chemtrail Awareness Week, HAARP is a Directed Energy WeaponInternet, Internet 24/04/2011, http://www. alternativemedia.ca/chemtrailday.pdf.
33 Shachtman, Noah, "Strange New Air Force Facility Energizes Ionosphere, Fans Conspiracy Flames", In *Wired Magazine*, Retrieved 17 April 2011.
34 Chossudovsky, Michel. (2007). Climate Change: Weather Warfare: Beware the US military's experiments with climatic warfare. In *Ecologist*; More Powerful Than HAARP-Bigger, Nastier Earthquake Machine Now In Operation, Internet 28/07/2014, http://before-itsnews.com/earthquakes/2013/02/bigger-nastier-earthquake-machine-now-in-operation-2449204. html.
35 See: http://ww w.time- travel.com/s kybooks/.
36 Dirty facts behind HAARP Technology!, Internet 28/07/2014, http://envirocivil.com/environment/dirty-facts-behind-haarp-technology/.

At the same time, there are serious indications, but no irrefutable evidence, that the technical method is misused for causing natural disasters, which, in the spirit of international law, would be an act of aggression. Surprising climatic disasters, that is, intimidating precipitation and floods that during 2014 befell certain European regions, especially Southeast Europe and the whole of the Balkans, are often interpreted in the public as a consequence of the operation of the HAARP system. The only thing undisputed is the fact that, so far, there are three known locations of the HAARP system-Alaska, where it has been developing from the beginning to the final project, and Greenland and Norway-where, according to the public information, new development programs on the principle of HAARP are being carried out.

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A GEOPOLITICAL ASPECT OF A VIOLENT SECESSION OF KOSOVO AND METOHIJA FROM SERBIA

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Jean Jacques-Rousseau, *Social Contract*: "To renounce freedom is
to renounce one's humanity,
one's rights as a man and equally one's duties."

Abstract: According to a geographic-deterministic comprehension of a notion that geography determines politics or in other words according to the comprehension that geography is linked to politics in its broadest sense, on the Balkans there are unavoidably present some foreign forces which create geopolitics of the Balkans. Directions of influence of these non-Balkan forces on the Balkan's domestic relations have shaped a geopolitical crossroad with its northwest-southeast and northwest-southwest poles on the Balkan Peninsula. Following the violent secession of Kosovo and Metohija from Serbia a very wide and deep spatial aperture has been created in Serbian ethnic territory with a tendency of its further widening and in accord with it its trait is continuous piranhas-like 'biting' of the Serbian ethnic territory as well as its diminution. In accord with such geopolitical scenario Kosovo and Metohija has fully got an Islamic sign mark and it has gained a multiple geopolitical role. It is in particular the existence and widening of 'Albanian ethnic wedge' acting in direction of the Morava-Vardar valley as a main traffic and military-strategic artery of the Balkan that is unacceptable for majority of the Balkan peoples. This wedge cuts off an 'ethnic' link of Christian Orthodox Serbs and Macedonians and also of the Serbs and Greeks. Consequently, the Albanians might preoccupy Macedonia from the west and north, or in other words from Struga to Kumanovo. This poses a great danger for the peace in the Balkans and it should be avoided at any cost.

Keywords: Serbia, Kosovo and Metohija, geopolitics, security, violence .

The Balkans is a geostrategic important European southern region and a cradle of European cultural, historical and civilization development. In geographic and geostrategic terms the Balkans is a 'geopolitical crossroad' as well as 'geopolitical inter-station' of the East and West, a great door toward the east, west, north and south of Europe and it is possible even to label it 'the chain of the world'. The Balkans is also considered to be 'the region of Southeastern Europe' situated between the Black Sea, Marmara Sea, Aegean Sea, Ionian Sea and Adriatic Sea, which means that its northern frontier equals a line from the Gulf of Trieste to the Black Sea or, in other words, from Trieste to Odessa.[1] In addition, throughout history and also at the beginning of 21st century the Balkans, as both the threshold and door of Europe, was a significant region of encounters and conflicts of different civilizations (primarily of the Christian Orthodox, Catholic and Muslim civilizations). In ethnic sense, the Balkans is a region of an "ethnic cocktail" (Z. Bzezinski); the bridge of encounter but also of collision of many peoples and of great transmigrations of the peoples, migrations, divisions, secessions and strong national and nationalistic passions.[2] The Balkan Peninsula is located in the southeast of Europe. Its usual northern borderline is a line the Gulf of Trieste – the Ljubljana valley – the Danube river (its confluence). Within this range of the Balkan Peninsula there are around 520.000 square kilometers and around 50 million of people. However, taking into consideration cultural-historical contents as a basis of the borderline determination, much more appropriate borderlines of the Peninsula would be the borderline: the Gulf of Rijeka – Kupa – Sava - Danube up to the Djerdap – Carpathians –Bilrad plateau – Prut – Danube – Black Sea borderline. This includes the Wallachia Plain and southern Moldavia (in Romania) into the Balkan Peninsula, but not Slovenia and Istria. The territorial surface of the Balkan Peninsula comprehended in this sense would be 565.000 square kilometers with approximately 55 million people.[3]

1 *Енциклопедија Југославије*, I том. Југословенски лексикографски завод. Загреб, 1985, стр. 361; *Бранислав* Матић, *"Геополитички кључ за судбину верига света – тајна Балкана"*,СКЦ, Београд,1995, p. 8

2 Митровић, Љубиша, *Нови светски поредак и Балкан*, СКЦ, Ниш, 1999, p. 30

3 The Peninsula is open to the European continent from many directions. In the west and southwest it is bordered by the Adriatic Sea and Ionian Sea and in the southeast and east by the Aegean Sea, Marmara Sea and Black Seas. It is linked with southwestern Europe by the Po valley and it is linked with western, middle, northern and even with eastern Europe by the Pannonia valley. The Wallachia plain connects the Peninsula with eastern Europe and the Black Sea basin. Nowadays there are eleven states on the Balkan Peninsula: Turkey, Greece, Bulgaria, Romania, Macedonia, Albania, Serbia, Montenegro, Bosnia and Herzegovina, Croatia and Slovenia, but in Bosnia and Herzegovina there are two entities – the Republic of Srpska and Federation of Bosnia and Herzegovina with a considerable

At the beginning of the 21st century the Balkans was a region with politically imperfectly defined borderlines and with redundancy of history and 'unfinished peace'. However, the production of the redundancy of history in the Balkans as the region where the arcs of different civilizations get intersected and different religions and ethnicities get intermixed is not a consequence of the Balkan peoples' acts only, but also of great powers which most often not only have 'shuffled cards and arbitrated', but have also directly triggered and managed the conflicts. Such was the state of affairs not only in the 19th and 20th centuries, but unfortunately at the beginning of the 21st century as well. The Balkan peoples are no less valuable and talented from the European ones, but in recent periods geo-history acted like a sort of the storm in the Balkans, like a sort of the weather disaster which during certain war periods devastated everything which former generations of people had created in this geo-region in the past. Certainly at the beginning of the 21st century and in new historical circumstances the Balkan peoples needed a Copernican turn – the turn from the warrior culture toward the worker culture, that is, toward a new culture of the work and the peace. This is a precondition for the development, modernization and progress of the Balkans. And this precondition demands a change of the system of values, world-related point of views, cultural orientations of the peoples and of course this has its own implications regarding the process of self-identification and transformation of identity of cultural essence of the Balkan peoples. It is the time for a metamorphosis of cultural forms from the warrior culture toward the working patriot culture in the spirit of a message of Djuro Danicic "It is possible to die for one's homeland at each working place".[4] However it is obvious that such renaissance will not be accepted by the Albanians in the Balkan for a long time. Therefore, considering the fact that in the Balkan the Albanians are the initiators and protagonists of regional conflicts – it is impossible to interpret the aforementioned Danicic's thought as a renunciation of great significance of a warrior values and patriotism of other peoples and citizens.

In the circumstances of growing cruelty of the Balkan bleakness, the working patriotism should be only an upgrade of basic values on which national and cultural identity of the Balkan peoples had been built upon. According to geographic-deterministic comprehension of the notion that geography determines politics, or again according to the comprehension that in the broadest sense the geography is connected with the politics, in the Balkans there have been unavoidably present foreign powers which create the geopolitics of the Balkan. Directions of influence of these non-Balkan powers on inter-Balkan relations have shaped a Balkan geopolitical crossroad with northwest – southeast (NW – SE) and northwest-southwest (NW-SW) poles. Throughout history, from directions of the northwest Germany and Austria, from the northeast Russia and Hungary, from the southeast Turkey and from the southwest Vatican, the Republic of Venice and Italy exerted their influence in the Balkans. From direction of the southern Mediterranean side the navy powers such as Great Britain and France and later in the 20th century the United States of America exerted their influence, too. Austria declared itself a 'natural' successor of Turkey in the Balkans and Russia made efforts to grasp control over the Straits (Bosphorus and Dardanelles) and gain access to 'warm' seas, while Great Britain fiercely resisted it. Therefore, the geopolitical crossroad was clearly shaped into an intricate Balkan geopolitical node. And so the process of 'Balkanization' of the Balkan had started.[5]

A foreign component of the Balkan geopolitical node has been most often expressed in a division of interest spheres (both secret and public ones) by biased meddling into Balkan geopolitical relations and processes, causing strives among the Balkan peoples along with redrawing of political borderlines and creation of new states (e.g. the creation of Albania 1912-1913).[6]

degree of statehood. In general, Turkey is territorially the most extensive state (779.452 square kilometers) and Slovenia the smallest one (20.251 square kilometers.) Greece, Macedonia, Albania and Bosnia and Herzegovina are located on the Balkan Peninsula by their entire territorial surface. There are eight local languages in use. On the Peninsula there are three cultural-civilization systems (circles): eastern Christian, Islamic and western Christian. These systems are mostly interconnected in Bosnia and Herzegovina, which was one of the causes for the recent civil war of ethnic-religious origin there. (Илић, Јован, *Балкански геополитички чвор и српски етнички простор*, Зборнбик радова, *"Геополотичка стварност Срба,"* Институт за геополитичке студије, Београд, 1997, p. 412)

4 Митровић, Љубиша, *Чари непознатих обала*, Књижевна заједница, Вељко Видаковић, Ниш, 2007, pp.76-78.

5 Derogatory term 'Balkanization' implies political-geographical fragmentation, mutual quarrels and intolerance of the Balkan peoples and states and the predominance of foreign forces and factors. Up to these days the Balkans has been primarily an object and not the subject in international political military and economic relations.

6 In terms of the spheres of interest, the majority of the settlements and attempted settlements were made between Austria and Russia, although one of the first plans regarding division of the Balkans had been made at the court of French king Louis XIV in 1686 (the plan of Jean Copain). According to this plan, France was supposed to gain Istanbul for which Napoleon I said that it was "the key of the world". There were also famous divisions of the spheres of interest in the Balkans in October 1944 in Moscow and in February 1945 on Yalta. According to an agreement made between Stalin and Churchill in October 9th 1944 in Moscow, the percentage part of great powers in the Balkans was the following one: Romania – Russia 90%, others (Great Britain, the USA, France and others) 10%; Greece – Great Britain and the USA 90%, Russia 10%; Bulgaria – Russia 75%, the others 25%; Yugoslavia and Hungary – 50:50% (Дедијер, Владимир, *Интересне сфере*, Просвета, Београд, 1980, p. 389)

GEOPOLITICAL SIGNIFICANCE OF KOSOVO-METOHIJAN REGION

The territory of the Autonomous Province of Kosovo and Metohija encompasses the surface of 10.887 square kilometers and it consists of two regional and four sub-regional morpho-tectonic units. They are: KOSOVO, with secondary valleys Lab and Upper Morava (the Gnjilan valley) and Kacanicka gorge which is located between the mountain Sar and Skopska Crna Gora (*Karadag*); and METOHIJA, which consists of Upper Metohija or Metohija in the narrow sense of the word and the Prizren valley. The Upper Metohija and Prizren valley make a comprehensive tectonic depression of valleys and one regional-geographic unit. Secondary intra-regional and peripheral geo-systematic units are the following ones: *Ibar-Kopaonik mountain-valley* region in the northern margin part of the Province. This region is a southern and southeastern part of Starovlah-Raska highland. *Drenica* is a region between Kosovo and Metohija valleys. Podrim, with a limestone and flysch insular mountain Milanovac is connected with Drenica, along with Prekoruplje, a hills-valley area that is directly connected to the lowland part of Upper Metohija in the basin of the river Klina which is the left tributary river to the Beli Drim River.

Mountain rim of Metohija in direction to Upper Polimlje, Crnogorska hills, Kolasin and the valley of the upper Ibar River with gigantic Prokletije mountains dividing Metohija from the Zeta, Montenegrin and Skadar coast. The *Sarplanina area* is situated between the Prizren basin and Poloske (*Tetovo*) valley in the upper part of the watershed of the Vardar (*Aegean watershed*) and Radika (*Adriatic watershed*) rivers. With mountains Koritnik and Pastrik, Sar-mountain area forms an orohydrographic node of a Central pulse-system (called *Catena Mundi* in Latin sources) in antic presentations of the orographic system of the Balkan Peninsula. The western part of the Sar Mountain overlooks the outlet part of the valley of the White Drin from Prizren basin above the watershed of the White and Black Drim in northern Albania. From there arises the Drim valley of the Metohija in the direction southwest-northeast (SW-NE), connecting the Skadar-Lješka coast with the Prizren basin. The Drim valley is a major natural link of historical Zeta with Metohijan-Kosovo Old Serbia or Lower Serbia Lower in Latin sources (*Servia inferior*) and also a central transverse communication road - Zeta road (*Via de Zenta*) - between the Adriatic Sea and the interior part of the Balkan Peninsula, starting from Split, Neretva, Dubrovnik and Kotor roads in the north up to *Via Egnatia* in the south, the ancient main link between the Western and Eastern Roman Empire. Some authors underline the connection of Sar Mountain area with Prizren or Metohijan-Prizren basin due to its functional relation with Prizren, the town with great influence to its mountainous background and also a former royal capital place in the period of the peak of power of medieval Serbia. By its regional position and its main natural and anthropogeographical-ethnographic characteristics Sar Mountain region is a separate regional unit with an excellent complex geographic, biogeocenologic, anthropological and ethno-cultural structure.[7]

The Kosovo-Metohijan region is a historical seat, the state-forming core and central territory of the medieval Serbian state and certainly these characteristics are the most significant geopolitical characteristics of each and every state. The relief of Kosovo and Metohija is of mountainous character, with two large valleys (Kosovo and Metohija), encompassing 36.5 % of the total surface, while their hilly and mountainous part covers 63.5 % of the surface of the Province. The Kosovo valley consists of a plain along the river Sitnica, with an average altitude of about 500 meters, while the Metohija valley is a gently undulate terrain with an average altitude of about 400 meters. The climate of Kosovo and Metohija is determined by its jagged relief, its proximity to the Adriatic and Aegean Seas, the direction of positioning of its mountains and valleys and also by the network of its numerous rivers. When viewed from the geopolitical and geostrategic aspects, Kosovo and Metohija is a Serbian security macro-fortress. Subsequently, the territory of Kosovo and Metohija encompasses about 12.3 % of the whole state surface of Serbia. Furthermore, when viewed by the position that Kosovo and Metohija has had in the state territory of Serbia it is obvious that it holds a great geopolitical, geostrategic and military significance, because in Serbia violent secession of this Province has not been recognized. By its geostrategic and geopolitical position the region Kosovo and Metohija is of priceless significance for Serbia. The region of Kosovo and Metohija covers the whole line of the state borderline of Serbia with Albania and about two thirds of its borderline with Macedonia. Comparing the strategic depth of Serbia with the spatial depth of Kosovo and Metohija both in the terms of its short and long axis, it is possible to conclude that *the region of Kosovo and Metohija encompasses about 100 kilometers of the strategic depths by both of these axes.* Taking into consideration that the strategic depths of Serbia is small, in particular in case of the short axis (East – West), then the estimation of great strategic significance of Kosovo and Metohija for Serbia becomes even more supported by such evidence. The region of Kosovo and Metohija holds great significance in Serbian ethnic space. In the words of experts it is a 'soft belly' of Serbia. By the use of this metaphor in a picturesque way there is expressed the great strategic significance of

7 Радовановић, Милован, *Косово и Метохија – антропогеографске, историјско-гографске, демографске и геополитичке основе*, Службени гласник, Београд, 2008, p. 9-10

Kosovo and Metohija for Serbia and even broader – for the whole ethnic space of the Serbian people.[8] The ethnic structure of Serbian population in Kosovo and Metohija up to the period of the 1960's reflected the statehood status of the Serbian population on Kosovo and Metohija.[9] In comparison with the Kosovo valley, Metohija has considerably more complex morphotectonic structure.[10]

The physical-geographical characteristics of Kosovo and Metohija used to have the characters of elements / parts of the 'macro-fortress' much more in the period of medieval Serbian state than nowadays at the beginning of the 21st century, but in the first place due to its specific relief, there is clearly identified its geopolitical position and role in contemporary age as well. However, all aspirations of Serbia for the Balkan to become the zone of peace in the 20th century have not been accomplished yet primarily due to the interests of some great powers to keep the Balkan Peninsula as the most fragile European region in the state of constant tension so that in given certain political circumstances the security problems of the Balkans might become activated. This was most directly proved in the case of the last decade of the 20th century by the lack of respect of international law and the Charter of the Organization of the United Nations on behalf of the most powerful military force in the history of humankind and also by the implementation of double standards regarding the peoples in the Balkans.

GREAT ALBANIAN STATE IN THE BALKAN AS AVANGUARD TO NEW WAR CONFLICTS

In European science it is well-known that homeland regions of Albanian people are the regions in the contemporary central Albania. The famous German Albanologist Georg Stadtmiler underlined that the homeland region of the Albanians encompasses the valley of the river Shkumba, both sides of the river Mat, Kroya and some other neighboring parts. However, in the last decade of the 20th century from several aspects Albania became interesting to some Western powers. For them it became 'the key' of the Adriatic Sea (the position on Otranto) and the fan-shaped arrangement of the Albanians outside (around) of the contemporary state of Albania provides the creation of considerably more spread 'friendly' Albania, in particular at the expense of the Serbian territories. In particular the existence and spreading of the 'Albanian ethnic wedge' in direction toward the Morava-Vardar valley as a main transport and military-strategic artery of the Balkans is unacceptable for the majority of the Balkan peoples. This wedge cuts off the 'ethnic' link of Christian Orthodox Serbs and Macedonians and also of the Serbs and Greeks. Consequently, the Albanians might preoccupy Macedonia from the west and north, or in other words from Struga to Kumanovo. The Albanians have the hugest population growth in Europe, which means that in future period their demographic capacity will gain in significance. Albania is predominantly a Muslim state and so by protecting the Albanians one might 'gain points' in other Muslim states. However, perhaps by placing the Albanians under their control the United States of America would like to prevent spreading of fundamentalist Islam to the western Balkans and its inroad into middle and Western Europe. Having placed Albania, Macedonia and Bulgaria into their influence zone, the USA have created some sort of a control (strategic) belt the Adriatic Sea – Black Sea. Thus, there has been accomplished additional protection of an important Mediterranean oil road as well as some sort of a barrier to the influence of Germans and Russians and even British, French and Italians on the whole entity of the Balkans. This fact becomes even more interesting if the USA (and other western states) have opted for the concept 'weak Serbia', which from geopolitical aspect implies strengthening and inroad of Orthodox Islam toward the Middle and Western Europe.

8 The testimonies of foreign authors are the best illustration of ethnic, political and religious circumstances in the region of Kosovo and Metohija. These are the works of Ami Boué, Joseph Müller, Johann Georg von Hahn, Ivan Stepanovich Jastrebov, Alexander Fyodorovich Gilferding, Victor Berar, Gaston Gravier and others. In 1838 Joseph Müller published the data on the religious and linguistic section in the structure of population in Metohija – Pec, Prizren and Djakovica. In Pec the Serbs were majority (92.09 %) in comparison with the Albanians. In Prizren the percentage of the Serbian population was 73.68 % and only in Djakovica there was vast Albanian majority (80.76 %). (*Велика Албанија – замисли и могуће последице*, Институт за геополитичке студије Београд 1998, pp. 21- 22),

9 According to the census register of the population in Kosovo and Metohija in 1929, the Serbs were the majority of the population (61 %). It is obvious that the Albanians understood the demographic factor to be the strategic one and they acted in that way, so that according to the census register of the population in 1948 in Kosovo and Metohija, the percentage of their population was 68.5 %, at the census register in 1961 there was 67.1 % and in 1981 74.4 %. Due to the fact that the Albanians boycotted the census register in 1991, the estimation of the percentage of their population in this period was 81.6 %. (Илић, Јован. *Косово и Мегохија изазови и одговори*, Институт за геополитичке студије Београд 1997, p. 261),

10 Metohija was a the biggest valley in the Socialist Federative Republic of Yugoslavia, descending on the tectonic confluence of Dinara and Sar mountain ranges and surrounded by high mountains of Sar and Prokletije. The altitude of the bottom of the valley is 350-450 meters and the rim of the mountain rises over 2000 meters. Deep Metohija valley is lower, but larger than Kosovo valley. It is oval in shape and is characterized by a complex 'plastics' of wavy hilled bottom which abounds in the river flows and tectonic lines. Along its edges at the crease with the rim of high mountains the rivers deposited powerful rampart-like mountain massifs. Within the Metohija valley there are secondary Pec-Djakovica, Prizren and Mirus valleys. '(Марковић, Ј. Ђ., *Регионална географија СФР Југославије,* Универзитет у Београду, Грађевинска књига, Београд, 1980, p. 440-441)

The latest scientific analysis has shown that the Albanians are not satisfied with the secession of Kosovo and Metohija from Serbia. In the first phase they will attempt to create 'Great Kosovo', because in recent history there were publicly expressed expansionist aspirations of the Albanians living in Kosovo and Metohija towards: a) Southeast of Serbia (Medvedja, Bujanovac, Presevo) within the framework of the project "Dardania"; b) Kosovo and Metohija within the framework of the project "Independent Kosovo"; c) Montenegro (Plav, Gusinje, Bar, Sutomore, Ulcinj within the framework of the project "Malesija"; d) Western Macedonia within the framework of the project "Iliria" and e) Northern Greece within the framework of the project "Epir". If such expansionist aspirations of the Albanians got accomplished, then the so-called Great Kosovo would form a federal or confederate union with Albania. In this case the territory under control of the Albanians would cover around 55000 square kilometers with 6.5 to 7 million Albanians.[11] The creation of great Albania in the Balkans would trigger further national prepotency of the Albanians and most probably an open conflict with Serbia or Greece, which would unavoidably lead to the Third Balkan War. This is primarily a warning for the European states and also for the Organization of the United Nations. In other words, without Kosovo and Metohija Albania cannot accomplish its strategic role in geopolitical games in the Balkans which was designed for it by some centers of power after the wreckage of Yugoslavia. Albania lacks all necessary resources on which there are based important elements and determinants of the state powers (spatial and strategic depth, demographic potentials and economic and natural resources as the basis of economic power of the state). On the basis of these facts, it is not difficult to conclude why the pressure of a part of international community over Serbia (to accept the change of the state-legal status of Kosovo and Metohija) is so strong and that these pressures and extortions will continue regardless of the fact who will reign in Serbia and in what way. In other words, the issue of human rights and the rights of national minorities as well as the need for domestic democratization in Serbia have a totally supporting role, the role of 'a smoke-screen' for the pressures which are motivated *solely by the geopolitical and geostrategic reasons*.

The violent geopolitical modeling following the post-Balkan intervention of the NATO pact in the southeastern European region might have very negative consequences for the most powerful states of the Western world, because the friendly relation with terrorist organizations might eventually have a boomerang effect. It has become completely obvious that the slogans on humanitarian missions and creation of a multiethnic and tolerant and supposedly democratic society in Kosovo and Metohija are not in accordance with the reality and that it became more difficult and uncertain to find the exits from the Balkan labyrinth than it had been possible to do that in the period before the intervention. In contrast to idealism and illusions, the state of affairs in this province shows that there is a new 'history repetition' there, that Albanian violence as well as the ethnic and religious conflicts do not quiet down and that extremisms and pretensions of various players in the Balkans and outside of it constantly grow and announce the revenge of an 'unlearned lessons in history'. An arbitrary geopolitical modeling and violent cutting of 'the Gordian knot' in the fragile Balkan crisis field and redrawing of the state borderlines is a serious blow not only to the basis of international law but also it triggers spreading of instability in the region and activity of new separatist movements in the world.[12]

It is certain that the Albanian leaders in Kosovo and Metohija for a long time have not counted on domestic economic and civilization progress, but on non-economic sources of profit by criminal and illegal methods of acquisition of wealth by trafficking drugs, people and weapons or by separate sources of help, even the help from Islamic sources. This gives rise to civilization regression in the Balkans and Europe which becomes more malignant and more distant from the postulates and principles of liberal and democratic civil society and regional stability.

The violent secession of Kosovo and Metohija from Serbia, which stands in contrast to constitutional, historical and international law, will significantly change integral capacity of security of the Balkans. By the act of disrespect of the Resolution of 1244 of the Security Council of the United Nations and the Kumanovo Agreement, the Charter of the United Nations and international law in general are also ignored. On the other hand, the implementation of international terror and terrorism toward one nation (the Serbs) in the Balkans has become legalized, because at the beginning of the 21st century the process of ethnic cleansing of this nation in Kosovo and Metohija has almost come to the end.[13]

The geopolitical position of the Balkan peoples and states has always been created by non-Balkan actors, first of all by great powers and the biggest centers of political, economic and military power. The influence of these non-Balkan factors, relations of the Balkan states and peoples toward these centers of power

11 Гаћиновић , Радослав, *Насиље на Косову и Метохији*, Политичка ревија No.1/2008, p. 79

12 Матић, Милан; Ђурић, Живојин, *Косово и Метохија пред судом историје*, Зборник радова САНУ, Београд, 2007, pp. 125-128

13 The threat to the security in the region of the Balkans became more obvious at the beginning of the 21st century and the violence of the Albanians over the Serbs was intensified. Since the establishment of the Serbian state in the Balkans, the Serbs have struggled for their survival. An analysis of the historical documents regarding the expulsion of the Serbs from Kosovo and Metohija throughout last three centuries (1690-2006) leads to the conclusion that there were 1 150 000 Serbs expelled by force from the Old Serbia (it is the former name of today's Kosovo and Metohija) and that about 200 000 of them were murdered and 150 000 – 200 000 of them converted into Islam. (Деретић, Јован Н., *Срби и Арбанаси*, Народна библиотека Србије, Београд, 2005, pp. 52; 130)

and mutual relations between the Balkan states and peoples themselves and domestic crisis fields in the Balkans have created the so-called Balkan geopolitical node. In the very center of this Balkan geopolitical node, or the crossroad where main directions of the influence of non-Balkan factors get intersected, there is Serbian ethnical space and their homeland – Serbia. There is almost no possibility that such adverse influences of these powerful non-Balkan factors can be completely avoided and so this fact will continue to very unfavorably influence the possibility of the accomplishment of national and state interests of the Serbian people on their whole ethnical space.[14]

Throughout recent political history and in particular during the war in the wreckage of the second Yugoslavia, the Serbian ethnical space was continuously narrowed. In this sense, the greatest losses were from 1991 to 1995, when Croatian state was left without 500000 Serbs as official owners of over one third of the land in the state by their expulsion from their homes and by various other ways. This was followed by the violent secession of Kosovo and Metohija from Serbia, the territory of about 10887 square kilometers. These losses were partially the consequence of the absence of any kind of support of the world power centers for the idea of reaching a fair solution of Serbian national issue. An indirect consequence of this fact was the expulsion of the Serbs from the regions which historically and traditionally were theirs and then the consequence was also the removal of the Serbs from the Adriatic Sea and the rivers Kupa, Una and Neretva, with serious dangers of further narrowing of this space in the region of Raska. The process of the violence toward the Serbs is still active, with an objective of narrowing of the Serbian ethnical space and forcing compactness of the Serbs into the watersheds of three Morava rivers (Great, Western and Southern ones), which would be a vanguard for vanishing of the Serbian people as political nation and for great turbulences in the Balkans, including a great war. This poses a great threat to the peace in the Balkans and it should be avoided at any cost.

GEOPOLITICAL STRUCTURE OF THE BALKANS GETTING CHANGED DUE TO THE VIOLENT SECESSION OF KOSOVO AND METOHIJA

Within the framework of the Serbian ethnical space, Kosovo and Metohija is a sacral-geographical, spiritual and historical center of all Serbian people. Their cultural-civilization identity makes all its parts connected into one unique ethnic spatial unit: the region of Raska as a historical center of the Serbian state and Pomoravlje (western and southern ones as well as Ponisavlje) as the backbone links of contemporary geostrategic and geopolitical position of Serbia as the homeland of all Serbs. Kosovo and Metohija also make the central line of connecting Serbian ethnical territories into one unique unit on its southern geostrategic wing: from the Kumanovo valley up to the east, over the region of Raska in the center and Montenegro in the west and on the Adriatic coast and its littoral part. And vice versa, by exclusion of Kosovo and Metohija from the Serbian ethnic space this connection disappears and in the depth and width of about 100 kilometers this 'soft belly' of Serbia becomes open and through it and over it there is the possibility of continuation of further dismemberment and disintegration of the Serbian ethnic space in all directions: to the west, northwest, north and east.

By the violent secession of Kosovo and Metohija from Serbia in the Serbian ethnical space there comes the creation of *a very wide and deep spatial aperture*, with a tendency of its continuous widening and in accord with that, of continuous piranha-like 'biting' of the Serbian ethnic space and its narrowing. In such geopolitical scenario Kosovo and Metohija completely get Islamic sign mark and gain a multiple geopolitical role: *firstly*, to support the creation of the project of 'Great Albania',[15] primarily at the expense of the Serbian ethnic space; *secondly*, to strengthen the so-called northern Islamic wedge which would cut into the center of the Serbian ethnic space (Kraljevo – Nis – Kragujevac) and *thirdly*, by the connection of Kosovo and Metohija and the region of Raska as Muslim spatial unit factually there would be created a territorial aperture between Serbia and Montenegro. In this way probably in the long run this would vitiate the idea of the establishment and strengthening of cultural and all other relations between the Serbian ethnic spaces in the Balkans, that is, between historically determined ethnic territories of the Serbs.

Kosovo and Metohija is located in the very center of envisioned 'green Islamic transversal' which goes from Tashkent over Asia Minor, Thracian territory (the part of Bulgaria and Greece), Macedonia (in its Islamic boundaries), Kosovo and Metohija, Raska (Sandzak in Islamized terminology and geopolitics) and Bosnia and Herzegovina all the way to Cazin as the farthest Islamic point in Europe. This is the direction and vector of new Islamic inroad to Europe of which Turkey is its strategic intercessor.

14 Илић, Јован, „Балкански геополитички чвор и српски етнички простор", Зборник радова, *Геополотичка стварност Срба*, Институт за геополитичке студије, Београд, 1997, pp. 429-430

15 Борозан, Ђорђе, *Велика Албанија – порекло, идеје пракса*, Војноисторијски институт, Београд, 1995, p. 237

By the violent secession of Kosovo and Metohija from Serbia, the geopolitical architecture concept of the Balkans gets into the process of transformation of the Balkans into a continuous conflict region of small Balkan states by activating the processes of separatism and nationalism from outside (by creation of misleading stereotypes regarding certain Balkan peoples and on the basis of it their demonization as well), simultaneously opting for one of the opposing sides and in this way provoking even bigger conflicts which are prepared in advance in centuries-long politics of great powers 'divide et impera'.[16]

Thus, during the last twenty years of interference of foreign factors into Yugoslav crisis in the Balkans, several new dependant states which are mainly ethnically clean states were created, despite a declarative support of the West for multiethnic society. In particular Croatia has become ethnically clean state by expulsion of the Serbian people from their ancestral homes in its territory and following that it was accepted into the European Union and the NATO pact. Only Serbia has remained as a multiethnic state after the wreckage of the Socialist Federative Republic of Yugoslavia. In addition, a 'new Kosovo' was created following the intervention of the most powerful military force in the history of mankind. On the territory of it there was rapidly conducted ethnic cleansing and genocide of Serbian and other non-Albanian peoples by the use of terrorist activities. Macedonia is also divided and subject to conflicts and criminalized Albania and after having gained independence Montenegro will soon become the target of the Albanian separatist movement.

Permanent loss of Kosovo and Metohija would have catastrophic consequences for the existence and survival of the Serbian people in this region. In addition to the destruction of the Serbian spiritual vertical which had created the national identity of the people, the negative consequences of such loss would be reflected on economic, military and strategic field as well. By the violent secession of Kosovo and Metohija (Kosmet) from Serbia its state sovereignty has been threatened and this sovereignty is a primary precondition for the survival and struggle for life of all Serbian people, because without the statehood constitution of one people (nation) there is no possibility for defense of their vital values and interests. The loss of this part of the state territory most often simultaneously has as a consequence the loss of the cultural-civilization parameters (in both spiritual and material sense), Serbian sacred monasteries and monuments, demographic potentials and vital natural resources and economic basis. However, even more significant are geopolitical consequences of the secession of Kosovo and Metohija from Serbian sovereignty and territorial integrity (regardless of the fact whether it is obtained at a glance of by 'step by step' methods). In the case of the secession the Albanians take over the whole quality of this region from the Serbs and instead of it being Serbian 'fortress' it becomes Arbanasian (Albanian) geopolitical 'fortress' in the Balkans not only in demographic sense, but also in cultural-civilization, military-strategic, economic and even in the statehood sense of the word. Due to the violent secession of Kosovo and Metohija, the Serbian lands are faced with the total destruction and the extent of their spatial implosion and fragmentation goes beyond the limit of ethnic and spatial compactness which is sufficient for their survival on this Balkan 'bleakness point'.[17]

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16 Митровић, Љубиша, „Балкан у светску савремених процеса глобализације", *Српска политичка мисао* No. 3-4/97, Институт за политичке студије, Београд, p.86

17 Степић, Миломир, *Косово и Метохија–политичке, гепграфске и геополитичке перспе-ктиве,* Знамен, Београд, 1999, pp. 15-21

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PSYCHOSOCIAL SUPPORT IN EMERGENCY SITUATIONS

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Abstract: In recent decades we have witnessed a growing number of major accidents and emergencies caused by natural hazards (floods, earthquakes, cyclones) and human factors (chemical and nuclear accidents, conflicts, terrorism). In such situations, people's lives are fundamentally changed and accompanied by various social consequences: loss of loved ones, loss of control over one's own life, loss of the sense of security, hope and initiative, social infrastructure, access to services and assets. Reactions may be various; shock, tears, anger, rage, a sense of hopelessness and an anxiety are just part of the whole range of unpleasant experiences. However, the intensity of the stress responses differs among individuals, but also communities, and thus the needs for interventions are different. The role of organizations dealing with the protection and rescue is to provide immediate assistance and protection, and also psychosocial assistance and support. The psychosocial support is the process of facilitating the recovery of individuals, family and communities from the effects of hazards and it plays a key role in the interventions at major accidents involving large number of victims.

Psychosocial support means that in the approach to a person two dimensions are involved influencing each other mutually: psychological (inner, emotional and meditative processes, feelings and reactions of individual) and social (relationships with other people, family networks, social values and culture of the community). The third dimension involves the first responders. Stress can initiate the development of depression, depressive disorders, anxiety, professional burn-out, depersonalization, distress, emotional exhaustion and related mental health problems, as well as other indicators of psychological distress among members of rescue teams.

Bearing in mind the importance of psychosocial programs of the nineties, their implementation is supported in many projects and it is proposed that the psychosocial care becomes an integral part of the emergency response of the public health care system.

Keywords: emergency situations, community, depression, mental health problems, psychosocial assistance.

INTRODUCTION

Historically, psychosocial consequences of war times, natural disasters, technological and traffic accidents as well as terroristic attacks are nothing new. Psychological disorders used to be a topic even during the American civil war when they were termed "nostalgia" and "sickness of the soul". During the First World War, psychic disorders which occurred as a consequence of warfare were termed "neurasthenia", "shell shocks" and "war neurosis". The Second World War contributed to the collection of much more data on stress disorders such as "combat shock", "combat stress" and "combat fatigue", yet at the same time due to the effects extension on civilians and vital (critical) infrastructure, it broadened the knowledge on psychosocial disorders in the community.

The progress of scientific research in the field of psychosocial support has enabled better understanding and perception of complex reactions of human psyche exposed events causing trauma. The most complete knowledge of these issues was acquired after the Vietnam, Korean and Arab-Israeli war. Extremely harsh conditions of warfare at the time inflicted significant emotional consequences upon the participants but at the same time increasingly affected civilians thus emphasizing the necessity of broad psychological and social support of the victims.

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In recent decades, vulnerability[2] in terms of natural hazards has again taken precedence over technological risks and dangers of war that threaten the community. According to the data from the OFDA/CRED International Disasters Database (EM-DAT), the number of natural disasters appears to have increased worldwide. In the decade 1900-1909, natural disasters occurred 73 times, but in the period 2000-2005 the number of occurrences rose to 2,788. Furthermore, the International Federation of Red Cross and Red Crescent Societies reported that 231,764 people were killed by disasters in Asia from 1972 to 1996. (Kusumasari, et al., 2010). However, regardless of different generic origin in relation to dangers of war, the natural disasters have inflicted equally difficult consequences on civil population, threatening before all the most vulnerable groups. At the same time it acknowledged the necessity to raise the awareness of psychosocial needs of victims and develop the capacity of psychological support. In addition to traditional programs that meet the physical and fundamental needs of affected populations related to food, water and shelter, the International Federation of Red Cross and Red Crescent, and other humanitarian organizations have developed programs to respond to the psychological and social suffering of affected populations. The permanent and growing interest of the international community for the psychological and social effects of natural, technological disasters and wars on people is reflected in increasingly comprehensive literature on psychosocial health, as well as the growing number of projects and other resources that deal with psychosocial support.

Further development of human civilization is accompanied with equally alarming data. In the past decade (2000–2009), 899 natural and technological disasters have occurred in Europe, claiming the lives of 89,317 people and affecting 9,196,702 people[3]. Among the most common events in Europe are natural disasters,[4] with more notable recent cases including the floods in the Czech Republic and Germany in 2002 and in Poland in 2010, as well as the Marmara earthquake in Turkey in 1999 and the L'Aquila earthquake in Italy in 2009. In addition, Europe has seen some high-profile man-made disasters, such as the bombings in Madrid, Spain, in 2004 and in London, United Kingdom, in 2005. Since these terror attacks, not to mention those in the United States on 11 September 2001,[5] public awareness of man-made disasters has increased in Europe.[6]

Statistics released by the UN Office for Disaster Risk Reduction (UNISDR) show that only in 2012 there were 310 natural hazards of varying intensity around the world, which caused the deaths of 10,000 people, but also influencing around 106 million people to be indirectly confronted with unforeseen economic, infrastructure, environmental and psychosocial consequences. These consequences and the impossibility of an adequate response of the community in many countries initiated the state of emergency or rather disasters.

The main causes of the state of emergency and disaster in certain areas still are civil and regional conflicts which expose the participants and civilians to violence and suffering. The tragic events in Somalia, Syria, Rwanda, Sudan and other war zones show significant difficulties in the process of providing psychosocial support. The post-war period of transition in the former Yugoslavia showed an increase of socially vulnerable population groups, and a huge number of refugees. Among them there are many people who have been victims of torture and war trauma. Most of them did not have the primary social security, lived under extremely difficult material conditions and had great health and psychological problems and often did not have the knowledge about the types of assistance they could have got. And the aggravating factor represents the fact that under conditions of war times, the participants in the conflict ignore the international humanitarian law and its principles, as well as the possibility of preserving a humanitarian area where the necessary psychosocial support would be provided to those in need. For these reasons, the idea to move the line of first aid as soon as possible towards the line of attack is as old as the devising of the strategy of mental health protection in war times and the "doctrine" has changed depending on the situation.[7] Moving towards the first line in case of refugee population, usually involves working in collective centres, which requires special adaptation to the conditions, population as well as estimate of risk factors and protection.[8]

2 Vulnerability is an essential characteristic of an element at risk (community, region, state, environment, individual, …) which determines the expected harm caused by the hazard. Vulnerability is changing over time and is driven by physical, social, economic and environmental factors. UN Institute for Environment and Human Security, 2004.

3 http://www.emdat.be

4 http://www.emdat.be

5 The terrorist attacks of 11 September 2001 (9/11) left workplaces in pressing need of a mental health response capability. Unaddressed emotional sequelae may be devastating to the productivity and economic stability of a company's workforce. In the second year after the attacks, 85 employees of five highly affected agencies participated in 12 focus groups to discuss workplace mental health issues. Managers felt ill prepared to manage the magnitude and the intensity of employees' emotional responses. Rapid return to work, provision of workplace mental health services, and peer support were viewed as contributory to emotional recovery.

6 Grim, A., Schmidt, S., Hulse, L., Preiss, M., (2014), Behavioural, emotional and cognitive responses in Europe disasters: results of survivor interviews, Disasters, 38 (1): 62-83.

7 Jović, V., (2004), Psihološka pomoć u okviru humanitarnih intervencija-šest godina iskustva u IAN-u (1997-2003), in: Špirić, Ž., Knežević, G., Jović, V., and Opačić, G., (Eds.), Tortura u ratu, posledice i rehabilitacija,Jugoslovensko iskustvo, pp. 71-90.

8 Mollica, R., Cui, X., McInnes, K., and Massagh, M., (2002), Science-based policy for psyhosocial interventiona in refugee camps: a Cambodine example, Journal of Nrvous and Mental Disease, 190 (3):158-166.

The increased vulnerability of individuals and social communities to the consequences of different dangers as well as the culmination of psychosocial reaction is not exclusively dimensioned by physical dimension, i.e. the level of physical exposure to hazard. Vulnerability is equally and perhaps primarily defined by the lack of resilience, which is reflected through incompetence and limitation of the society to mobilize the existing capacities and revitalize the affected area. According to experts who have been studying disaster losses and causes of increasing vulnerability, understanding institutional standing, power, and their perception of disaster risk reduction is first and foremost on the path of building resilient communities.[9]

PSYCHOSOCIAL SUPPORT TO VICTIMS

In emergency situations, people's lives are fundamentally changed and accompanied by various social consequences: loss of loved ones, loss of control over one's own life, loss of the sense of security, hope and initiative, social infrastructure, access to services and assets. Reactions may be different; shock, tears, anger, rage, a sense of hopelessness and an anxiety are just a part of the whole range of unpleasant experiences. However, the intensity of the stress responses differs among individuals, but also communities, and thus the needs for interventions are different.

Stress related disorders in most cases are described as "a normal reaction to abnormal circumstances".[10] This implies that the traumatic event causes a change that is pathological. The change is usually described in terms of "economic model" (stressor of too high intensity affects the balance / possibility of adaptation / defense mechanisms / normal recovery leading to disturbances).[11] This model falls within psychoanalytical tradition.[12] The adoption of this principle is very important both for the victims and the responders. The intensity of difficulties, the symptoms that occur may disturb the victims and develop a fear that they "are losing their mind" and that they will never be able to function normally. This may be even intensified by experts, especially psychiatrists, whose presence and work may create an impression with the victims that their symptoms are of a serious origin and require treatment. Therefore we find in literature recommendations that in such situations experts should be named differently, nor neutral. Instead of naming them psychiatrists or psychologists, it is better to name those experts "community counselors", "advisors in disaster". It is also important, if possible, not to render psychological support in medical institutions, but in institutions which are not directly related to mental health, for example in schools, churches, cultural centres, Red Cross organizations etc. Education of community members is very important and such education should be conducted in two directions. The first drection follows the requirement that community members should be informed on emotional difficulties that they and their children may face, as well as who they can address in case they feel they need support and the way they can help themselves in order to mitigate those symptoms or at least make them tolerable.

The predominant disorders after the manifestation of different hazards that require special focus and which should be reanalyzed are as follows:

1) Acute reaction to stress, which represents a temporary disorder that develops as a reaction to an extreme physical and mental stress. The occurrence and severity of acute stress situation is highly individual. It depends exclusively on vulnerability and self-defence capacity of each individual. Symptoms of this disorder usually include an initial state of outrage, a certain degree of narrowing of consciousness, disorientation and inability of reasoning. These symptoms usually occur a few minutes after the stressful stimulus or event, and disappear after a few days, or not longer than six months. In some people there sometimes occurs partial or complete amnesia in relation to the stressful event.
2) Adjustment disorder, which is reflected in the depressed behavior, feelings of inability to combat and feeling of anxiety. However, adjustment disorder is very difficult to detect and accurately diagnose, given that none of the symptoms is sufficiently prominent and notable to justify the diagnosis.
3) Post Traumatic Stress Syndrom[13] occurs immediately after manifestation of the hazard, or rather in the situation labelled as emergency or disaster. In accordance with the psychiatric criteria PTSS

9 Nirupama, N., Etkin, D. (2012). Institutional perception and support in emergency management in Ontario, Canada. *Disaster Prevention and Management, Vol. 12, No. 5*, 599-607.

10 Signs of stress may be expressed in many different ways: 1) Physical signs, eg. abdominal pain, fatigue 2) Mental signs, e.g. impaired concentration, track of time loss, 3) Emotional signs, e.g. anxiety, sadness, 4) Spiritual signs, e.g. life is meaningless, 5) Behavioural signs, e.g. excessive use of alcohol (negligence), sense of uselessness, 6) Interpersonal signs, e.g. becoming introvert, conflict with other people.

11 Psychiatric classifications offer better definitions of stressors: exposure to an event "which involves real or threatening death or serious injury or a threat to one's own physical integrity or other people's integrity" (American Psychiatric Association, 1994), or "a stressful event of situation of extremely dangerous or catastrophic nature, which may cause comprehensive suffering to almost every person" (*World Health Organization, 1993).*

12 Bohleber, W., (2002), The Development of Trauma Teory in Psychoanalysis, In: Varvin S., and Štajner-Popović, T., (Eds.), Upheaval: Psychoanalytical Perspectives on Trauma, pp.207-234.

13 According to the findings Staperstain the first group of symptoms makes the phenomenon of repetition syndrome, or persistent repetition of the events and the revival of unpleasant dreams. The "flash-back" phenomenon is common, as well as the occurrence

is defined as a behavioural disorder and an appearance of the reduction of function capabilities of survivors which is most frequently caused by psychologically very serious events beyond usual human experience.[14] This disorder is also described as absence of emotions associated with obedience, undecisiveness and behaviour as if in a trance. During the next phase, in accordance with certain opinions, the victims express the signs of acute neurosis, they are disturbed by memories and the feeling of liability for survival. The manifestation of Post Traumatic Stress Syndrome may occur directly, indirectly or delayed after surviving a traumatic event.

However, many people show resilience[15], that is the ability to cope relatively well in situations of adversity. There are numerous interacting social, psychological and biological factors that influence whether people develop psychological problems or exhibit resilience in the face of adversity. (IASC Guidelines 2007. str. 3)[16] Social, psychological and biological factors that keep people resilient are called protective factors. They reduce the likelihood of severe psychological effects at the time of having faced a difficult situation or suffering. Belonging to a caring family or community, maintaining traditions and culture, possessing strong religious beliefs or political ideology are examples of protective factors. As for the children, stable emotional relationships with adults and social support, both outside and within the family, are very protective. Studies show that personality can be differentiated along (at least) five distinct dimensions[17] referred to as the Big-Five, these traits capture individual differences in people's personality: first, preference for originality (Openness); second, tendency to control impulses and/or pursue goals (Conscientiousness); third, level of sociability (Extraversion); fourth, willingness to cooperate (Agreeableness); and fifth, ability to cope with stressors (Emotional Stability). Of these traits, Emotional Stability is most relevant for predicting people's changes in mental health following a disaster.[18] It is a fact, however, that psychosocial support even under circumstances of existence of protective factors is necessary for preservation of the very structure, integrity and culture of a community.

The term "psychosocial" implies a dynamic relationship between psychological and social dimensions of an individual, whereby the two dimensions are influencing each other mutually.

The psychological dimension includes inner, emotional and meditative processes, emotions and reactions. The social dimension includes relationships, family and community networks, social values and cultural practices. Psychosocial support refers to activities that meet the psychological and social needs of individuals, families and local communities. In practice there are many approaches and activities which are used in the name of "psychosocial support" and - in line with this diversity - various terminology is used. It can be confusing and frustrating, especially when the use and definitions vary between and within organizations and disciplines, or when certain terms are often used, and then become no longer valid. The terms "trauma" or "traumatized" are, for example, especially sensitive. For some people these terms are intensively related to the disorder which occurs in people's lives after a critical, emergency event or situation. For others these terms are too narrowly focused on psychological disturbances on the account of broader psychosocial and mental health problems. IASC Guidelines help to bridge these differences through building mutual understanding among mental health and psychosocial approaches. The exact definitions vary, from people who work in primary health care and talk about "mental health" to those who work in other areas and use the term "psychosocial health." IASC Guidelines set out the framework that highlights the necessary steps before an emergency occurs which describes the minimum response during the acute phase and then suggests comprehensive responses that are required during the early stages of reconstruction after an emergency situation.

The people affected by a critical event are in need of different types of psychosocial support (Intervention Pyramid, IASC Guidelines, 2007):

1) Basic services and security: The well-being of people is preserved if their basic needs are fulfilled as well as the right on security, management and basic services like food, shelter, water, basic health care. Psychosocial support in this level means commitment and representation for the purpose of

of intense emotional excitement when a person finds himself in a situation that symbolizes the traumatic event. The second group of symptoms characteristic for this syndrome represents a state of emotional numbness, or general absence and total lack of interest in activities, people and things around them as well as avoidance of conversation that is in any way connected with the event that caused the trauma. The third group of symptoms is associated with an increase in emotional sensitivity which includes sleep disturbances, irritability, social intolerance, the feeling of resignation and lack of perspective, as well as difficulties in concentration.

14 Staperstain, R., (1992)The emotional wounds of war, Millitary Review, 1.

15 Resilience - an individual's ability to cope with difficulties and challenges and to restore and maintain the new balance when previous balance has been challenged and destroyed. It is often described as the ability of "recovery".

16 IASC Working Group was formed in 2005 from 27 agencies, including the International Federation of Red Cross and Red Crescent Societies. The work that the agency conducted jointly focused on the need for a comprehensive approach to psychosocial health and was aimed to demonstrate practical steps to support mental health and psychosocial support. "IASC Guidelines on support of mental health and psychosocial support in emergency situations" which were published in 2007, was the result of this cooperation. IASC Guidelines can be found in print version and online at www.humanitarianinfo.org/iasc.

17 John, O.P. and Srivastava, S. (1999), "The Big Five trait taxonomy: history, measurement, and theoretical perspectives", in Pervin, L.A. and John, O.P. (Eds), Handbook of Personality: Theory and Research, 2nd ed., The Guilford Press, New York, NY, pp. 102-138.

18 Osborne, D., Sibley, K., (2013)After the disaster, Using the Big-Five to predict changes in mental health among survivors of the 2011 Christchurch earthquake, Disaster Prevention and Management, Vol.22, No.5.

establishment of basic services with respect for and protection of human dignity as soon as possible and in the best possible way under given circumstances.

2) **Community and family supports:** most of the population affected by an emergency situation needs some kind of psychosocial support to regain the sense of normality in their own lives in order to make it easier for people to continue with everyday live and tasks. Psychosocial support may help in different ways: helping people in mourning, adapting to new circumstances. A number of people will need help in finding missing family members. Psychological support at this level means joining the search for and connecting family members, as well as encouraging the creation of social networks within the community.

3) **Focused non-specialized support:** smaller number of people will be heavily affected by a hazard and they may develop different disorders which may vary from milder to moderate. These people will need individual, family or group interventions provided by trained and educated humanitarian workers.

4) **Specialized services:** a small number of people will require specialized professional assistance, which includes professional psychologists or psychiatric assistance. Those may be the individuals who experienced very intensive reactions to crisis or the ones who had similar problems even before the crisis. Support at this level may be individual or may require complex social intervention.

PROVIDING SUPPORT TO FIRST RESPONDERS

The analysis show that psychosocial support means that in the approach to a person two dimensions are involved influencing each other mutually: psychological (inner, emotional and meditative processes, feelings and reactions of the individual) and social (relationships with other people, family networks, social values and culture of the community). The third dimension involves the first responders. Stress can initiate the development of depression, depressive disorders, anxiety, professional burn-out, depersonalization, distress, emotional exhaustion and related mental health problems, as well as other indicators of psychological distress among members of rescue teams.[19]

The reactions of members of rescue teams, in addition to psychological disorders, are reflected in the need to respond to the existing risks and threats. With these people, as many studies have shown, there are physical symptoms of fear: a rapid pulse and breathing, impaired cognitive functions, which are reflected in the problems of memory, reduced concentration, reduced ability to solve problems and difficulties in communication. There is also a phenomenon of identification with the victims, they are uncapable to rest and experience "conflict of roles" – or rather they get an uncontrollable need of rescuing others, often failing to support their own families. So, first of all, responders should be coordinated and responsible and timely perceive every possible scenario that awaits them. They are also vulnerable and susceptible to various psychological situations that accompany complex catastrophic situations.[20] Sotgiu and Galati[21] (2007) asked survivors about their experience during the floods in Italy in 2000 and found that participants remembered well the emergency phase and reported a variety of emotions, such as fear, sadness, and surprise.

Prati, Catufi, and Pietrantoni (2012) noted similar emotional responses by survivors of earthquakes in Italy, and highlighted the main coping responses during the earthquake: flight; freeze; seek shelter; no reaction, because the individual did not realize what was happening; look for relatives and try to protect them; seek additional information from the social environment; and completion of previous activities. Pro-social behaviour was common and looting did not occur.[22]

Contrary to what most of people think, very often the causes of stess in employees and members of rescue teams are not violent nor extreme experiences. People working as first responders, often find meaning in their tasks and are able to deal with situations they are exposed to. Instead, stress reactions of first responders are often caused by working conditions and organizational preparations. Working conditions that cause stress are vague or non-existent job description, poor preparation and information, or lack of job limitations.

In case supervision is inconsistent or inadequate it will add to stress in the same way as the situation when an employee, a volunteer responder feels the lack of support in working environment. It happens very often that the employees and volunteers get personally affected by the situation in which they work. They

19 Jović S.J., Ristić S.S., Bogdanović D.C., Radulović O., Višnjić A.M., Sagrić Čedomir R. (2012) Sources of stress among future helper professionals in human services. *Health MED* 6: 2886-2892.

20 Pangi, L.R., After the Attack: The Psychological Consequences of Terrorism, Belfer Center, for Science and International Affairs, John, F., Kennedy School of Government, Harvard University, Cambridge, Massachusetts, 2003.

21 Sotgiu, I. and D. Galati (2007) 'Long-term memory for traumatic events: experiences and emotional reactions during the 2000 flood in Italy'. *Journal of Psychology.* 141(1). pp. 91–108.

22 Prati, G., V. Catufi, and L. Pietrantoni (2012) 'The Umbria–Marche earthquake: emotional and behavioural reactions to earth tremors'. *Disasters.* 36(3). pp. 439-451.

may lose their family, relatives or their property. Difficult working conditions due to the nature of the event, such as physically difficult, exhausting and dangerous tasks, can also cause stress. If responders become part of the collective crisis, or if they are faced with moral or ethical dilemmas, it can also cause stress. If the working circumstances do not change, and if they are exposed to disaster for a longer period of time, when they are separated from their families and homes, they can hardly cope with stress. In some cases they may feel that they are not capable to deal with that task. If unresolved these stress factors may affect the person's health and quality of work or all members of rescue services.

The employees, the members of rescue teams and volunteers may be supported in several key points to reduce the possibility of developing problems caused by stress. The primary intervention consists of regular, solid information about tasks, on mechanism stress effects and coping with emotional reactions to difficult situations. Such information prepare responders to discover their own reactions and give them the option to take care of themselves, as well as peer support. Responders need also words of praise and signals from others that they and their work are appreciated, which has a positive effect on their motivation for further work. This is called "care for responders". The needs volunteers and employees are often similar or identical to the needs of the people they help. The environment that provides support is a key factor in reducing the effects of stress. This can be achieved in the following ways: 1. Providing available advice and support by managers and colleagues; 2. Creating organizational culture where people may speak openly and share their problems without fear of consequences; 3. Scheduling regular meetings of humanitarian workers, employees and volunteers and fostering a sense of belonging to the team; 4. Respecting the principles of confidentiality (privacy) so that their privacy is surely preserved when they talk about stress and ask for help; 5. Creating a working culture in which gathering after the critical event would become an established norm e.g. a system of peer support in an organization; 6. Ensuring the work is realized and implemented in pairs.

Undertaking the listed activities will preserve mental state of responders but also certain qualities of special importance such as trust, accessibility, patience, kindness and dedication. Failure to render support to responders would prevent realization of complete structure, integrity and culture of community in emergency situations.

CONCLUSION

Adopting the principle that emotional reactions in disaster situations are normal reactions to abnormal situations, mental health experts accept at the same time the attitude that classical medical model of mental illness and health is not the most appropriate in accidents and that survivors may not be treated in the same manner as patients. The most effective solution is that emotional difficulties of the victims are treated as difficulties in adaptation which are occasionally regressive but at the same time have intensive progressive capacity ("crisis as opportunity"). Reducing of regressive trends of adaptation and strengthening of progressive capacity appears to be the first priority task of any form of psychological support in accidents. Progressive capacities of humanitarian workers and all persons representing first responders are an important premise in response to the consequences of emergency situations. Responders, volunteers, employees, managers and organization must be aware and must respect personal and practical limitations. In order to avoid overloading responders, volunteers or employees with work, everybody has to take over the responsibility to treat each other with compassion and respect. Reduction of stress effects is achieved by exchange of experience from work which at the same time has the effect of team building and helps in prevention of psychological problems. The fact is that the reactions which did not receive due attention or which were not solved, may lead to increased stress of responders which eventually may turn into crisis. In addition to numerous activities taken to support humanitarian workers (advice, regular meetings, establishing organizational and work culture) the exchange of difficulties with others will reduce misunderstandings and misinterpretations. The environment in which the discussion of emotional reactions and limitations is actively encouraged, facilitates quality and effective activities and health of the entire community.

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SECURITY AND JUSTICE IN THE MULTI-ETHNIC COMMUNITIES IN SERBIA[1]

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Abstract: Within the project *ALTERNATIVE*, the Victimology Society of Serbia (VDS) is implementing a research *Fostering victim-oriented dialogue in a multiethnic society*, the aim of which is to develop alternative models of resolution of existing and prevention of future conflicts between members of different ethnic groups in Serbia, which may contribute to closing a cycle of violence and increase the overall security of citizens. During 2013,the VDS conducted empirical research on conflicts that have been evolving since 1990 between members of different ethnic groups in three multi-ethnic communities in Serbia, and the way people have been solving them. The aim was also to see how victims are treated, how security and justice are perceived, and what role restorative justice approaches have in dealing with conflicts and security. The research consisted of a qualitative and a quantitative part. It had an action dimension, too. The aim of this paper is to present findings of one part of the empirical research related to the feeling of safety of respondents in three multi-ethnic communities in Serbia. In the conclusion, the notion of security (safety) is reconsidered by emphasizing that it goes much beyond physical safety of people, also encompassing social, economic, legal and political safety. In addition, the potential of restorative justice in the process of conflict transformation and the increase of overall security of citizens is pointed out, suggesting the need for a broader acceptance of the concept 'human security'.

Keywords: security, justice, multi-ethnic communities, research, Serbia.

INTRODUCTION

The Victimology Society of Serbia (hereinafter referred to by its Serbian acronym – VDS) is one of the partners in implementing the research project *Developing alternative understandings of security and justice through restorative justice approaches in intercultural settings within democratic societies – ALTERNATIVE*, which is coordinated by the Katholieke Universiteit Leuven (Belgium) and financed by the European Union under the FP7 programme. The *ALTERNATIVE* aims to provide an alternative and deepened understanding of justice and security based on empirical evidence of how to handle conflicts within intercultural contexts in democratic societies in order to set up security solutions for citizens and communities. Empirical evidence is collected through action research, which is conducted by the project partners in Serbia, Hungary, Austria and Northern Ireland. Within the *ALTERNATIVE*, Victimology Society of Serbia is implementing a research *Fostering victim-oriented dialogue in a multi-ethnic society* with the aim to develop alternative models of transformation of existing and prevention of future conflicts between members of different ethnic groups in Serbia, which may contribute to closing a cycle of violence and the increase of overall security of citizens. The VDS's objective is to elicit ideas of how to involve citizens from multi-ethnic communities, particularly victims, in democratic processes for peace-building and conflict resolution, as well as how to stimulate cooperation of citizens and state institutions at the local level in order to develop long term human and civil security and justice solutions for multi-ethnic communities.

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During 2012 VDS conducted theoretical research, i.e. a literature review and qualitative research of civil society's and state's dealing with interethnic and related political and intercultural conflicts in Serbia in the period 1990-2012 (Nikolic-Ristanović and Ćopić, 2013).[2] This provided a basis for operationalization of the empirical research study, which was conducted in 2013 in three multi-ethnic communities in the border regions of Serbia: Bac and Backa Palanka (Vojvodina), Medvedja (South Serbia), and Prijepolje (South-West Serbia) (Nikolić-Ristanović et al., 2013).[3] The empirical study was on conflicts that have been evolving since 1990 between members of different ethnic groups in these three multi-ethnic communities and the way people have been solving them. The aim was also to see how victims are treated, how security and justice are perceived by the citizens, and what role restorative justice approaches have in dealing with conflicts and security. The research consisted of two parts: qualitative research and a quantitative survey. It had a strong action dimension, too.

The aim of this paper is to present findings of one part of the empirical research study related to the feeling of safety of citizens in three multi-ethnic communities in Serbia. The paper starts with a theoretical overview of the concept 'security', confronting 'human' and 'state' security. This is followed by a brief description of the research methodology. Afterwards, we present the research findings related to the feeling of safety of the respondents within the quantitative survey. In the conclusion, we try to bring the findings back into the theoretical framework, emphasising the need to accept the concept of 'human security', which is particularly important for the post-conflict countries faced with transition, and the potential of restorative approaches, which includes active participation of citizens in the development of human security.

'HUMAN' VS. 'STATE' SECURITY: THEORETICAL OVERVIEW

The word 'security' means the absence of danger (physical), harmlessness, the state in which no danger is felt. However, the word security is not unambiguous and has many uses. This word can relate to individual (human, personal), public, state, national (internal and external), international (collective and global), military, political, social, economic, ecological and other forms of security (Milosavljević, 2014). Given the complexity of the concept of security, there have been major difficulties in defining it in the literature since there is no agreement on the definition and its meaning. According to Barry Buzan, the concept of security belongs to the group of disputable concepts and proposes to give up on defining this term, since its nature is such that it prevents reaching the consensus on its definition (Buzan, 1991). This Buzan's attitude about the disputability of the concept of security was later criticized by some authors who pointed out that the problem is not in defining the concepts, but in its operationalisation in unexpected situations that occur in the world politics (Kovačević, Smajić, Ahić, Korajlić, 2013). Haftendorn claims that studies related to security suffer from a lack of common understanding of what security is, about its core elements, what the most important research questions related to it are, and because of the fact that it is not clear whether the security is a goal, field, concept, research program or a discipline (Haftendorn, according to Vanfraechem, 2012).

The lack of the consensus about the definition of the concept of security is reflected in the fact that it has been changing with the changes that have taken place in the society at the micro and macro levels. Starting from the end of the Cold War, security has moved from the narrow concept of national security to the concepts of social and human security, even to international relations and has made an impact on other disciplines (political science, sociology, criminology, law), which opened the floor for a wider range of security issues (Lohrmann, according to Pali, 2013). Therefore, different definitions of the concept of security are the product of the interpretations of its meaning given by different actors, including "researchers, practitioners, policy-makers, media, governments and people in different contexts and periods" (Vanfraechem, 2012: 4).

Proponents of the traditional model of understanding of security, define this concept as the absence of threats that are primarily coming from the outside, which is certainly related to the protection of the state (the so-called 'state security'). As part of this approach, security studies are defined as the studies of threats, use and control of military force, and in particular the specific policies that states adopt to prepare for the prevention of war or starting a war (Valt, according to Pali, 2013). So, narrowly speaking, security meant security of the state and its citizens from primarily military threats. According to this model the reference object of security is the state and its institutions. However, the changes the world has faced in the second

2 The research report on dealing with conflicts by NGOs and the state *Dealing with interethnic conflicts in Serbia and the place of restorative justice and victims* is available at the web site of the project ALTERNATIVE http://www.alternativeproject.eu/assets/upload/Deliverable_6.1_Research_report_on_dealing_with_conflicts_by_NGOs_and_the_state.pdf, and the web site of the Victimology Society of Serbia http://www.vds.org.rs/File/Deliverable_6_1_Research_report_on_dealing_with_conflicts_by_NGOs_and_the_state(.pdf.

3 The research report *Conflicts, security and justice in intercultural context of Serbia* is available at the web site of the project ALTERNATIVE http://www.alternativeproject.eu/assets/upload/Deliverable_6.2_Research_report_on_interethnic_conflicts_and_citizens_security_perceptions_.pdf and the web site of the Victimology Society of Serbia http://www.vds.org.rs/File/Deliverable_6.2_Research_report_on_interethnic_conflicts_and_citizens_security_p.pdf

half of the twentieth century required the broadening of the concept of security beyond the narrow views of national defence against external military threats. Traditional security issues were joined by other topics, including transnational and international terrorism, transnational and organized crime, migration, piracy, infectious diseases, ethnic conflicts, proliferation of weapons, asylum seekers and degradation of the environment, which came into the focus of security studies (Klare and Chandrani, according to Pali, 2013; Kreda, according to Pali, 2013).

Notwithstanding this broadening of the concept of security, it was argued that the state-centric concept of security became too narrow for understanding international relations, primarily international security, but also of the position of people, being rather ignorant towards threats to their personal security, and their rights and interests. Therefore, the concept started to be more considered from the perspective of security of the citizens and became people-centric. Within this concept of security the emphasis is on the issue of human security, and the people, as well as at different components of security arising from this viewpoint. So, according to this approach, a person becomes the core and the primary object of security (Glušac, 2010).

The concept 'human security' emerged from a "post-Cold War, multidisciplinary, people-centred understanding of security" (Foss et al., 2012: 34). It has drawn great attention in the political and academic discourse since the publication of the Human Development Report in 1994, which gives two main directions for changes of the concept of security: first, the focus should be moved from the territorial security to the security of people, and second, security should be sought not through weapons but through sustainable development (United Nations Development Program, 1994). Therefore, the concept of security was more explicitly defined in this Report, incorporating two main dimensions: "safety from such chronic threats as hunger, disease and repression", and "protection from sudden and hurtful disruptions in the patterns of daily life - whether in homes, in jobs or in communities" (United Nations Development Program, 1994: 23). The concept of human security refers to the protection of the vital core of all human lives in ways that enhance human freedoms and human fulfilment. It is identified as the protection of individuals from risks to their physical and psychological safety, dignity and well-being in a broader sense. Therefore, it has two main components: 'freedom from fear' and 'freedom from want'. Consequently, the concept of human security refers to seven main categories or forms of security: economic security, environmental security, personal security, political security, food security, health security and community security.

The concept of human security is a people-centred concept, which focuses on the protection of individuals. In other words, the state needs to work and develop policies not for the state but for the people (Shinoda, 2004: 13). Therefore, if the police, judiciary or administration of the state do not function properly, this creates a problem of personal, i.e. human (in)security. Or, if crime is not prevented and criminals are not held accountable, the state does not fulfil its basic functions, leaving citizens unprotected. So, the aim of human security is to shift the focus from the state-centric idea, i.e. "from political concerns to the importance of economic and social issues" (Shinoda, 2004: 12). In addition, the concept of human security is an integrative concept, which demands "policies of social integration" (Shinoda, 2004: 13). The important dimension of the concept of human security is to respond to ordinary people's needs in dealing with sources of threats to their security. In this respect, human security "deals with the capacity to identify threats, to avoid them when possible, and to mitigate their effects when they do occur" (Tadjbakhsh, 2005: 5). Thus, human rights and needs can be used as indicators of human security, although these are not identical concepts.

In the security discourse of multiculturalism an important role belongs to the autonomy of individuals as 'the ability to make good choices', which is closely related to their cultural affiliation, but also to the development of tolerance in terms of evaluating the autonomy of individuals by others (Marković, 2012). Human security seen in the context of multiculturalism refers to the questions, not just of personal (in)security, but on economic, legal and social security in the context which is rather complex due to the inter-ethnic and intercultural relations. Therefore, the study of the security of citizens in multi-ethnic societies is aimed at understanding the concept of human security in terms of evaluation of personal autonomy and security in relation to the ethnic and cultural background. Defined in this way, the concept of human security goes beyond the concept of mere physical security and takes into account all aspects of security which, taken all together, qualitatively determine the living conditions of people in multi-ethnic societies.

Therefore, in this context, when speaking about security, some authors correctly make the difference between 'subjective security', in terms of how people experience safety, and 'objective security', which refers to the risk assessment, policing, etc. (Foss et al., 2012). Thus, within the *ALTERNATIVE* in general, and the research done by the Victimology Society of Serbia, in particular, the concept security is defined "as the sense of safety that people experience" (Vanfraechem, 2012: 6).

THE RESEARCH METHODOLOGY
THE SUBJECT AND THE AIM OF THE RESEARCH

The aim of the empirical research was to find out how people from multi-ethnic communities deal with interethnic conflicts in their everyday life and to identify both problems and positive experiences in solving them. In addition, we intended to find out how victims are treated, how security is perceived by citizens, and what place restorative justice approaches have in dealing with conflicts and security.

One of the research questions was: to what extent do citizens in three multi-ethnic communities in Serbia feel safe and what impacts their feeling of (un)safety? Taking the framework of the *ALTERNATIVE* as well as the results of the qualitative research done in preparation of the quantitative part of the empirical research as a departure point, we used the broader notion of the concept security defining it in terms of 'subjective security' i.e. as the sense of safety that people experience. Therefore, the term safety was not limited to the feelings of physical safety, but it referred to all other aspects of social security in general.

Although quantitative, this research had a strong action dimension, too. Its aim was not only to collect the data on the subject of the research, but also to inform the citizens (respondents) about existing NGOs, institutions and independent state agencies that could provide certain services (assistance, support, information, legal aid, mediation etc.) to victims of violence, discrimination and other forms of human rights' violations, including those that are ethnically motivated. An additional aim was also to raise awareness about interethnic relations and conflicts, victimisation, security issues, and restorative justice through the questionnaire and/or interviews with the interviewers.

Methodological framework and data collection

As already pointed out, the empirical research consisted of qualitative and quantitative part. In order to get more knowledge about the social context of the research-sites and to operationalise the quantitative survey, a qualitative research was conducted first. Within the qualitative research, the data was collected through qualitative interviews with 17 persons from civil society organisations and state institutions in the research sites. Ten of them were Serbs, while there were three Albanians, three Bosniaks/Muslims, and one Croat.

Within the quantitative part of the research the data was collected through a victimisation survey, which was accommodated to serve the needs of the research aims. For collecting the data, the semi-structured questionnaire was used. One part of the questionnaire related to the questions about respondents' feelings of safety. In this part respondents were asked how safe they felt and what their feeling of safety was in comparison to the period of 1990s and before 1990. In addition, they were asked to state what impacts their feelings of unsafety or feeling less safe at any time and what needs to be done in order increase safety. The questionnaire was in Serbian, but it was translated to Albanian for Albanian respondents in Medvedja.

The data was collected from June 1st to October 1st 2013 in towns of Bac and Backa Palanka, Medvedja and Prijepolje, and twenty villages that belong to these municipalities. For processing the data we used the SPSS 18.0 program. The data was processed by the use of descriptive statistics, Hi square test, and ANOVA.

The sample

The survey was conducted on the sample of 1,423 persons: 610 respondents in Prijepolje, 431 in Bac/Backa Palanka, and 382 in Medvedja. We intended to have approximately the same number of Serbs and respondents from other ethnic groups in each subsample, i.e. in each research site. In Prijepolje, where the ethnic balance is present, i.e. the proportion of Serbs and Bosniaks is almost the same, so this meant having the same ratio as in reality. In two other research sites (in Bac/Backa Palanka, and in Medvedja) where Serbs constitute the majority of the population, while the percentage of Croats (in Bac/Backa Palanka) and Albanians (in Medvedja) is very low, we intended to have oversampling of minority ethnic groups. However, we managed to have the desired sample structure only in Prijepolje, while oversampling of minority ethnic groups in two other sites was not achieved. The reason for that was that, unlike in Prijepolje, the response rate was lower in other two research sites in general, as well as in relation to minority ethnic groups, particularly Croats. Namely, citizens are still not ready to speak about either their experience of victimisation or the experience of others, primarily due to distrust and fear, which is still very much present in these research-sites particularly among citizens who belong to ethnic minorities. It was particularly hard to approach respondents of Croatian ethnicity in Bac/Backa Palanka, which resulted in having fewer than 100 respondents from this ethnic group. This is one of the limitations of this quantitative survey and that is why one needs to approach the data related to Croat respondents with some reservations.

At the end, the ethnic structure of the sample was as follows: in Medvedja 243 (63.6%) respondents were Serbs and 139 (36.4%) Albanians; in Prijepolje, there were 304 (49.8%) Serb and 306 (50.2%) Bosniak respondents, and in Bac/Backa Palanka - 346 Serb respondents (80.3%) and 85 Croats (19.7%).

For the purpose of the research we used a respondent-driven sampling method. In collecting the data, interviewers were instructed to contact persons they know first ("primary referral points") (Klinger and Silva, 2013) and then to ask them to recommend other person(s) to be respondent(s). In addition, interviewers could question more than one person in a household, but they had to take care of the age and gender structure of the sample. By choosing the respondent-driven sampling we tried to avoid some limitations and problems in applying standard sampling techniques when using random sampling in surveying vulnerable population in post-conflict societies. This was particularly applicable to South Serbia, where some of Albanians who left Serbia at the end of 1990s now only occasionally live there. In addition, there are no precise data about the number of Albanians in Medvedja, the residential layout is chaotic, etc. Thus, the sample is not statistically representative either for Serbia or for the regions in which the research was conducted, which may result in some limitations of the research findings. Nevertheless, from the point of view of the importance of the findings for the project and further activities the sample is correct, because in general it reflects the ethnic structure of the population in these regions.

RESULTS AND DISCUSSION

One part of the survey related to the feelings of safety of the respondents at the time of the research, but also to their feelings of safety during 1990s, when the armed conflicts in the former Yugoslavia were going on, and before 1990 in order to see if there were some differences in the respondents' feelings of safety. In addition to this, in this part we particularly discuss the impact of ethnic belonging, age and gender, as well as of the experience of previous victimisation on the respondents' feelings of safety. This is followed by the analysis of the factors that, according to the respondents' opinion, contribute to their feeling of (un)safety, and what would be the best ways of increasing safety of citizens in their local communities.

The respondents were first asked if they felt safe in the place they were living in at the time the research. As it can be seen from Table 1 most of the respondents were feeling very safe (47.3%) and safe (41.2%). A minority of respondents felt unsafe (9.4%) or very unsafe (1.8%).

Table 1 *Feelings of personal safety in the total sample*

Current feelings of personal safety	Frequency	Percent
Feeling very safe	673	47.3%
Feeling safe	586	41.2%
Feeling unsafe	134	9.4%
Feeling very unsafe	26	1.8%
No data	4	0.3%
Total	1423	100%

We wanted to see if there is a statistical significance in the differences between the feelings of personal safety of the respondents from these three research sites. In order to do that, we reduced the categories into two – feeling safe and unsafe. Also we did not include the missing cases in the analysis. The data show that there are significant differences in the feelings of the respondents. It was established that the respondents from Prijepolje feel safer than those in two other research sites. The highest percentage of those feeling unsafe come from Bac/Backa Palanka ($\chi 2=8.105$; df=2; $p<0.05$), with the percentage of those feeling unsafe in Medvedja being only slightly smaller than that.

From Table 2 we can also confirm that the majority of respondents of the entire sample feel safe (88.7%).

Table 2 *Differences in feelings of personal safety in research sites*

Research site	Feeling safe		Feeling unsafe		Total	
Prijepolje	557	91.5%	52	8.5%	609	100%
Medvedja	330	87.1%	49	12.9%	379	100%
Bac/Backa Palanka	372	86.3%	59	13.7%	431	100%
Total	1259	88.7%	160	11.3%		

Besides the relation with research sites, we wanted to know if any other factors influenced the feelings of personal safety. It was discovered that there are no significant gender or age differences in feelings of personal safety of the respondents. However a significant relation was found between the experience of victimisation and feelings of safety.

The data show that the respondents who were victimised, more often answered that they feel unsafe ($\chi2=26.224$; df=1; $p<0.01$).

Table 3 *Differences in current feelings of personal safety in relation to victimisation*

Victimisation experience	Feeling safe		Feeling unsafe		Total	
Yes	311	81.6%	70	18.4%	381	100%
No	948	91.3%	90	8.7%	1038	100%
Total	1259	88.7%	160	11.3%		

There are no significant ethnic differences in feelings of personal safety, but a higher percentage of Croat respondents answered they felt safe than in any other ethnic group (Table 4). Serb respondents on the other side, as well as Bosniaks have to a greater extent answered they feel unsafe, as we can see from the percentage ratio. In order to be sure that there are no significant differences we repeated this analysis for each of the research sites independently.

Table 4 *Differences in feelings of personal safety in relation to ethnicity*

Ethnicity	Feeling safe		Feeling unsafe		Total	
Serbs	785	87.9%	108	12.1%	893	100%
Croats	82	96.5%	3	3.5%	85	100%
Bosniaks	269	88.2%	36	11.8%	305	100%
Albanians	123	90.4%	13	9.6%	136	100%
Total	1259	88.7%	160	11.3%		

When we analysed each of the research sites independently we discovered that there are no significant differences in feelings of personal safety in Medvedja between Serbs and Albanians. Gender and age were also found to be of no influence on the feelings of safety in this subsample. However victimisation did have an effect: those who have not experienced victimisation in this town tend to feel safer than those who had such experience ($\chi2=8.419$; df=1; $p<0.01$).

The results from Prijepolje show that a greater percentage of Serb respondents answered feeling safe in comparison to the Bosniak ones ($\chi2=8.339$; df=1; $p<0.01$). Gender and victimization also influence this feeling in Prijepolje. Women have reported feeling more safe than men in this town ($\chi2=4.630$; df=1; $p<0.05$). Similar to Medvedja those who have not experienced victimisation in Prijepolje are feeling safer now than those who have experienced it ($\chi2=8.419$; df=1; $p<0.01$).

As for Bac/Backa Palanka we found out that Croat respondents feel more safe than Serbs ($\chi2=9.250$; df=1; $p<0.01$). Gender, age and victimisation did not have an impact on the feelings of safety of respondents in these research sites.

The respondents were also asked to compare their feelings of safety at the time of the research with the one during the period from 1990 to 2000. Most of the respondents feel safer today (52.4%) than during the 1990s. However, 5.6% of them feel less safe, while the feelings of personal safety did not change for 34.2% of our respondents.

Respondents from Prijepolje feel safer today than in the 1990s in a much greater percentage compared to the other two research sites. On the other hand, in Bac/Backa Palanka we recorded the highest percentage of those who are feeling less safe today compared to the period of the 1990s ($\chi2=40.803$; df=2; $p<0.01$). The respondents from Medvedja are somewhere in the middle.

Table 5 *Changes of feelings of personal safety in the research sites (1990s and now)*

Research site	Feeling more safe		Feeling less safe		Total	
Prijepolje	343	97.7%	8	2.3%	351	100%
Medvedja	224	86.8%	34	13.2%	258	100%
Bac/Backa Palanka	179	82.5%	38	17.5%	217	100%
Total	746	90.3%	80	9.7%		

Table 6 shows us the differences in changes of feelings of personal safety in relation to ethnicity. It shows that feelings of the Bosniaks and Albanians have changed to the positive more than those of Croats and Serbs. Also it shows that it is Serbs who are now in greater numbers feeling less safe ($\chi 2=42.499$; df=3; $p<0.01$) compared to other ethnic groups. During the 1990s Serbs as the majority had an objectively better position than the minorities. However, after the wars, the minority ethnic groups were starting to feel less threatened and gained more rights. Serbs on the other hand were faced with economic problems and tended to link the feelings of safety to economic unsafety. Some Serbs even feel threatened by the requests of ethnic minorities for more rights. Bosniaks feel most safe probably because they feel as equal in numbers compared to Serbs in Prijepolje.

Table 6 *Changes of feelings of personal safety in relation to ethnicity (1990s and now)*

Ethnicity	Feeling more safe		Feeling less safe		Total	
Serbs	362	84.2%	68	15.8%	430	100%
Croats	39	88.6%	5	11.4%	44	100%
Bosniaks	228	98.3%	4	1.7%	232	100%
Albanians	117	97.5%	3	2.5%	120	100%
Total	746	90.3%	80	9.7%		

Age was also an important factor. Those in the youngest age group (18-30) feel safer today. Contrary to that, the highest percentage of those feeling less safe today is in the oldest age group over 60 ($\chi 2=6.094$; df=2; $p<0.05$). The middle aged group (31-60) is in the middle. It is possible that these changes could be attributed to economic factors, since the oldest category of respondents are usually retired. Also, older people tend to be more pessimistic and fearful of the future. The youngest group on the other side had only the direct experience of the NATO bombing and everything compared to that probably seems safer.

From Table 7 we can see what the respondents answered to the question: In comparison with the period before the 1990 do you now feel safer in the place you live in? We see that 32.7% of the respondents answered that they felt the same, 26.6% more safe today and 20.9% less safe today, i.e. the perceptions are not uniform. It seems that for the fifth of respondents the period before the 1990 was safer, while for about the fourth of them it was less safe. Adding another time period in the equation proved useful since we gathered more information about the perceptions of the respondents and the factors influencing them.

Table 7 *Feelings of personal safety before 1990 and today compared*

Feelings of personal safety before the 1990s and today	Frequency	Percent
I feel more safe today	379	26.6%
I feel less safe today	297	20.9%
I feel the same	466	32.7%
I cannot respond either because: I can't remember because I was too young or I wasn't even born or I wasn't living in Serbia	273	19.2%
Something else	3	0.2%
No data	5	0.4%
Total	1423	100%

Once again we wanted to see if different factors are related to the changes of feelings of personal safety between the period before the 1990 and at the time of the research. The results show that most of respondents from Medvedja answered they feel more safe today; most of those from Bac/Backa Palanka answered feeling the same, and a similar part of those from Prijepolje answered feeling more and less safe nowadays ($\chi 2=45.567$; df=2; $p<0.01$).

In relation to ethnicity, it seems that, in comparison to other ethnic groups, Albanian respondents most often answered feeling more safe today ($\chi 2=97.474$; df=3; $p<0.01$). Bosniaks on the other hand, answered in this way the least often. Therefore it is not hard to make an assumption that safety was a problem for Albanians already before the 1990s and at the same time Bosniaks lost that feeling of safety during the 1990s and are now feeling less safe than before the conflicts. Serbs and Croats are divided in opinions, about a half of respondents from these ethnic groups answered feeling more safe at the time of the research and a half answered feeling less safe (Table 8).

Table 8 *Changes of feelings of personal safety in relation to ethnicity (before 1990 and now)*

Ethnicity	Feeling more safe		Feeling less safe		Total	
Serbs	189	54.6%	157	45.4%	346	100%
Croats	15	50.0%	15	50.0%	30	100%
Bosniaks	65	35.7%	117	64.3%	182	100%
Albanians	110	93.2%	8	6.8%	118	100%
Total	379	56.1%	297	43.9%		

Significant differences were found between the youngest age group (18-30) and the other groups. Those who can remember this time period, but were very young more often say they feel safer. In two other age groups there is almost an equal percentage of those who feel more safe and those who feel less safe. So, those who can remember this period well have different feelings ($\chi 2=41.091$; df=2; $p<0.01$).

In relation to victimisation, those who had such experiences tend to feel more safe nowadays ($\chi 2=25.837$; df=1; $p<0.01$). It is interesting that this difference was not found in comparison with the period of the 1990s, when the largest number of victimised respondents experienced victimisation. Possible explanation may be that this is because the sources of unsafety related to their victimisation from the 1990s still exist and influence their feelings which are not much different comparing to 1990s. On the other side, for some, like Albanians, unsafety existed already before the 1990s with their safety being increased comparing to that period.

We also asked all of the respondents about the reasons for them to feel unsafe. The question was: If you felt unsafe or less safe at any time, please mark in what reasons for feeling unsafe you agree with. The respondents gave their opinion on the 4-point Likert scale ranging from 1 (I disagree completely) to 4 (I agree completely) for every of the offered reasons for their feelings of unsafety. In this way we could measure and compare the effects of various factors on the feelings of unsafety.

Table 9 *Reasons for feelings unsafe*

Reasons for feelings unsafe	Mean
Inefficiency of the state in solving problems	3.22
Economics reasons	3.04
Presence of police forces	2.54
The behaviour of the police forces	2.46
My ethnicity	2.44
The relationship with close persons of different ethnicity	2.28
The relationship with members of the same ethnic group	2.20
My political affiliation	2.20
Total respondents 299	Range: 1 - 4

The data from Table 9 show that inefficiency of the state in solving problems (M=3.22) and economic factors (M=3.04) are seen as the greatest contributors to personal feelings of insecurity of the respondents. They are followed by the presence of police forces and their behaviour as well as by ethnicity of the respondent. Relationship with close persons of different ethnicity was less of a reason for the feelings of unsafety than those mentioned before (M=2.28) and is followed by the relationship with members of the same ethnic group and the political affiliation of the respondents (M=2.20), which the respondents perceived as the least influential reasons that contributed to their feelings of unsafety.

In the end we asked the respondents about their opinions about the things that should be done in order to increase their feeling of safety. The respondents gave their opinion on the 4-point Likert scale ranging from 1 (I disagree completely) to 4 (I agree completely) for every possible measure we proposed. As it can be seen from Table 10, creating job opportunities for citizens is seen by the respondents as the best way to increase the feeling of safety (M=3.85). This is followed by more conversation about existing problems between people (M=3.69), more severe punishments for those who endanger safety of the citizens (M=3.65) and more efficient police in solving problems (M=3.64). An equal amount of support gained the following measures: creating more organisations and institutions that people can turn for help and more organised socializing for people (M=3.51). The measure that had least support was the introduction of more policemen on the streets (M=2.68).

Table 10 *Opinions about the measures that would increase safety*

Opinions about the measures that would increase safety	Mean
People should have jobs (salary)	3.85
People should talk more about the problems they have	3.69
Introduce more severe punishments for those who endanger safety of the citizens	3.65
Police should be more efficient in solving problems	3.64
There should be more organisations and institutions that people can turn to for help and information	3.51
There should be more organised socializing of people	3.51
There should be more policemen on the streets	2.68
Total respondents 1423	Range: 1 - 4

CONCLUSION

The survey findings showed that large majority of the respondents felt safe living in their communities at the time of the research. Most of them feel safer today than during the 1990s, while a third feels the same. For the fifth of respondents the period before the 1990s was safer, while for about the fourth of them it was less safe.

The findings about sources of unsafety suggest that different aspects of (un)safety were recognised by the respondents. Namely, respondents' perception of security goes much beyond physical safety in terms of freedom from crime, war or violence; it also encompasses social, economic, legal and political safety. Therefore, a strong link with the concept 'human security' is noticed.

The findings also indicate that the inefficiency of the state in solving problems and economic factors appeared as the greatest contributors to respondents' personal feelings of unsafety. In addition, presence and behaviour of the police was a prominent source of unsafety. Ethnicity and political affiliation as well as relationships with members of different and the same ethnic group seem to have smaller, but still important impact. Therefore, we may conclude that the state is not seen as a guarantor of the safety/security of its citizens, but is rather perceived by the respondents as one of the main sources of unsafety/insecurity. This is particularly characteristic for the post-conflict and countries in transition. As some authors suggest, "post-conflict societies often lack mechanisms and institutions for upholding the rule of law" and dealing with conflicts, being a 'vacuum' in which "the eruption of lawlessness, corruption and crime" is visible (Rohne, Arsovska, Aertsen, 2008: 12-13). This decreases the feeling of safety and has particularly negative consequences on members of ethnic minorities, whose chances to get protection and support are put in question (Nikolić-Ristanović, Ćopić, 2013).

Tightly connected to the notion of the state's non-functioning or inadequate functioning as a source of unsafety is the vision of the respondents in these three multi-ethnic communities that safety of the citizens would be increased if the state became more efficient. Therefore, the respondents mostly opted for economic measures (more jobs), more communication between people about problems and various ways of increasing efficiency of the state as the best ways of increasing their safety. However, together with emphasising the role of the state and its institutions in increasing the human security, respondents gave relevance to both formal and informal restorative approaches as well. This suggests the need of citizens to actively participate in conflict transformation and the increase of security, and in promotion of human security in general. In addition, it suggests the need for broader use of alternative ways of increasing human security, in particular the use of restorative justice approaches based on active participation, dialogue, respect, inclusion, empowerment, restoration etc. (Vanfraechem, 2012: 14).

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SECURITY POSITION OF SERBIA IN EUROPE TODAY – CONCEPT OF SECURITY NEUTRALITY AND OPTIONS OF MODELING SERBIAN NEUTRALITY ACCORDING TO SWISS NEUTRALITY MODEL

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Abstract: The paper reviews the security position of Serbia in today's Europe in the light of Serbia's presidency over the Organization for Security and Co-operation in Europe (OSCE) in 2015. The authors specify the security position of Serbia as impartial and neutral in relation to the current (geo) political crises, such as the one in Ukraine, which allow Serbia to become a kind of a link between the European West and the European East, reinforcing the authority of our country in the international community. The authors consider the possibility of additional specifying and defining a neutral security status of Serbia modeled on Switzerland in the years to come, in the light of possible geostrategic and foreseeable developments at the European and global level. The consideration of the Swiss neutrality model is particularly interesting in the context of the scientific meeting dedicated to Dr. Archibald Reiss, the man thanks to whom Serbia and Switzerland have nurtured a bond for over a century.

Keywords: Serbia, security position, Europe, impartiality, neutrality, Switzerland, geostrategic developments.

INTRODUCTION

The paper we hereby present to the scientific community is dedicated to the memory of Dr. Archibald Reiss, an honourable Swiss man who indebted Serbia with his endeavours and who was its loyal friend, and after death an enduring guide in pursuit of humanistic values and civilization courses. This paper is not only dedicated to the memory of Dr. Archibald Reiss, but also to the Swiss-Serbian relations, the two nations very different in character, temperament and historical fate. By defining the security position of Serbia in today's Europe as its main topic, this paper poses the question of what the Serbs can learn from the Swiss, so that their historical position and fate could be more quiet, stable and peaceful than those from the previous two centuries in never-ending cycles of wars, great sufferings of the people and constant impoverishment of the country. Unlike Serbia and the Serbs, the historical position of Switzerland and the Swiss is one of steady diplomatic wisdom and constant progress in all segments of society, especially regarding the economic sector. However, these two nations are currently connected through their common denominator, the security segment of a nation's existence, which will be the topic of this paper's research. Both nations are neutral in military and security terms, i.e. both have adopted a neutral military security status, outside of the different systems of collective security, a significant difference being that the Swiss military and security neutrality has lasted several centuries, whereas the Serbian has only lasted a few years.[3] Therefore we can conclude that the Swiss neutrality has stood the test of time, while the Serbian one is yet to be proved. More precisely, the Swiss neutrality is *active*, complete, certified and recognized by the world's leading diplomatic and military forces, while, in this sense, the Serbian neutrality appears *incomplete* and *passive*, because Serbia today is still, as it was in the past, torn between various diplomatic and military forces which regard its "neutrality" with suspicion. In that sense, this paper raises the question of whether it is possible to turn Serbian neutrality from passive into active following Switzerland's

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3 Switzerland completed its own neutrality after the Congress of Vienna in 1815, where it created a permanent basis, the one that would be upgraded in years and centuries to come, without significantly changing the concept. Serbia, on the other hand, defined its military and security neutrality with the resolution of National Assembly in 200, after which all other necessary security documents that would further define this concept were not defined, resulting in the fact that Serbian neutrality, aside from being in its infant years, seems unfinished

example, i.e. whether it is possible to take advantage of some of the experiences of Swiss neutrality for further reflection and institutional arrangements of Serbian neutrality.

Therefore, the paper will be divided into several thematic sections. The first part of this paper will consider the Swiss experience regarding security and political neutrality, emphasizing the main components, functions and purpose of Swiss neutrality and the historical context during which it developed and prevailed. The second part of the paper deals with the lessons from the Swiss concept of military and political neutrality intended for Serbia, especially in the context of Serbia's presidency over the OSCE in 2015 and the fact that Serbia and Switzerland will be initially chairing the OSCE together, after which Serbia will take the helm since Switzerland chaired the OSCE in 2014. The second part will not only deal with what Serbia can learn and apply in its concept of neutrality drawing from the Swiss experience of neutrality, but it will also focus on what Serbia can learn and apply from the Swiss experience of chairing at the OSCE. Finally, in this section, we will raise a question whether Serbia can use its chairmanship at the OSCE, (assigned to it in a package with Switzerland) in order to further define its concept of military and security neutrality, based on the Swiss model of neutrality. The main thesis with which we will access the aforementioned research is that military and security neutrality, in order to be stable, efficient and functional, need to be recognized by other countries, which should show confidence in it in the same manner the world's leading diplomatic and military powers have confidence in Swiss neutrality. However, some of them regard Serbia's neutrality as vague and imprecise, therefore not recognizing it in the full sense of the word. In the final remarks of this paper we will summarize all the conclusions we have reached while dealing with the topic of Serbia's (neutral) security position in Europe today, trying to reach final conclusions that would lead to a better, more precise and more functional definition of security and diplomatic position of Serbia in modern-day Europe.

SWISS EXPERIENCE OF SECURITY AND POLITICAL NEUTRALITY

Before we begin to explicitly describe the concept of Swiss neutrality, we will say a few words about the concept of political and military neutrality *per se* and the different models of neutrality known in recent history.

Neutrality as a political concept: the concept of political neutrality, or "neutrality policy", is a package which consists of *political measures and decisions* made in a neutral state during peacetime in order to preserve the credibility and effectiveness of the state's legally-binding neutral position. As certain well-known examples have shown in recent history, the policy of neutrality differs from one neutral state to another and depends on the state's specific situation and the particular historical and political context. On the other hand, states which are not neutral may consider neutrality either contribution to peace or a type of political hypocrisy.

Legal bases of the neutrality status in contemporary international law: Legal bases of the neutrality status in contemporary international law are defined by *the Law of Neutrality,* an integral part of international law. This law is defined by the *Hague Convention* of 1907 and is applied during international armed conflicts. *The Law of Neutrality* is not relevant in the case of an outbreak of internal armed conflict and during peacetime. In accordance with the provisions of this law, a neutral country has an obligation to remain neutral, i.e. impartial and not participate in armed conflict, the warring parties are not allowed to enter or pass through its territory, and a neutral state must defend itself in case of aggression. While it cannot export any military material to the belligerent sides, it has the right to maintain other types of economic and diplomatic relations. Neutrality can be permanent or *ad hoc*, i.e. temporary. It is especially crucial that the *warring sides* (*or even the current dominant diplomatic forces*) *must recognize the status of neutrality of neutral states* and must not occupy a neutral territory. This brings us to the most important issue related to the state's political and security neutrality status, which is that *such neutrality must be recognized by other states* and that, if it strives to be a real political fact, not simply a fictitious desire, it cannot be "self-proclaimed" on account of the lack of external objections to such neutrality. *The Law of Neutrality of 1907* was limited by *the Charter of the United Nations* from 1945, and in the case where the two obligations arising from these two documents are in conflict, the one stemming from *the UN Charter* will be applied.

Different contexts and models of neutrality in recent history: Throughout the centuries there have been different interpretations of "neutrality" in different countries identifying themselves as neutral, such as Denmark, Sweden, Finland, Ireland, Switzerland, or recently, Moldova and Turkmenistan, which proves that the concept of neutrality is very broad and ambiguous. The concept of neutrality in recent history has ranged from "active neutrality" (Switzerland) to "Cold War neutrality" (Austria, Finland) or "non-aligned neutrality" (Tito's Yugoslavia and other countries of the so-called Non-aligned bloc), getting new meanings in the new context of globalization and new security challenges which such context poses to different countries.

In recent history, the first complete and defined instance of neutrality was the example of Swiss neutrality, stabilized in 1815 after the Napoleonic wars and the Congress of Vienna, when Switzerland declared as a "permanent neutral state". At that time, the decision had a legal basis and confirmed political dimension, as it was recognized by the dominant world powers of the time (France, Prussia, Great Britain and Russia). Since that time, depending on the different political circumstances at the global level, new types of neutrality have emerged, for example, Finnish and Austrian "Cold War neutrality", which was different from Swiss neutrality primarily due to the fact that their *ad hoc* role was less active and evidently more passive in comparison to Swiss neutrality, which is proverbially known to be diplomatically proactive in terms of offering good diplomatic service to all interested and possibly conflicting parties, and mediation through a number of international organizations residing in its territory.[4]

As part of "Cold War neutrality" we also have a specific concept evident in the case of the former Yugoslavia (SFRY), which, in the mid-60s opted for a policy of *non-alignment*, which could not be defined as a classical concept of neutrality, but rather as a kind of idealistic *neutralism*, based on strong ideological "non-aligned" foundations and an ambition not only to have non-aligned countries refuse to join any existing block, but also form their own bloc at the global level. In this sense, the difference between *neutrality* and *neutralism* is that a state in the first case solely defines its own neutral status exclusively to gain individual state interest from it, while the second case represents a wider attempt to create a whole neutral (non-aligned) bloc of countries, aspiring to become a significant factor in world politics and world events. In this sense, for example, Ireland's neutrality is different from the previously mentioned ideological "neutralism", because it contains elements of a classical neutrality concept which does not go beyond the individual state interests. Namely, the neutrality of Ireland was a way to ensure the survival of the Irish state next to the powerful neighbour of Great Britain, and the reason for Ireland not joining NATO proved to be more than practical, without any ideological connotations, as Ireland could not afford enough material resources for membership. Finally, in the context of classical concepts of neutrality, we could mention Ukraine's neutrality up until recently, whose *ad hoc* purpose was to establish the balance between the impact of the West and the East, which collapsed in the whirlwind of the recent civil war in that country, the result of which is the state's currently undefined security status. Therefore, the case of Ukraine can serve as a negative example of an easy, sudden and tragic collapse of a state's neutrality, which was poorly defined and insufficiently externally guaranteed.

The concept of Swiss neutrality as an exemplary model of continuous and effective neutrality: As mentioned earlier, in the context of this paper, out of all the known neutrality models in history, the Swiss concept of political neutrality is especially interesting to us, not only because both this paper and the scientific meeting where it will be presented are dedicated to the memory of Dr. Archibald Reiss and the Serbian-Swiss friendship, but also because the concept of Swiss neutrality is the most enduring one in the history of the modern world, and the longevity certainly testifies to the effectiveness and practicality of the model. In the following passages, we will present the basic elements of the Swiss political neutrality and security model.[5] Then, in the next part, we will focus on the possibility of such a model serving as an example for the security position of Serbia and examine whether Serbia can, rounding off its currently rather unfinished neutrality model, adopt something similar to the Swiss model of neutrality, naturally not by copying it, but rather by using creative means.

Historical context, the political and legal definition of Swiss neutrality, its purpose and its security aspect: The neutrality of Switzerland is the result of a specific historical development, i.e. specific historical tradition and numerous adaptations to external and internal circumstances. Swiss neutrality was guaranteed for the first time in 1815 by the world's most important diplomatic powers of the time (Austria, Great Britain, Russia, France and Prussia) at the Congress of Vienna, which finally resulted in the signing of *the Act on the Neutrality of Switzerland* as an official act confirming its neutrality, which would then be upgraded and confirmed in the future in all subsequent diplomatic documents, eventually resulting in the fact that Swiss neutrality has remained confirmed and guaranteed by all the relevant world factors until the present day, so that no one questions it anymore. The fact that Swiss neutrality was officially diplomatically confirmed and guaranteed makes this neutrality *active i*n the full sense of the term. In the beginning, neutrality was the only way to preserve the Confederation made up of different entities with different cultural and religious traditions. The only possible way to reconcile them and integrate them was solely by applying the concept of non-participation in the dominant religious and political conflicts of the time, due to which, for a variety of centrifugal forces, the Confederation would certainly divide and disintegrate. Therefore, one of the first functions of Swiss neutrality was internal integration of disparate Confederation, after which other positive aspects of neutrality continued to be gradually discovered. The Swiss, using their fantastic ability

4 Precisely because of its neutral military and political status, Switzerland is a home to a number of international organizations that provide the so-called good services to the global community – from the International Committee of the Red Cross, over the World Health Organization, up to the International Labour Organization and a dozen of other international organizations, which found a place there. The list of all international organizations residing in Switzerland on the website https://www.eda.admin.ch/content/dam/eda/en/documents/topics/OI-Geneva_en.pdf

5 About Swiss neutrality we report from the paper of Veronique Panchaud (2009)

of social learning and adaptation for decades, and even centuries, further learned how to use neutrality to realize their external and internal interests. One consequence of this historical development was the fact that over time, *other states recognized Switzerland's neutrality and had confidence in it*, which helped it to become permanent and stable.

According to the Swiss authorities and supporting documents that regulate this issue, Swiss neutrality implies that neutrality is *self-determined*, *permanent and armed*. According to the traditional understanding of the Swiss, neutrality represents the cornerstone of foreign and security policy, which ensures *the independence of the state and the integrity of its territory*. The Swiss Constitution states that the Federal Assembly (Parliament) is responsible for taking measures to safeguard external security, independence and neutrality of Switzerland (Article 175), and that the Federal Council (government) is responsible to take measures to safeguard external security, independence and neutrality of Switzerland (Article 185). Neutrality is further mentioned in the section of the Constitution entitled "Federal authorities", but not in the sections about the aims of the Confederation or the foreign policy principles. The Constitution maker's idea was to emphasize the role of neutrality not only as an instrument of foreign and security policy, but also as the heart of the Swiss political system, which, as we have mentioned, draws its internal coherence and stability from this concept. Switzerland's neutrality policy is based on four elements from which it draws its legitimacy and legality: *the Law of Neutrality*, the national interest, the international situation, its tradition and history. The special feature of Swiss neutrality concept is that it is active, not passive, in the sense that it does not exclude different diplomatic resources to better align the state interest with the interests of other states.

Thus, the Swiss policy of neutrality is neither a fundamental obstacle for participation in economic sanctions nor for a membership in non-military international organizations. For example, the recent admission of Switzerland in the UN does not mean that it has an obligation to participate in military operations, which makes the admission to this organization in accordance with neutrality. According to *the Law of Neutrality*, Swiss military personnel can be sent abroad only if the mission takes place in accordance with a mandate of the UN or the OSCE, or with the permission of the warring parties, and in accordance with Swiss neutrality. *The Law of Neutrality* strictly prohibits the Swiss Armed Forces members from participating in peace enforcement combat. However, it exclusively connects them with Peace Support Operations (PSO) if they are based on a UN Security Council mandate or performed with the consent of the warring parties. In accordance with the provisions of *the Law of Neutrality*, it is also possible to participate in international military cooperation (training and weapons), but only if it does not assume an obligation to provide assistance to any party in the event of war. Participation in international programs and membership in international organizations is possible if there is no obligation to provide military assistance to anyone or if any other commitment taken contradicts the provisions of *the Law of Neutrality.*

Functions of Swiss neutrality: According to Riklin (1991), Swiss neutrality has five basic functions:

1) Integration or preservation of the internal cohesion of different cultural and religious groups in order to establish a lasting and stable peace between them and neutralize all external disruptive centrifugal forces affecting the group

2) Protection or the possibility of non-inclusion in the wars fought in the vicinity and the preservation of the status of an independent and neutral state

3) Economic interest or the possibility of doing business with all parties in a possible armed conflict[6]

4) European balance, or creating a situation in accordance with the geopolitical interests of major powers on the Continent, and not doing anything contrary to the interests of the leading powers

5) Good service, or an opportunity to offer mediation or negotiation services and demonstrate solidarity, the result of which are the state's multiple benefits

The attitude of the Swiss towards their neutrality: The vast majority of the citizens of Switzerland are very fond of neutrality (according to various researches conducted in the last ten years, about 89% of the population has an affectionate attitude towards this concept), which for them represents a part of self-perception and their national identity. Nevertheless, the Swiss citizens and participants in the political and social life experience the term "neutrality" in very different ways. On the one hand, there is the point of view which sees neutrality as *a pillar of sovereignty*, while on the other hand there are those who mainly see neutrality as *an instrument for active foreign policy*. There are differences in the perception of neutrality regarding the political affiliation of the Swiss. Thus, for example, Swiss Social Democrats interpret neutrality primarily as *active neutrality in the function of public diplomacy*, or an active foreign policy, placing an emphasis on *solidarity*, *human rights* and *multiculturalism*, which entails diplomatic, and sometimes security participation in various international initiatives promoting these values, adding certain activist bias to

6 In accordance with that, during World War II, Switzerland, for example, made business with all the conflicting parties, and they made business with each other with it serving as the mediator, the very important segment of this mutual business was trading in gold. However, it should be noted that during World War II there was a very serious violation of Swiss neutrality and, in the opinion of the Allied countries, biased actions in favour of the Axis powers, resulting, by the end of the war, for Switzerland to be placed on the list of enemy states by the Allied countries.

the neutral status.[7] On the other hand, the Swiss right parties, e.g. Swiss People's Party (SVP) and its sympathizers, are inclined to believe that cooperation regarding security issues makes Switzerland dependent. This is the reason they advocate a detailed assessment of the current Swiss Armed Forces' involvement abroad and their exact costs. Therefore, there is a certain noticeable distance towards leaving the framework of neutrality in any, even the smallest, interventionism - they see neutrality primarily as *a pillar of Swiss sovereignty.*

The relationship of Switzerland with NATO and activities in the Partnership for Peace: The relationship of Switzerland towards the North Atlantic Treaty is not negative and hostile, but would be rather characterized as reserved. It is well known that NATO launched the program "Partnership for Peace" (PfP) in 1994 in order to establish better cooperation with countries that are not explicit members of the Alliance. Switzerland joined the program in 1996, and together with other members of the program (including Serbia) is currently a member of the Euro-Atlantic Partnership Council (established in 1997), a security-political forum which provides guidelines for practical cooperation within the Partnership for Peace. Swiss participation in the Partnership for Peace is in line with its neutrality, since the Member States of this program are not obliged to join NATO. Moreover, there is no obligation to provide military support in case of any possible armed conflict, as this program is based on voluntary obligations. Simply put, the position of Switzerland in relation to the Alliance is reserved, but with a high degree of mutual trust, placing Switzerland in the so-called "first ring" of countries within the Partnership for Peace, which the Alliance treats in a friendly manner and with trust. Namely, within the framework of the Partnership for Peace, there are "three rings" of countries according to their openness to the structures of NATO,[8] not in terms of explicit membership and participation in military operations, but rather in terms of supporting other activities of the Alliance and building a relationship of trust. The "first ring" includes the countries such as Switzerland, but also Austria, Sweden, Finland, Ireland and Malta, which the Alliance treats as completely amicable in terms of commitment to common (Western) values. Regardless of not having the explicit membership in the Alliance to promote these values, the level of cooperation and trust with these countries is very high. The "second ring" mainly comprises the countries in transition, just like Serbia, Bosnia and Herzegovina, Macedonia, Montenegro and many countries of the former Soviet Union, which the Alliance sees as potential, but insufficiently stabilized partners. And finally, the "third ring" of the Partnership for Peace includes, first of all, Russia and the states of the former Soviet Union that openly gravitate around it, which the Alliance sees as a great unknown and a potential security challenge. Switzerland has a stable position in the aforementioned "first ring" of the Partnership for Peace, using all the benefits arising from such "trust status" with the Alliance. Respecting its own neutrality, Switzerland managed to build a significantly credible relationship with the dominant military alliance of today, using it as an instrument for military exchange of knowledge, experience and information. For example, NATO regularly invites Swiss representatives to participate in certain courses and exercises, and vice versa. The key areas of Switzerland's cooperation with the Alliance within the framework of the Partnership for Peace program are: improvement of interoperability, planning procedures in civil emergencies, provision of assistance during natural disasters, creating democratic and efficient security structures, adherence to humanitarian law and the law of armed conflict, usage of small arms and light weapons as well as education and provision of IT services. The most important activities and contributions of Switzerland in the Partnership for Peace regard the following areas: peace support operations (PSO), courses and training, regional cooperation projects, the International Relations and Security Network (ISN). Switzerland is also extremely active in the so-called "Partnership for Peace" Consortium. All in all, Switzerland has succeeded in building a relationship of trust with the NATO alliance, preserving its neutral status, and, through the Partnership for Peace it has established direct and open contacts with key stakeholders in European security (the USA, France and Great Britain). The attitude of Swiss society towards NATO is not uniform, and there are big differences in the perception of favuorable relations with the Alliance between the different parts of Swiss society and political parties. A very influential Swiss political party, representing the most conservative social circles, suspicious of NATO and the state's abundant usage of the Partnership for Peace, is Swiss People's Party (SVP). They believe that the participation in the PfP program means that there are numerous military exercises of Swiss soldiers abroad and foreign troops in Switzerland, which, in their opinion, represents a violation of the original idea of neutrality. Therefore, in accordance with their position, they believe that Switzerland should discontinue its participation in PfP as soon as possible. Other Swiss political parties, ranging from liberals and social democrats to moderate conservatives, have no problem with this, and many of them, for example, the

7 Of course, the Swiss Social Democrats do not go beyond *the Law of Neutrality* in their activist proceedings, but interpret the spirit of that law in accordance with their own values of promoting human rights and multiculturalism whenever a diplomatic opportunity arises.

8 Specific knowledge and information on the functioning of the Partnership for Peace, as well as on the status which different countries have in this program, and in NATO itself, was collected by one of the authors of these lines, Dr. Neven Cvetićanin, during the duty he had as a member of the delegation of the National Assembly of Serbia in the Parliamentary Assembly of NATO, during his parliamentary mandate in the National Assembly of Serbia

Liberals (FDP) and Moderate conservatives (CVP) argue that the participation of Switzerland in the Partnership for Peace should be intensified.

Perspectives of Swiss neutrality: According to Riklin (1991), five previously listed functions of neutrality have lost importance after 1989 and the drastic changes in the world order. However, in the light of new circumstances in Europe and the world, caused by the conflicts in Ukraine and new deterioration of the relations between the East and the West, as well as the escalation of international terrorism, Swiss neutrality would again be able to get value and expediency. What is indisputable, regardless of the global context, is that the neutral status gives Switzerland unquestionable reputation in international relations due to which it is very gladly seen as an intermediary between the various warring parties. Moreover, its territory very often serves as a meeting point for various peacekeeping and mediatory diplomatic conferences. Furthermore, the status of a neutral state can be an advantage in the 21st century in the context of increasingly frequent terrorist threats and attacks and possible tensions that may occur in the future due to water resources. All this suggests that Switzerland's neutral security status not only provides prestige, but also clear benefits when it comes to representing national interests, i.e. interests of its own citizens. This is why the Swiss model of neutrality can be exemplary for Serbia and for that reason we will analyze which specific lessons Serbia can draw from the Swiss neutrality model, in order to strengthen its diplomatic position and international reputation.

LESSONS FOR SERBIA GAINED FROM THE SWISS CONCEPT OF NEUTRALITY, SECURITY POSITION OF SERBIA AND SERBIAN PRESIDENCY AT THE OSCE IN 2015

The application challenges of the Swiss neutrality model in Serbia: Describing Swiss neutrality, we have mentioned that the neutrality model was the product of a specific historical development of Switzerland and its specific historical tradition, which created a national identity and mentality. The historical development, traditions and mentality differ significantly, if not entirely, from the historical development, traditions and mentality of Serbian society, which immediately creates aporias in the attempts to apply the Swiss neutrality model to Serbia. In the following paragraphs, we will list the key differences in historical development, traditions and mentality between Swiss and Serbian societies, which lead to aporias regarding the explicit application of the Swiss model of neutrality to Serbia. However, even if it is not reasonable and realistic to expect explicit, literal and copied application of the Swiss neutrality model in Serbia due to significant differences in the historical development, traditions and mentality, it does not mean that it is impossible to upgrade Serbian, for now merely proclaimed neutrality, using certain segments of the Swiss neutrality model, so that it would make a transition from its *passive* to an *active* phase.

The first aporia to emerge when we think about the possibilities of the Swiss neutrality model application in Serbia is the fact that there is a significant difference between Switzerland's and Serbia's so-called historical-security positions. Namely, in the past few centuries, Switzerland has been the place where the most important European and world powers have consulted and communicated with one another. The Swiss security buffer zone has successfully been used by all - from the Swiss themselves to a variety of global forces - as the existence of such security buffer zone has worked well for everyone. On the other hand, Serbia and the Balkans in general, measured according to the so-called longevity processes, were the areas where the great powers "arm-wrestled" and where they prevailed. Thus, not only did Serbia and the Balkans lack the function of a secure, calm and peaceful buffer zone, but, on the contrary, they were always a gunpowder keg which caused large European fire, while the world powers struggled to overpower one another. Therefore, the main question is whether Serbia and the (Western) Balkans in general can, in the distribution of world interests and plans, become an area where the leading world powers would not overpower each other, but gather to communicate, as it is the case with Switzerland, i.e. the "Swiss security buffer zone" which has acted, both in a literal and metaphorical sense, as the place of communication between various influential world powers for centuries.

The second aporia to emerge when we think about the possibilities of application of the Swiss model of neutrality in Serbia is that Serbia and other Western Balkan countries have not had a tradition of neutrality.[9] Thus, Serbia has, in particularly dominant conflicts of the time, been explicitly either on one or the other side of conflicting parties, rarely staying on the sidelines, reserved and neutral like Switzerland. The only exception was the socialist Yugoslavia (SFRY) with its non-aligned policy, but as stated in the introduction of the first chapter where we underlined the difference between *neutrality* and *neutralism*, the Yugoslav model of non-alignment did not represent a security-political neutrality in

9 Except for the Renaissance Republic of Dubrovnik of a long time ago, which is perhaps the only instance when a Balkan polity maintained its existence more through diplomacy than through arms, wisely acting "neutral" towards all dominant conflicts of that time and even, as Switzerland, profiting on them by trading and doing business with all the conflicting parties.

the classical sense, but it aspired to create a third bloc, in the space between the conflicting parties of Cold War. This third bloc had global aspirations, too, nevertheless fraught with ideological connotations. What makes Swiss neutrality efficient, expedient and enduring is the fact that it is not an ideological project as that of the non-alignment of Tito's Yugoslavia, but, first and foremost, a pragmatic project, which has eventually become acceptable among various world powers, exactly due to its own pragmatism. Therefore, the neutrality of Serbia, if it strives to be sustainable and expedient, should not to be based on the model of non-aligned socialist Yugoslavia, since it might mean that Serbia allegedly has some kind of global pretensions for which there is no ground in the current position of the country. On the contrary, the concrete situation dictates Serbia to concentrate on its own individual national interest and remain within the mandate of this special national interest. It is in this segment that Switzerland can serve as an exemplar to Serbia providing the example of *unpretentious pragmatic neutrality* as opposed to any *idealistic neutralism* such as Tito's policy of non-alignment.

The third and very important aporia which emerges when we think about the possibilities of application of the Swiss model of neutrality on Serbia is that Serbia is a highly indebted country in terms of external debt and therefore financially dependent on different sides and forces to which it owes a debt. By contrast, Switzerland is not an indebted country in relation to government debt, so in this sense, it is free and independent, which allows it to remain within the bounds of the classical neutrality model. This means that one of the main principles of a true, and not merely proclaimed neutrality of Serbia, is the reduction and eventual complete regulation of external debt, which is not an easy task and is an issue of economic parameters which we will not discuss here, as that is an entirely different topic. Here we can only add a specific conclusion that the high external indebtedness of the country and consistent implementation of the neutrality policy are mutually exclusive.

The fourth aporia, which emerges when we think about the possibilities of application of the Swiss neutrality model on Serbia, is the proclaimed strategy of Serbia to join the European Union in full capacity. Namely, the European Union has since 1992 and the Maastricht Treaty also been a security union with the Common Security and Defence Policy (CSDP). The Treaty of Lisbon of 2007 went even further in its Article 42.7 which relates to regional solidarity in the case of a terrorist attack, thus excluding any possibility of consistently remaining within the frame of the classical neutrality model of those states which are a part of this common security and defense policy. Additionally, the European Union has, with the introduction of the Petersburg tasks in the Treaty of Amsterdam in 1997, shifted from peacekeeping to ensuring peace, and today the former neutral countries, such as Finland and Sweden, are very active in their endeavours to turn CSDP into a means for effective international crisis management which, to some extent, excludes the consistent application of the classical neutrality model. However, within the European Union there are countries that have retained a wider space for its security neutrality such as Austria. Hence the claim that the EU membership excludes the neutral safety status should be taken with reserve. Therefore, it is possible that Serbia maintains its proclaimed strategy to join the European Union and, at the same time, develop a model of security neutrality, but then the model of Serbia's neutrality should be based on the Austrian, and not on the Swiss model, which is a different theme and not a subject of this paper. This paper tries to imagine Serbia's neutrality according to the Swiss model, or even contemplate which segments of Swiss neutrality could be applied to Serbia, and therefore starts from an assumption that for the implementation of such neutrality it is not necessary for Serbia to become an explicit member of the EU.

Be that as it may, there are many obstacles to the Swiss neutrality model application in Serbia, caused by Serbian history, tradition, mentality, geographic and economic position. However, as we have mentioned earlier, this paper does not strive to offer a pretentious formula by simply copying the Swiss neutrality model in Serbia, but rather try to analyze which segments of the Swiss neutrality model Serbia could adopt to further round its, for now, merely proclaimed neutrality, and transition from its *passive* to an *active* phase. Swiss experiences can be useful to Serbia, especially the insight that, in order for a neutral status to be expedient, it needs to be recognized by the leading world powers in the same manner the neutral status of Switzerland is recognized and respected. Serbia could use its shared chairmanship of the OSCE in 2015 with Switzerland, which chaired the OSCE in 2014, to tie its security position to Switzerland's, and to, in that sense, further define its own neutrality, which will be discussed in the following passages.

Serbian Chairmanship of the OSCE and the possibilities of using the presidency to define the model of neutrality of Serbia according to the Swiss model: As it is known, Ministerial Council of the OSCE's decision of 10 February 2012, decided that the Republic of Serbia would chair the OSCE in 2015 as part of a joint candidacy with Switzerland, which had chaired this organization in 2014. Switzerland and Serbia agreed to, for the first time in the history of the OSCE successively assume the presidency of this organization. The fact that Serbia is in this way "attached" to Switzerland, a country traditionally known for its neutrality and objectivity in international relations, is very favourable for Serbia and its international position due to the current crises. This does not only allow Serbia to learn from the Swiss experience, but also to define its own neutrality better and to try to transit from its "passive" to an "active" phase after the Swiss model.

The adoption of Decision on the presidency of the OSCE represents a success and a great responsibility for Serbia in the field of multilateral diplomacy, as, ever since it regained its independence, Serbia has rarely had the opportunity to "swim" in the waters of multilateral diplomacy. This is a double-edged sword as it can be beneficial, but it could also cause damage if Serbia is not diplomatically skillful during its chairmanship of the OSCE. A particular challenge for Serbia stems from the fact that in 2015, which marks the forty-year anniversary of the Helsinki Final Act, a consensus of the OSCE States on a new strategic framework of the Organization should be reached, as a result of the reform process which is underway. Furthermore, the OSCE undoubtedly rose in importance after the Ukrainian crisis, which set new challenges before the Organization, and especially for the country at its helm - Serbia - in the year when the crisis should show the direction in which it should go - whether decrease or inflate. In accordance with *the Joint Work Plan* drawn up in collaboration with Switzerland (which we shall discuss later), Serbia may have to appoint *special representatives for existing long-term conflicts,* i.e. appoint a representative for the conflict in Ukraine. It is also expected from Serbia to, as the chairman of the OSCE, coordinate so-called trilateral contact group for resolving the Ukrainian crisis, which consists of the OSCE, Ukraine and Russia. Furthermore, there is an intention to form the so-called Panel of eminent personalities within the OSCE, made up of selected diplomats and influential people in the global community, the aim of this Panel hence being to restore confidence among the member states of the Organization, which is yet another task for the Serbian presidency in the OSCE which requires skillful coordination.

In the context of these not at all easy challenges and tasks which will be set before Serbia during its chairmanship in the OSCE, a very favourable circumstance is that Serbia is chairing in the package with Switzerland, that is, in the package with the state of neutral security status of a great international reputation. Serbia can use this principle not only to continue to chair the OSCE strictly adhering to *the principle of continuity* in the same impartial manner in which Switzerland did it, but also to use its presidency to further define its own neutrality according to the Swiss neutrality model. The guide and support to this endeavour could certainly be the so-called *Joint Work Plan* for the presidency of the OSCE, formulated by Switzerland and Serbia, and presented on 2 July, 2013to the Permanent Council of the OSCE in Vienna.[10] This plan refers to "*the common and indivisible Euro-Atlantic and Eurasian security community stretching from Vancouver to Vladivostok*", which is a cleverly composed inclusive and impartial formulation providing the chairperson duo of Switzerland and Serbia a neutral approach to existing crises (above all the crisis in Ukraine) and a fair relationship with partners in the West and the East. Moreover, the section of the *Joint Work Plan* devoted to *the management of conflicts during the entire conflict cycle* states that "our presidency will support all necessary means to increase efforts to resolve existing conflicts in the area of the OSCE in a peaceful manner, within the agreed formats, and support all efforts to prevent the outbreak of new crises", emphasizing the intention that we intend "to appoint special representatives for existing long-term conflicts, with a mandate covering both consecutive periods of our presidency" which we have already discussed when we mentioned that this task can now be given to non other Serbia. As one of the priorities, this document states the intention "to strengthen the capacity of the OSCE to respond effectively in situations of tension or crisis" as well as to "support the practical application of facilitation and mediation in dialogue in the field, including through capacity building for mediation support". Beyond the diplomatic vocabulary, it is clear that Switzerland and Serbia devised a moderate and pragmatic platform for the presidency of the OSCE in 2014 and 2015, which is largely based on neutral security status shared by the two countries. However, since the neutrality of Switzerland is confirmed and recognized, and that of Serbia is for now only declaratory, it is reasonable to assume that the pressure on Serbia to be biased toward one or other side in the current conflict will be higher than it was on Switzerland, so Serbia will have to manage these conflicts skillfully. The most optimal option for Serbia is to hold the positions that were held by Switzerland and not in the least depart from the ways of chairmanship employed by Switzerland in the OSCE. In all this, Serbia should take advantage of the fact that *the Joint Work Plan* envisages that Switzerland and Serbia *"coordinate our positions",* and that the two sides are willing to "*help networking of Swiss and Serbian institutions and non-governmental organizations with an aim to include them in our preparations*". This means that *the Joint Work Plan* envisages a constant and continuous communication between Swiss and Serbian institutions, which Serbia can use for the absorption of Swiss experiences and attitudes not only in terms of chairmanship of the OSCE, but also in terms of further defining its neutral status modeled according to the Swiss model, so that what was tolerated to Switzerland during its presidency of the OSCE also be tolerated to Serbia - to be impartial and neutral in dealing with major security threats and challenges of which the most important is the crisis in Ukraine. What can help Serbia to have a successful presidency of the OSCE are good relations it already has with Brussels and Moscow, as well as its own experience of a post-conflict society. In addition, Serbia has to take into account the fact that after it, the OSCE will be chaired by Germany in 2016, and that, according to an established custom within the OSCE, it has to be active in 2015 in the so-called triad consisting of past, present and future chairmen of the OSCE, or in other words Switzerland, Germany and Serbia, which requires the effort of preparing tripartite consultations between the aforementioned countries.

10 The content of this *Joint Work Plan* can be downloaded from the website of the Ministry of Foreign Affairs of Serbia http://www.mfa.gov.rs/sr/index.php/teme/oebs-2015--predsedavanje-srbije?lang=lat

All in all, the presidency of Serbia over OSCE sets an unusual diplomatic challenge facing our country, which will require a lot of skills and abilities to overcome them. The best ally in carrying out this delicate task, can be - a clear plan - and a strategy not only to stay within the minimalist action plan to chair the OSCE without mistakes and blunders, but also to fit our own chairmanship at the OSCE into the broader vision of our own security in the sense of promoting neutral security status and lobbying for its recognition by the dominant world powers. What works in our favour in this task is that we chair the OSCE together with Switzerland, a country neutral in terms of military and security, which leaves room to take root in this riverbed of neutrality which Switzerland has already carved out for us, of course, having in mind all the limitations when it comes to application of the Swiss neutrality model on Serbia as previously discussed. Finally, during the crisis in Ukraine and the growing gap between the West and the East, the confirmed neutrality of Serbia may perhaps be acceptable for both sides, because the West would certainly not like to witness closer military-security connection between Serbia and Moscow (nor it would suit Serbia for practical geographical reasons, since it would be in the ring of states that are either members of NATO or gravitate around the Alliance), and, on the other hand, Serbia's direct membership in NATO would neither suit Moscow (although Moscow certainly does not have the same problem with this as with the eventual membership of Ukraine in NATO, since the Ukraine belongs to the first ring of defense of its interests, and Serbia just in the second or maybe even third). In addition to all that, the interest of the West is not to repeat hasty mistakes made in the case of Ukraine in the time before the open crisis, especially not when it comes to Serbia, because it would, in that way, get a neuralgic point within its tissue (since Serbia is surrounded by countries that gravitate towards the West which now extends all the way to divided Ukraine) and weaken its own coherence. Therefore, it might be in the interest of all parties that Serbia be granted a neutral military-security status, which cannot be reached if Serbia does not devise its neutral position better and more concretely and if it does not specifically lobby at the most important world powers with a clear plan, wisely interpreting the interests of these powers, skillfully corresponding to these interests. Finally, Serbia could use its presidency over the OSCE to skillfully promote its own security interests, which, given the geographical location and the historical tradition of Serbia, lie exactly in the fact to be a fair, impartial and neutral mediator in both the Ukrainian crisis, and all other possible misunderstandings between the West and the East, i.e. the dominant Western powers and Russia. The current neutral security status enables that to Serbia, and in the conclusion of our paper, we will give final conclusions about the perspectives of the neutral security status of Serbia in this dynamic world that is ever changing.

CONCLUSION

The ancient Chinese Taoist philosopher Lao Tzu said in one of his famous maxims that "a journey of a thousand miles begins with a single step". A confirmed and guaranteed neutral security status of Serbia is like a journey of a thousand miles, as Serbia's current neutrality is purely declarative, i.e. it is neither specifically guaranteed, nor recognized by any diplomatic force and a thousand diplomatic miles would need to be crossed in order for its security neutrality to be fully and realistically realized. This journey needs to begin with small, but sure steps and the fact that Serbia will be chairing the OSCE in 2015 represents an opportunity to move in that direction. The very important detail is that Serbia is chairing this distinguished organization alongside Switzerland, and after it, exploring the opportunity to learn from the Swiss diplomatic experience and its fully rounded neutral security position. In this paper, we have emphasized numerous real aporias in the application of the Swiss neutrality model in Serbia, as we have seen that these societies have different historical traditions. We have also pointed out that it would be not only unrealistic, but also presumptuous to expect the Swiss model of neutrality copied and applied literally in Serbia. On the other hand, we have pointed out that this does not mean that the possibility of applying certain segments of the Swiss neutrality model to Serbia should be rejected and that Serbia should learn from the experience of Swiss neutrality. The most important lesson Serbia can learn from the Swiss neutrality experiences is that neutrality can be expedient and realistic only if it is recognized and guaranteed, as the Swiss neutrality was guaranteed for the first time in 1815 by the world's most important diplomatic powers of the time (Austria, Great Britain, Russia, France and Prussia) at the Congress of Vienna. This finally resulted in the signing of *the Act of Neutrality of Switzerland*, which would be updated in the future and verified by all the subsequent diplomatic documents. Swiss neutrality has remained confirmed and guaranteed to this day by all the relevant world factors, so that no one questions it today. This leads us to the conclusion that the neutrality of Serbia, in order to be realistic and expedient, needs to be confirmed and guaranteed by the leading forces of our time (specifically, in our case, the most influential forces in our region - the United States, Russia and the European Union) by a neutrality Act of Serbia of some kind. If this is not possible or if it is not in the interest of the said forces (or some of them, which is enough to destroy the entire construction and make it unsustainable), then it would be valuable to consider whether it is better to stay in such a declarative, unguaranteed and unrecognized neutrality or to transit to a system of the so-called collective security, which is another topic for a new research.

However, as the current security status of Serbia, no matter how declarative, is still neutral, Serbia could check with the most influential international diplomatic centers whether this current declaratory neutrality status can be turned into a defined and guaranteed neutral status, i.e. whether it can transit from its *passive* into an *active* phase. If this proves to be unrealistic and unsustainable, Serbia can search for other solutions to define its security situation. In the opinion of the authors of this paper, it would certainly be better for Serbia to find a way to define its own neutrality, rather than to seek other solutions for its security status through the systems of collective security, which, in the world we live in, can result in more problems than benefits. This primarily refers to the fact that the image of a neutral country can be an advantage in the context of terrorist threats which are a certainty of the century we live in. Simply put, neutral Serbia, if confirmed and guaranteed, would just be a "state minding its own business", away from all major global conflicts, regardless of whether they are as direct as the one in Ukraine or diversified as aforementioned terrorist threats. This is exactly the position which we have least frequently occupied in the past, as we were very often dragged in, even against our will, into the maelstrom of conflicts in which we paid high prices on the behalf of others. Neutral status ensures one's position as an island of peace in an increasingly unstable world. Nevertheless, as it was mentioned, in order to be expedient, this status cannot be self-declared, but recognized and guaranteed. Moreover, "this status" needs to be "armed" just as the neutrality of Switzerland is "armed", as every Swiss citizen is a soldier, with basic military training and weapons for possible defense of neutrality.[11] Still, this is another topic, delving into purely military aspects of neutrality.

Finally, a realized neutrality in Serbia, if it ever came to be, would have the same function as it does in Switzerland, which is the internal integration of the country with its diverse cultural and historical heritage, where various parts of the country gravitated towards different historical and cultural traditions (e.g. Vojvodina toward Central Europe, Šumadija toward the so-called "hard" Serbian national identity, Sandžak toward Turkey, etc.) Indeed, Serbia is not as ethnically and religiously diversified as Switzerland, but it is still significantly culturally diversified in comparison with, in this sense, homogeneous countries, such as Greece or Turkey. Here, the main mentality opposition is between the "Central European" Vojvodina, "insurrectionist" Šumadija as "the heart of Serbia" with its characteristic mentality, Islamized Sadžak and Eastern Serbia, as a special mentality environment. Therefore, in order not to have problems between these parts of the country in future (especially Vojvodina and Sandžak and the rest of Serbia), not only would it be optimal for Serbia to be modeled on the civil grounds of the so-called constitutional patriotism, but a fully rounded neutral status of Serbia would be the main support to such constitutional patriotism. It would then, as in Switzerland, balance out any possible external centrifugal forces, which have always negatively affected the stability of Serbia. This way, such a rounded neutral security status would help additional internal integration of a country, incomplete in the sense of forming an integrated society and the state, providing calm waters suitable for internal institutional arrangements and completeness of Serbia as a state and society in every sense.

In general, the benefits of a rounded neutral security status of Serbia would be manifold and extremely beneficial, but, ultimately, the question remains whether Serbia can reach the position where it could fully round its neutral status and security, formed on the real grounds or if it will be forced to join a system of collective security. This question cannot be answered in this paper, as it does not depend on theoretical assumptions. The answer to that question depends on the diplomatic skills of Serbia, the realistic international situation and the interests of various world powers in this area. In this paper, we have only presented a thorough analysis of Serbia's neutral security status, using the example of Swiss neutrality as the exemplar towards which it would be good to strive, with realistic consideration of specific differences in tradition and positions of the two countries, but with a concrete conclusion that if any country wants its neutrality to be effective and expedient, it needs to be recognized and guaranteed.

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THE CONCEPT OF SECURITY AND SECURITY STUDIES

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Abstract: Security is one of the most important concepts in International Relations theory. Defining security concept is not a simple thing to do since there are various understandings of the term and the concept has greatly evolved in time. Mainstream conceptualizations of the term security have been state-centred and mainly related to military security, as is compatible with the realist views of international relations. However, even during or because of the Cold War, various efforts to broaden this narrow conceptualization of security were begun.

Debates over the nature and meaning of "security" have become the focus of renewed controversy in security studies. The field has been challenged to consider questions surrounding the "broadening" of its agenda to include threats beyond the narrow rubric of state and military security, as well as, "deepening" of its agenda to include the security concerns of actors ranging from individuals and sub-state groups (often formulated under the rubric of "human security") to global concerns such as the environment that have often been marginalized within a traditional state-centric and military conception.

In this article concept of security will be define and different approaches to this concept will be analyzed.

Keywords: security, international security studies, realism/neorealism, liberalism/neoliberalism, social constructivism.

INTRODUCTION

As one of the main concepts used in International Relations, security was and still is one of the most contested ones[2]. Even before the demise of the Cold War, traditional state-centric and military-focused approaches to security studies were being questioned by a growing number of scholars and practitioners[3]. At the end of the "short twentieth century"[4], the environment dramatically changed in Europe and the old approaches to security had to be replaced by others that fit better to the multidimensional characteristics of the European Security landscape today.

As an international relations concept, the term security is ambiguous in content as in format: is it a goal, an issue-area, a concept, a research program, or a discipline.[5] There is no one concept of security; '*national security*', '*international security*' and '*global security*' refer to different sets of issues and have their origins in different historical and philosophical contexts."[6]

All these difficulties in understanding security and the concepts related to it increased in the last twenty years. The end of the Cold War, the demise of the Soviet Union and the end of the bipolar balance of power in Europe and in the world made the concept of security one of the most disputed concepts in international relations.

During the Cold War we have been looking at the traditional security. However, in the 1970's and the 1980's the concern over the economic and environmental problems, and in the 1990's the concern over the "identity" and "transnational crimes", and in the 2000's the concern over the energy, cyber and social security as well as terrorism have broadened the meaning of security. Already, in the 1980's Buzan has mentioned about new security domains beside military such as social, economic, political and environmental.[7] Thus, discussion on the broadening of security has started towards other domains even before the end of the Cold War era, indicating that we cannot only focus on military issues, which is also well noted by the Copenhagen School.

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1 snikodinovska@gmail.com
2 As Barry Buzan points out in *People, State and Fear* security is an "essentially contested concept", p. 7.
3 Hide-Price, A. (2001), *Beware the Jabbewock": Security Studies in the Twenty-First Century* in Gärtner, H., Hyde-Price, A. and Reiter, E., eds., Europe's New Security Challenges. Lynne Rienner. Publishers, 2001, p.29.
4 Hobsbawn, E. (1995). Age of Extremes, The Short Twentieth Century 1914-1991, Abacus.
5 Haftendorn, H., (1991), "The security Puzzle: Theory-Building and Discipline-Building in International Security", *International Studies Quarterly, 35:1.*
6 *Ibid*. p.3.
7 Buzan, B. (1991), *People, States and Fear: an Agenda for International Security Studies in the post Cold-War Era*, New York, (2nd edition)

With re-conceptualization of security, there are two dimensions: broadening, i.e., consideration of non-military security threats such as environmental scarcity and degradation, spread of disease, overpopulation, refugee movements, terrorism; and deepening, i.e., consideration of the security of individuals and groups rather than focusing narrowly on external threats to states such as ethnic conflict, civil war, environmental threats and survival of individuals.[8] While broadening can be attributed predominantly to attempts made by representatives of neorealist approach, then parallel broadening and deepening of the concept of security has been proposed by the constructivist approach associated with the works of the Copenhagen School.[9]

ETYMOLOGICAL ASPECTS OF SECURITY

Etymological discussions on the English notion "security" are twofold. In the first approach the term security is deriving from Latin *securus* safe, secure, from *se* without + *cura* care - the quality or state of being secure or as a freedom from danger (freedom from fear or anxiety). In the classical sense security - from the Latin *securitas*, refers to tranquility and freedom of care, or what Cicero termed the absence of anxiety upon which the fulfilled life depends.[10]

In the second interpretation, the English word "security" originates from the Latin word "*se-curus*". "*Se*" means "without" and "*curus*" means "uneasiness." That is, "security" originally meant liberation from uneasiness, or a peaceful situation without any risks or threats. The English word "security" has a wide range of meaning including "to feel safe" and "to be protected" and is used to describe a situation without any risks or worries.

In other discussions on security some classical concepts are recalled. In his seminal work on Realism, Hans Morgenthau thus hardly bothered to define security. The closest he came to a definition was: "National security must be defined as integrity of the national territory and its institutions". [11] In another connection, he added "culture" to the list, emphasizing that the "survival of a political unit in its identity" (i.e. "security") constitutes "the irreducible minimum, the necessary element of its interests vis-à-vis other units".[12]

A more comprehensive definition of security was proposed by Arnold Wolfers. This definition has become a "standard" in IR theory: "Security, in an objective sense, measures the absence of threats to acquired values, in a subjective sense, the absence of fear that such values will be attacked".[13]

A CHANGING VIEW OF SECURITY

There is a consensus that security implies the absence of threats to core values (for both individuals and groups) but there is a major disagreement about whether the main focus of enquiry should be on "individual", "national", or "international".[14] During the Cold War, security in Europe was conceived in largely military terms: it was about the threatened use of military power in international relations.[15] Security was usually assessed in negative terms as the absence of conflict between the continent's two military blocs. This traditional understanding of security focused on the threat of military force to sovereign states (national security). Traditionally national security is understood as "the acquisition, deployment and use of military force to achieve national goals".[16] Stephen Walt's traditionalist perspective articulates a position that is state-centric and restricts the application of security to threats in the military realm.[17]

The concept of 'collective security', in which all states guaranteed the security of their neighbors, had been discredited in the inter-war period by the failure of the League of Nations, which sought to embody this principle. The Cold War witnessed the building of alliance 'collective defence' arrangements in which

8 For some of these discussions see, Seyom Brown, S., (1994), "World Interests and Changing Dimensions of Security", in Klare, M. and Chandrani, Y. (eds.), *World Security: Challenges for a New Century*, New York: St. Martin's, p. 1-17.

9 See more in B. Buzan, B., O. Wæver and J. de Wilde (1998), *Security. A New Framework for Analysis*, Lynne Rienner Publishers: Boulder-London.

10 Liotta P. H., (2002), "Boomerang Effect: The Convergence of National and Human Security", *Security Dialogue*, vol. 33, no. 4, p. 477.

11 Morgenthau, H. J., (1960), *Politics among Nations. The Struggle for Power and Peace*, 3rd edition, Alfred A. Knopf: New York.

12 Morgenthau, H. J., (1971), "Problem of the National Interest", *Politics in the Twentieth Century,* University of Chicago Press: Chicago, p. 219.

13 Wolfers, A., (1962), National Security as an Ambiguous Symbol, *Discord and Collaboration. Essays on International Politics*, John Hopkins University Press: Baltimore, pp. 147-165.

14 Baylis. J. and S. Smith (2005), *THE GLOBALIZATION OF WORLD POLITICS, An introduction to international relations,* third edition, Oxford University Press, p.300.

15 In a narrow realist, or later, neorealist approach, military security was an attribute of relations of a state, a region or a grouping of states (alliance) with other state(s), regions, grouping of states. It was also referred to as "international security".

16 Held, D., and A. McGrew, (1998), "The End of the Old Order?" *Review of International Studies*, No. 24, pp. 219-243.

17 Walt, S., (1991) "The Renaissance of Security Studies", *International Studies Quarterly*, No. 35, pp. 211-239.

groups of states came together to guarantee each other's security. States within the transatlantic framework developed patterns of economic and political cooperation to such an extent that it became inconceivable to envisage military conflict between them. A 'regional security complex' was formed in Western Europe in which states became interdependent in their security.

A more differentiated concept of security began to emerge with the end of the Cold War. Radical transformation of security ambient, complete reconfiguration of the system of global relations of power and force at the end of the Cold War and emergence of entirely new security challenges, risks and threats, only added to intensification of the debate on redefinition of the concept of security. The central point of the debate was a question on whether and how to broaden and deepen the security concept without bringing its logical coherence into the dispute, how to widen the focus of the research onto the other, nonmilitary sectors, and keep the sole concept meaningful and to analysts a useful tool.

Enormous contribution to the contemporary security studies was made by the so-called Copenhagen School of Security Studies, which offered a quite innovative, original perspective on a broad spectrum of security issues, perceiving clearly that security dynamics could no longer be reduced only to the military-political relations of the two super powers, however important they might be.

Drawing on the work of Buzan and the Copenhagen school, security was viewed as a much more multifaceted concept which was not necessarily linked to territory.[18]According to this approach, security could be measured on a variety of levels, both above and below the state and it could be assessed in relation to political, economic and societal values.[19] Broadening of the neorealist concept of security means inclusion of a wider range of potential threats, beginning from economic and environmental issues, and ending with human rights and migration. Deepening the agenda of security studies means moving either down to the level of individual or human security or up to the level of international or global security, with regional and societal security as possible intermediate points.

However, the moment one leaves the idea to tie the concept of security only to certain referent objects (such as the state) and to certain kind of security threats (such as military), a question "what quality makes something a security issue" arrives at the very centre of controversy. [20] Without distinctive criteria which separate a security issue from non-security issue, the concept of security is trivial and leaves only confusion behind.

CONCEPT OF SECURITY IN THE THEORETICAL APPROACHES THE THEORETICAL APPROACHES IN SECURITY STUDIES

Concept of security has been always at the centre of attentions in understanding international relations and international security studies/ISS. Different definitions are provided for the concept according to the variety of approaches. Among the definitions, Wolfers' idea on concept of security achieved the most popularity among political scientists. He argues that the numerous elements such as national characters, preferences, and prejudices shape overall understanding out of concept of security. But what is the central to understand the concept is the lack of threat and fear against the values of a nation. But according to different theoretical approaches in studying international relations, the lack of threat against the values of nations is interpreted differently.

There are two conventionally and traditionally dominant approaches in security studies; Realism and Liberalism.[21] These two approaches are also the main schools in International Relations theory.

Realism/neorealism and security

Realism is the first and main school of thought in security studies which take nation-states as the primary units/actors in international relations. Realism's roots can be traced back to ancient Greece and Thucydides (460 BC-395 BC).

Realism identifies group as the fundamental unit of political analysis. Since the Treaty of Westphalia (1648) realists consider the sovereign state as the legitimate representative of the collective will of the people. Outside the boundary of the state, realist argue that a condition of the anarchy exist. In an anarchic

18 See for example, B. Buzan, B. (1983). *People, States and Fear: The National Security Problem in International Relations*, Wheatsheaf, Brighton, and Waever, O., B. Buzan, M. Kelstrup and P. Lemaitre (1993). *Identity, Migration and the New Security Agenda in Europe*, Pinter, London and the Centre for Peace and Conflict Research, Copenhagen.

19 See more in B. Buzan, B., O. Wæver & J. de Wilde (1998). *Security. A New Framework for Analysis*, Lynne Rienner Publishers: Boulder-London.

20 *Ibid*. p.21.

21 Collins, A., (2007), *Contemporary Security Studies*, Oxford: Oxford University Press, p.5.

international system there is no overarching central authority above the individual collection of sovereign states.[22] In an anarchic international system there is lack of a common power or central authority to enforce rules and maintain order in the system. Under anarchy, the survival of the state cannot be guaranteed. To this end, no means is more important than the acquisition of power- the capacity to exercise influence over others, especially by military means.[23] Self-help is the most important principle of action which means the ultimate dependence of the state on its own resources to promote its interests and protect itself in an anarchical system where there is no global government.

The main representative of realism is Hans Morgenthau. In his famous work *Politics among Nations. The Struggle for Power and Peace* presents the six main principals of political realism.[24]

The reformulated realism, known as neorealism[25], is a variant of realism that emphasizes the anarchic structure of international system rather than human nature in its explanation of state behaviour. For this reason, neorealism is sometime referred to as structural realism because it emphasizes the influence of the global system's structure on the behaviour of the units that comprise it.[26]

There are some crucial differences, as noticed by Steven Lamy in his analysis, between the neorealism of Waltz and its predecessor, the classical realism of Morgenthau. Firstly, realism is an inductive theory, which explains the international politics through the analysis of interactions and actions of states in the international system. Neo-realists do not deny the importance of unit-level explanations but they believe that the effects of structure must be considered. The anarchical structure of the international system is the one that determines the options of states for their external policy. The structure of the international system shapes all foreign policy choices. Secondly, power also remains a central concept in neorealism. But, if in classical realism power is in itself an objective, in neorealism power represents not only an objective but also a mean. The third difference between realism and neorealism refers to the way in which states react to the condition of anarchy at the international level. As such, for realists anarchy is a condition of the system, and states react according to their size, location, domestic politics, and leader capacities, while for neo-realists, anarchy defines the system, constrains the actions of all states equally (Lamy, 2005, 208-9)[27]. Neo-realists explain any differences in policy by differences in power and capabilities.

For neo-realists cooperation through international organizations is of lesser significance. War is a constant pattern/ phenomenon in international relations, while cooperation, although not impossible, is temporary because state are always concerned about the relative and not the absolute gains. This means that the states will choose not to cooperate when there is a possibility for another state to obtain more in relative terms, as this could hurt their own security. Moreover, the pessimist do not consider that international organizations could have a role in preventing war, since they are the creation of states, while optimists consider that through international cooperation there can be created and maintained the international security

Regarding the influence that globalization could have upon states, realists consider that states continue to be the most important actors, being the only ones capable to manage the effects of globalization, although they recognize that up to a certain level the influence of states was reduced by transnational social movements.[28]

There are also criticisms expressed towards the realist theory, among which: the lack of a definition of security, the refusal of realists to extend the concept towards other fields on the reason that any extension would make the concept incoherent and the impossibility to explain the role of non-state actors in ensuring security.[29]

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22 Dune, T. and B. C. Schmidt, (2005), "Realism" in Baylis. J. and S. Smith (eds.) *THE GLOBALIZATION OF WORLD POLITICS, An introduction to international relations,* 3rd edition, Oxford University Press, pp.162-183.

23 Kegly, W.C., Jr. and E. R. Wittkopf (1997), , St. Martin's Press New York p.22

24 a. International politics is governed by objective laws that have their roots in human nature;

b. The state interest is defined in terms of power;

c. The interest defined in terms of power is an objective category, universally valid, but without a fix and final meaning;

d. The universal moral cannot be applied to the actions of national states in their abstract form, but need to be filtered taking into account the concrete circumstances of space and time;

e. There needs to be done a clear distinction between the moral aspirations at some time of one nation and moral laws;

f. The principles of realism maintain the autonomy of the political sphere from all the other spheres that need to be subordinated to it (Morgenthau, 2006, 4-15).

25 For most academics, neo-realism refers to Kenneth Waltz's Theory of International Politics (1979).His theory of structural realism is only one version of neo-realism.

26 Kegly, W.C., Jr. and E. R. Wittkopf (1997), *World Politics trend and transformation*, St. Martin's Press New York. p.28

27 Lamy, S. L., (2005), "Contemporary Mainstream Approaches: Neo-Realism and Neo-Liberalism", in Baylis. J. and S. Smith (eds.) *THE GLOBALIZATION OF WORLD POLITICS, An introduction to international relations*, 3rd edition, Oxford University Press, New York, pp. 2008-9.

28 *Ibid*. p.218

29 Krause, K., (1996), "Broadening the Agenda of Security Studies: Politics and Methods", Mershon *International Studies Review,* No. 40, p. 230.

Despite these differences and despite the existence of more types of realism, there are some topics which remain constant, such as: the assumption according to which states are the main actors in international relations and their central preoccupation is to ensure their own security.[30]

Liberalism/neoliberalism and security

Liberal school of thought developed as a reaction to Realism's hegemony in IR theory and security studies. Liberal scholars of security studies tried not to focus on nation-states but also on supranational, international organizations, institutions and on non-governmental organizations. For liberals, international peace and security can be ensured through international law, international organizations, political integration and democratization. They dealt with both macro and micro issues such as culture, environment, economics etc. Liberals also gave attention to military power but they added economic power, cultural power to the equation and posed a new picture of world order. In that sense, they tried to pass the borders of positivism and solely quantitative studies by adding qualitative information. Liberals thought that peace can be provided not only thorough deterrence, bipolar world or a hegemonic, regional power but also through economic integration which would lead to political integration. They were influenced by German philosopher Immanuel Kant (1724-1804) and Democratic Peace Theory. Supporters of democratic peace ideas, as a way of promoting international security in post - cold war era argue that wars between democracies are rare or non – existent. Conflicts of interests will, and do arise between democratic states, but shared norms and institutional constraints mean that democracies rarely escalate those disputes to the point of threat to use military force against each other.[31]

Neoliberalism starts from the assumption that there is cooperation between states at the international level, through institutions. Furthermore, the institutions are defined by Robert Keohane, one of the most prominent representatives of neoliberalism, as "persistent and connected set of rules (formal and informal) that prescribe behavioural roles, constrain activity, and shape expectations".[32]

One of the main ideas of neoliberalism can be summarized as being: anarchy is the structure that characterizes the international system, but this is limited by cooperation through international institutions. According to this theory, states are the main actors at the international level, but not the only ones, as the intergovernmental organizations as well as non-state actors complete this image, while power remains the main concern of state but this does not mean that states always search for power.

THE MAIN FEATURE OF THE NEO-NEO DEBATE

Regarding the debate between the two main theories of international relations, neorealism and neoliberalism, it is important to emphasize that while neo-realists focus on war and security –the high politics issue-area, neo-liberals focus on cooperation, political economy, environmental and human rights issues that have been called the low politics issue agenda .[33] The institutions have an important role in the neoliberal vision in ensuring international security in comparison with neo-realists. Neo-liberal institutionalists see institutions as the mediator and the means to achieve cooperation in the international system. Regimes and institutions help govern a competitive and anarchic international system and they encourage, and at times require, multilateralism and cooperation as a means of securing national interests.[34] Neo-realist state that neo-liberals exaggerate the impact of regimes and institutions on state behaviour. They claim/say that the regimes and institutions do not mitigate the constraining effects of anarchy on cooperation.

Neoliberals consider that states have common interests and as such, they can cooperate. From this perspective, important for states are the absolute and not the relative gains, in contrast with the neorealist view. Namely, neo-liberals believe that actors with common interests try to maximize absolute gains. They want to maximize the total amount of gains for all parties involved. On the other hand neo-realists claim that the fundamental goal of states in cooperative relationship is to prevent others from gaining more.

Neo-realists emphasize the capabilities (power) of state over the intentions and interests of states. Capabilities are essential for security and independence. Neo-realists claim that uncertainty

30 Jervis, R., (1998), Realism in the Study of World Politics, *International Organization*, Vol. 52, No. 4, p. 980.
31 Baylis, J., (2005), "International and global security in the post-cold war era", in Baylis. J. and S. Smith (eds.) *THE GLOBALIZATION OF WORLD POLITICS, An introduction to international relations*, 3rd edition, Oxford University Press, New York, p. 309.
32 Keohane, R., (1989), *International Institutions and State Power: Essays in International Relations Theory*, Wesview Press, Boulder, p.3.
33 Lamy, S. L., (2005), "Contemporary Mainstream Approaches: Neo-Realism and Neo-Liberalism", in Baylis. J. and S. Smith (eds.) THE GLOBALIZATION OF WORLD POLITICS, An introduction to international relations, 3rd edition, Oxford University Press, New York, pp. 217-218
34 *Ibid*. p. 214

about the intentions of other states forces states to focus on their power. Neo-liberals emphasize intentions and preferences.[35]

There are still common points between the two theories, the neorealism and neoliberalism. Firstly, both consider the international system as being anarchic, and both consider that the institutional structure, cooperation and coordination in international relations are endogenous, meaning that they are products of the actions of the system's constituent parts. Secondly, both theories consider states as being unitary actors and as being the main constituent parts of the international system. Finally, states are considered by both theories to be rational actors that act strategically in international relations.[36]

CONSTRUCTIVISM AND SECURITY

The end of Cold War and the rapid success of Globalization did not end wars and social turbulences and a new approach needed in IR theory and security studies.

Constructivism or Socio-constructivism emerged at the beginning of the 90s, once the international relations analysts realized that the dominant theories of neorealism and neoliberalism cannot explain the changes in the international community, such as the end of the Cold War. Unlike many "post-modernists", most constructivists work within the theoretical and epistemological premises of the social sciences, and they generally seek to expand rather than undermine the purview of other theoretical perspectives. Constructivists do not constitute a monolithic perspective, but they do share some key ideas, the first of which is that the environment in which states act is social and ideational as well as material

Constructivism or socio-constructivism is not a theory but an approach which is based in the idea that international relations are socially constructed.[37] The term constructivism was introduced in international relations in 1989 by Nicholas Onuf, but lately this approach was developed mainly by Alexander Wendt. For Wendt, Constructivism is a structural theory of the international system that makes the following core claims: (1) states are the principal units of analysis for international political theory; (2) the key structures in the states system are intersubjective rather than material; and (3) state identities and interests are in important part constructed by these social structures, rather than given exogenously to the system by human nature [as (neo)realists maintain] or domestic politics [as neoliberals favour.[38]

Wendt's basic works on constructivism (he's considered the founder) is a reaction to realism, and is intended to counter the idea that self-help and power politics are essential features of anarchy. Instead, Wendt treats anarchy as a social construct (or practice) rather than an inseparable condition of international relations and the way that states see anarchy.

There are more types of socio-constructivist approaches in international relations. The literature makes a distinction between conventional and critical socio-constructivism, between interpretative and positivist socio-constructivism, but also a classification of socio-constructivists according to the level of analysis taken into account.[39] Despite these differences, there are some assumptions that stay at the basis of all socio-constructivist works, and these are:

1) Social factors influence human interaction;

2) Social structures help at constituting the interests and identities of actors;

3) The agents and structures mutually constitute each other.[40]

Regarding security, the main idea of socio-constructivists is that security is not an objective condition, that threats to security do not represent only an issue of correct perception of more material forces, and that the object of security is not stable or unchanging..[41] In other words, socio-constructivists do not see security as being something that exists somewhere and waits to be discovered and analyzed by analysts and theoreticians, but see security as being constructed and re-constructed through intersubjective

35 *Ibid*. p. 215.
36 Niou, E.M.S., (1991),"Realism versus Neoliberalism: A Formulation", American *Journal of Political Science*, Vol. 35, No. 2 p. 483.
37 Karacasulu, N. and E. Uzgoren, (2007), "Explaining Social Constructivist Contributions to Security Studies", *Perception* (Summer-Fall 2007), p. 29.
38 Wendt, A., (1994): "Collective Identity Formation and the International State," *American Political Science Review,* 88, p. 385 , available at: http://www.e-ir.info/2011/02/03/constructivism-an-introduction/#_ednref41
39 Barnet, M., (2005), "Social Constructivism" in Baylis. J. and S. Smith (eds.) *THE GLOBALIZATION OF WORLD POLITICS, An introduction to international relations,* 3rd edition, Oxford University Press, New York, p. 258.
40 Frederking, Brian, Constructing Post-Cold War Collective Security, *The* American Political Science Review, Vol. 97, No. 3 (2003), p. 364.
41 Krause, K. and M.C.Willams (1996), "Broadening the Agenda of Security Studies: Politics and Methods", *Mershon International Studies Review*, No. 40, p.242.

human understandings.[42] Social constructivists argue that changing the way we think about international relations can bring a fundamental shift towards greater international security.

CONCLUSION

While many theories of international relations/security are fiercely contested, it is usually inappropriate to see them as rivals over some universal truth about world politics. Rather, each rests on certain assumptions and epistemologies, is constrained within certain specified conditions, and pursues its own analytic goal. While various theories may lead to more or less compelling conclusions about international relations, none is definitively 'right' or 'wrong'. Rather, each possesses some tools that can be of use in examining and analyzing rich, multi-causal phenomena in international politics such as security.

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POSSIBILITIES TO RAISE AWARENESS OF ENVIRONMENTAL CRIME THROUGH SAFETY CULTURE[1]

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Abstract: Generally speaking, the public is unaware of the risks which environmental crime poses to the environment and human health. This situation together with the tendency of corporations to lessen the corporate environmental responsibility gives a false image of environmental crime. Raising the awareness and understanding of the environmental crime among the general population are the first steps which could influence change in this area. There are some scientists, governmental and nongovernmental institutions, who are trying to deal with the environmental crime issues, but this information has to reach the public and it must be available outside of the academic literature. There are some available methods for reaching this goal. In this paper, the authors are adopting the safety culture approach to deal with the problem of environmental crime. The aim of this paper is to examine the possibilities of using the safety culture methods for raising awareness of environmental crime. The authors believe that it would result in reducing, and raising the number of resolved acts of environmental crime.

Keywords: environmental crime, safety culture, environmental crime awareness, raising awareness.

INTRODUCTION

For more than several decades the ecology and environmental issues have been in the centre of scientists' and practitioners' research. These issues are affecting general public as well. The 19th century was characterized by the "exploitative capitalist paradigm", where environmental destruction was considered to be "the inevitable by-product of growth, consumption, and industrial advancement".[5] By the turn of the 20th century, scientists alarmed us that with rapid urbanization and industrialization human race must focus on preserving nature and protecting species for the enjoyment of later generations. For the most part, environmental concern focused on conservation and protection of natural spaces.[6] In the USA the "new environmental movement" evolved in the 1960s[7] and involved legal-scientific groups and the creation of the Natural Resources Defence Fund (NRDC), the Sierra Club Legal Defence Fund (SCLDF), and the Environmental Defence Fund (EDF).[8] But, this movement was more concerned with resource conservation than with human environmental hazards and more inclined to strive for small systematic changes rather than radical political and social changes.[9] The "environmental justice paradigm"[10] involves activists who are most directly affected and more severely affected by environmental problems.[11] Mainstream or "new" environmentalists are primarily concerned with aesthetic and recreational considerations; they adopt a social justice orientation that calls for structural level changes so as to address the deeper problems

1 This paper is the result of the research on project: "Management of police organization in preventing and mitigating threats to security in the Republic of Serbia", which is financed and carried out by the Academy of Criminalistic and Police Studies, Belgrade - the cycle of scientific projects 2015-2019.
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5 Taylor, D. E.: *The Rise of the Environmental Justice Paradigm - Injustice Framing and the Social Construction of Environmental Discourses*, American Behavioral Scientist, year 43 no.4/2000, p. 529
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7 Taylor, D. E.: *The Rise of the Environmental Justice Paradigm - Injustice Framing and the Social Construction of Environmental Discourses*, American Behavioral Scientist, year 43 no.4/2000, p. 508-580
8 Cole, L. W.: *Empowerment as the key to environmental protection: the news for environmental poverty law*, Ecology Law Quarterly 19/1992, p. 619-683
9 Jarell, M. L. op.cit.
10 Taylor, D. E.: *The Rise of the Environmental Justice Paradigm - Injustice Framing and the Social Construction of Environmental Discourses*, American Behavioral Scientist, year 43 No.4/2000, p. 508-580.
11 Cole, L. W., op.cit.

of poverty, crime, unemployment, and environmental destruction.[12] The mainstream environmentalists view pollution as the result of governmental and industry's incompetence to bring to justice a few violators. But grassroots activists think of pollution as the success of industry in maximizing profits by externalizing environmental costs.[13] Similarly, many regard environmental crime as the result of a few corrupt individuals rather than the result of the capitalist economy.[14]

Within the ecological science there are different concepts, disciplines, projects and attempts which are aiming to influence ecological and environmental behaviours of the individuals and social communities. The goal of much environmental psychology research is to help understand and change environmental behaviour. There are different approaches to the measurement and conceptualisation of environmental behaviour.[15] First, there is pro-environmental or environmentally friendly behaviour which should be distinguished from the broader concept of environmental behaviour. The latter includes any kind of behaviour that can be damaging or beneficial for the environment. Furthermore, a distinction should be made between pro-environmental behaviour, which is beneficial to the environment, and goal-directed pro-environmental behaviour, which aims to be beneficial to the environment.[16] Several studies have investigated environmental knowledge, attitudes, and behaviour relationships.[17] In the main, a positive but weak association between increased environmental knowledge, a positive environmental attitude, and behaviour changes to protect the environment has been identified.[18] The purpose of environmental education is to produce an environmentally responsible citizen.[19] Hungerford and Volk [20] described this citizen as one who has an awareness or sensitivity to the environment, a basic understanding of the environment, motivation to improve the environment, skills to solve environmental problems, and active involvement in working toward solutions. However, there is a notion among some authors that there has not been done enough, and that endeavours to improve environmental condition through environmental education are far from being fruitful.[21]

Within the environmental issues, it has been shown that environmental crime is one of the problems which are very hard to resolve. One of the reasons is that it is almost impossible to discover acts of environmental crime and their offenders. Recently, there have been lots of initiatives for the development of the systems for prevention and combating environmental crime. The most important approach is forensic analysis, but there are also political, educational and legal incentives. These elements are visible through the programs and projects of international organizations for prevention of the international environmental crime (such as UNEP, CITES, EFFACE). Some authors are talking and researching the "green criminology".[22]

However, there has not been any incentive which would connect the prevention of environmental crime to safety and security culture. The authors are of the opinion that it is possible to change the consequences of the environmental crime by raising the public awareness through the safety culture. This process should include all governmental and non-governmental agencies, media, educational systems and public services.

12 Jarell, M. L. op.cit.
13 Cole, L. W., op.cit.
14 Mayo, D. G., Hollander, R. D.: *Acceptable evidence: science and values in risk management*, Oxford University Press, New York, 1991
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CONCEPT OF ENVIRONMENTAL CRIME

Most definitions of environmental crime cover acts or omissions that violate federal, state, or local environmental standards and laws.[23] But some acts, especially those committed by corporations, may not violate the criminal law.[24] Many are violations of regulatory laws.[25] Many of these acts cause a great deal of harm to the environment and human health and safety and therefore should be treated as criminal.[26]

Environmental crime typically affects many victims and the victimization may be gradual and/or silent.[27] In the USA the Federal Bureau of Investigation (2003) focuses its attention on the most serious threats to public health and natural resources such as cases involving handling of hazardous waste and pollutants that may endanger workers, environmental catastrophes that place entire communities at risk, federal government facility violations, businesses identified by regulatory agencies as having a long history of violations or flagrant disregard for environmental laws and organized crime activities generally in the solid waste industry.[28] A number of studies have examined victimization distributions by examining exposure to toxic hazards in relation to community characteristics.[29] For example, it has been shown that minority or low-income communities are disproportionately affected by environmental hazards.[30] The majority of these studies fall within an area of research identified as "environmental justice" whose advocates argue that no person, regardless of race, class, or gender, should suffer the consequences of environmental degradation and therefore substantial political, social, and economic efforts should be made to protect the environment and human health.[31]

Environmental crime is almost always unnoticed and people are apathetic to the problems caused by environmental crime. For the most part, the apathetic response to environmental crime is a direct result of public unawareness of the real dangers to health and safety posed by this type of criminal behaviour.[32] Most environmental hazards commanding political, public, and media attention have been those hazards that can be easily "pinpointed" at particular places and locations and where cause and effect could be closely linked.[33]

Environmental crimes are usually committed for economic reasons and more often, corporations place the value of money over public health,[34] "especially, if they can be reasonably sure that the penalty that will be imposed will be a monetary one in the way of the fine".[35] Environmental crime and environmental injustice then are a result of industry and corporate decisions to maximize profits and externalize costs.[36]

The devastating effects of environmental crime are not easy to determine or estimate. Although we gather and report a wide range of statistics of street and violent crime at the national, state, and local level, there are virtually no uniform or national statistics describing the status and impact of environmental crimes.[37] There is a continuing debate over the consequences and extent of environmental pollution and serious questions over the impact of enforcement on the nation's competitiveness in global/domestic markets. The cost of environmental toxic abatement and clean up is often more than the government is willing to spend. Researchers suggest that environmental crime causes more illness, injury, and death than street crime.[38] Particular problems are presented by the research produced by "corporate" scientists.[39] Despite the abundance of toxic chemicals everywhere, it is difficult to establish a direct causal link between adverse health effects and chemical contamination.[40]

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23 Situ, Y., Emmons, D.: *Environmental crime: the Criminal Justice System's role in protecting the environment*, CA: Sage. Thousand Oaks, 2000
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27 Frank, N.,Lynch, M. J., op.cit.
28 Jarell, M. L., op.cit.
29 ibidem
30 See more in: Bullard, R. D.: *Confronting environmental racism: Voices from the grassroots*,South End, Boston,1993; Lavelle, M., Coyle, M.: *The racial divide in environmental law: Unequal protection*, National Law Journal-Special supplement, september 1992
31 Jarell, M. L. op.cit.
32 Jarell, M. L. op.cit.
33 Mayo, D. G., Hollander, R. D.: *Acceptable evidence: science and values in risk management*, Oxford University Press, New York, 1991
34 Jarell, M. L. op.cit.
35 Albanese, J. S.,Pursley, R. P.: *Crime in America: some existing and emerging areas*, Englewood Cliffs, Regents/Prentice Hall. NJ 1993, p.317
36 Jarell, M. L. op.cit.
37 Ibidem
38 Burns, R. G.,Lynch, M. J. op.cit.
39 Ibidem
40 Adeola, F. O.: *Endangered community, enduring people: toxic contamination, health, and adaptive responses in a local context*, Environment and Behavior *32/2000, p.209-249.*

THE CONCEPT OF SAFETY CULTURE

There are different definitions of culture in general. The American Heritage Dictionary defines *culture* as "the totality of socially transmitted behavior patterns, arts, beliefs, institutions, and all other products of human work and thought considered as the expression of a particular period, class, community, or population". The organizational development community might have borrowed the term 'culture' from anthropologists.[41]

But, when we talk about safety culture, we can say that it represents "an organization's values and behaviours, modelled by its leaders and internalized by its members, which serves to make safe performance of work the overriding priority to protect the public, workers, and the environment".[42]

If we adopt Ulich's[43] claim that organizational culture defines how an employee sees the organization, we can by analogy say that culture in the state defines how a citizen sees its country. Also, we can say that a culture represents a collective phenomenon that is growing and changing over time and it can be influenced to some extent or even designed.[44] The two core substances of any culture are basic assumptions and beliefs. The culture is consequently expressed in the collective values, norms and knowledge. In turn, those collective norms and values affect the behaviour of the group members. Artefacts and creations such as handbooks, rituals and anecdotes are the expression of such norms and values.[45]

The basic elements of safety culture

Safety culture consists of visible and invisible elements. The basic elements of safety culture could be divided into:[46]

1) Shared mental content, which reflects the way of thinking;

2) Norms, which reflect the behaviour;

3) Institutions, and

4) Physical items, that is visible elements.

Table 1 *Elements of safety culture*[47]

CULTURE ELEMENT	CATEGORY
Ability to detect deviations from safe behaviour and from safe conditions.	Mental content
Training to raise the ability to detect deviations from safe behaviours and from safe conditions.	Institution
Detecting deviations from safe behaviours and from safe conditions.	Norm
Reporting detected deviations from safe behaviours and from safe conditions.	Norm
Forms for reporting detected deviations from safe behaviours and from safe conditions.	Physical item
Process for handling forms for reporting detected deviations from safe behaviours and from safe conditions.	Institution
Process for investigating the factors that resulted in reported deviations from safe behaviors and from safe conditions.	Institution
Process for investigating the factors that resulted in reported deviations from safe behaviors and from safe conditions and/or their causes not being reported earlier.	Institution

41 Choudhry, R. M., Fang, D. P., Mohamed, S.: *The nature of safety culture: A survey of the state-of-the-art*, Safety Science, 45/2007, p. 993–1012. doi: 10.1016/j.ssci.2006.09.003

42 Conklin, T.: *Assessing safety culture*, EFCOG Safety Culture Group, 2008

43 Ulich, E.: *Arbeitspsychologie*,Hochschulverlag an der ETH Zürich, Zürich, 2001

44 Schlienger, T. and S. Teufel: *Information Security Culture - From Analysis to Change Proceedings of ISSA 2003*, Johannesburg, South Africa 9-11 July, 2003.

45 ibidem

46 Corcoran, W. R.: Safety Culture - Back to the Basics, *The Firebird Forum*, Vol. 13, No. 3, March 2010

47 ibidem

Mental content really represents a way of thinking, attitudes toward safety, adopted knowledge, skills, abilities and professional principles. Norms reflect the way people behave, and comprehend environment in which they live and work, the way in which they recognize and report problems and issues they encounter everyday and if they obey regulations and rules in their everyday life. Norms include customs, tradition, rituals, manners, etc.[48] Institutions represent legal and other rules and regulations which are adopted and reflect policy and social attitude towards certain safety and security issues. Institutions also reflect governmental tools in combating different security and safety problems, as well as clear responsibilities and accountability. Educational and training programs fall in this category. Physical items are all the things which we can see by analyzing any phenomenon. When we talk about safety culture, these elements could be media coverage, monitoring and controlling of public services in different areas and measuring their efficiency and effectiveness, etc.

When we talk about safety culture assessment, it makes sense to make assessment of these elements. However, it should be emphasized that basic assumptions are unconscious, and norms and principles of behaviour regarding safety are often considered as confidential. Community member may feel endangered if those details are revealed to outsiders. That is why it is sometimes almost impossible to find out the real condition because people are prone to hide some data, and even to exaggerate from time to time.

Aside from elements, safety culture could be put in different contexts, and analyzed from various aspects. The most common aspects of safety culture in literature are:[49]

1) Psychological aspects which deal with the way people feel about safety and security. This also comprises beliefs, attitudes and perceptions of individuals and groups at all levels of society and/or organization. This aspect is often called "safety climate". These attitudes should be measured by different kinds of surveys which aim in detecting attitudes of people in certain moment.
2) Situational aspects deal with existing policy, accepted rules, procedures and systems of management, the way of information sharing and communication, etc.
3) Behavioural aspects deal with the way people act or do regarding safety issues.

SAFETY CULTURE INDICATORS APPLIED ON ENVIRONMENTAL CRIME

The safety culture indicators are allowing us to establish the feedback on the condition of safety culture, while safety assessment gives us current picture or the condition of the culture in a particular moment. There is no one general indicator which alone would be enough for determining the condition of the safety culture. However, keeping the track with time trends of some indicators could reveal strengths and weaknesses of existing safety culture in society. The number and complexity of indicators are dependent on territory, state, society as well as area of interest in which we want to monitor the condition of safety culture. Practical way of achieving this is to make a portfolio of indicators which measure important characteristics of positive safety culture. When we talk about environmental crime, some of the possible indicators are given in Table 2.

Table 2 *Safety culture indicators*

INSTITUTIONS	SOCIETY
Legislation: number of regulations, severity of penalties, number of resolved/unresolved acts, number of prescribed penalties, etc.	Number of conducted/revealed acts of environmental crime, number of acts which are revealed thanks to citizens – their readiness to report acts they witness/suspect...
Educational program: coverage of environmental crime in compulsory and higher education	Media coverage
Educational/training programs for adults: number and nature of courses, number of workshops, roundtables, and number of attendants per year, etc.	Presence of elements in public: number of billboards, public argumentations, citizen's initiatives, monitoring and controlling of public services which deal with the environmental crime, work of NGO's, etc.

48 ibidem
49 Cooper, M. D.: *Towards a model of safety culture*, Safety Science 36/2000, p.111–136.

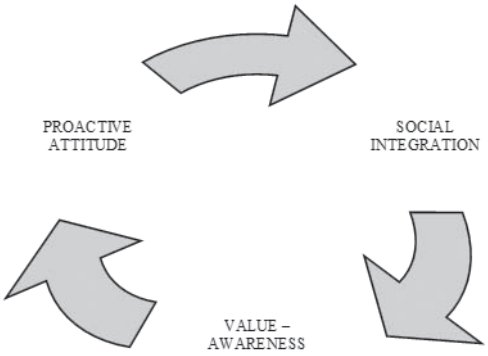
A possibility of raising awareness on environmental crime through safety culture

In order to design safety culture and raise awareness of environmental crime, governments need a cycle which is given at the next figure . This cycle has the following elements:

1. Proactive attitude of governmental policy. This means that there should be laws and regulations to ensure their optimization in order to allow for their implementation. Also, proactive attitude is reflected through readiness of government and society in general to implement safety culture in educational programmes at all levels from compulsory to higher education. Content of educational and training programmes which deals with safety and environmental crime is reliable indicator of state's and government's commitment to those issues. Also, through the educational system and training programmes it is possible to design believes and values which strengthen and allow implementation of those contents not only into everyday behaviour of citizens, but also into everyday routine of all agencies and services which are accountable for combating environmental crime.

2. Integration of these issues in the society in general. This integration is accomplished by implementing regulations, resolving acts of environmental crime in efficient way and transparent and clear process of reporting the criminals to public and the penalties for those criminals. Through these processes it is possible to influence public opinion, raise awareness of individuals and build trust of citizens into governmental policy and agencies and services. By doing so, individuals and public can really see that the society is interested in raising environmental safety of individuals and environment as a whole.

3. Adopted values and raised awareness of citizens of environmental crime. At this level citizens completely trust in government and change their own behaviour in order to obey the rules and regulations. They are also able to recognize the acts of environmental crime, which leads to reporting of any suspicious behaviour. Through this it is much easier for all services which are accountable for environmental crime prevention and combating to really do their work. This completes the cycle, because once the values and believes are accepted in the society as a whole, citizens can influence government and individuals to behave in accordance with those values through various ways of public pressure.



The cycle of safety culture design

CONCLUSIONS

History shows that in a human society humans and the environment are inextricably united. Humans in the environment find the basis of their biological existence, and thus the environment affects them, but the man and his everyday activities affect his surroundings as well and leave environmental impact.

Modern living environment is certainly quite different from living environment several decades ago not only in terms of natural environment but also the social environment. In contemporary society political security and other interests of citizens change, transform and receive a new content in accordance with the general civilization changes or flows. On the way towards a new contemporary society new security challenges appear as well as different forms of destruction. The main factor for stability in a society is to provide basic living conditions (unobstructed access to potable water, clean air, fertile soil, food).

Modern sources of threat take on global character and question the existence and survival of humanity, which certainly points to the great complexity of today's social reality. One of the basic needs of modern people or a modern society is the availability of resources and preservation of important assets and values

which an individual, the state or, global international community have, and there is no doubt that in these modern conditions that includes the safety of biosphere.

In the contemporary social circumstances, environmental issues rose from the margins of social problems and are now in the center of interest - fully justified since the security of the biosphere is the basis of all other safety systems.

The modern way of life and work with the application of modern technical and technological achievements leaves some consequences on the biosphere, however if we count on a modern man's present environmental awareness and safety culture that should inevitably decrease the negative consequences for the biosphere. Environmental awareness and safety culture are the main factors of sustainable development of a modern society.

Everyone has the right to live in a safe and secure community and within adequate environment. Precisely because of this as a basis of an environmental security, we have to combat against all forms of threats and endangerment of biosphere. One of the forms of endangering biosphere is an environmental crime.

Environmental crime by nature is complex socio-legal phenomenon, which is a reflection of contemporary social relations. The existence of environmental crime is based only on two sets of assumptions. The first assumption which is necessary for the existence of environmental crime is that human activity (or sometimes the failure of the activity) causes damage to the environment in the form of pollution or environmental degradation. It is these anthropogenic negative changes in the environment that in some situations can jeopardize ecological security and disrupt the functioning of human society. Therefore, the responsibility for environmental crime prevention occurs as a means of self-defense of society to ensure its survival, because by protecting the environment the society protects itself since man is a being of nature.

The second assumption which is necessary for the existence of environmental crime is based on the fact that a man is a social being and must comply with social laws. Therefore, positive legislation is the basic requirement of responsibility for environmental crimes. The historic "instability" of environmental crime is reflected in the fact that the society is constantly changing, transforming, and this affects the environmental crime and its existence. Unlike the most of the norms of social behavior the occurrence of which is influenced by many factors such as economic, political , psychological and others depending on the balance of power in society and their interactions, environmental standards are determined precisely and primarily based on the condition of the environment.

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DEVELOPMENTS IN THE COUNTER-TERRORISM LAW OF THE EUROPEAN UNION AND OF THE REPUBLIC OF MACEDONIA

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Abstract: Since 2001 the EU (following the reaction of the UN) has adopted a vast array of instruments directed at combating terrorism. The attacks in Madrid and London in 2004 and 2005 prompted the EU to develop a comprehensive anti-terrorist strategy based on four strands: prevention, protection, pursue and respond. The EU reshaped its legal and institutional counter-terrorism framework. The common European definition of terrorism, the European Arrest Warrant and now the Directive on EIO, and the use of biometrics have boosted the EU action on suppressing and combating terrorism. On the other hand, as recent jurisprudence of the CJEU showed, these new instruments raised concerns regarding the respect of fundamental rights and civil liberties. In the recent period common problems have been caused by attacks performed by "lone terrorists" and emergence of safe havens outside the EU. This is why interinstitutional cooperation between EU agencies but also cooperation with international partners is of crucial importance. These developments triggered significant legislative action at national level as well new incriminations of activities associated with terrorism.

The Republic of Macedonia, as a member of the UN and the Council of Europe, a candidate country for EU Membership, and particularly due to the fact that it experienced a terrorist aggression in 2001, followed these developments and ratified many UN conventions (e.g. 1999 International Convention for the Suppression of the Financing of Terrorism, International Convention for the Suppression of Acts of Nuclear Terrorism) and Council of Europe conventions (e.g. Conventions on: 1) the Suppression of terrorism and its Protocol, 2) Prevention of Terrorism, 3) on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism) and introduced numerous changes in its Criminal Law regarding terrorism and strengthened its institutional capacities to prevent and combat terrorism both domestically and internationally. This paper aims to give comparative analysis of the counter-terrorism law of the EU and the Republic of Macedonia.

Keywords: terrorism, law, strategy, criminal offence, policy.

INTRODUCTION

The counter-terrorist policies of the EU have emerged intensively with the advent of the terrorist attacks in New York and Washington. The combat against terrorism became a focal point in the creation of the Area of Freedom, Security and Justice. Under the Lisbon Treaty, the commitment to fight terrorism is even more decisive and covers a wide range of policies: common security and defence policy (Art.43), AFSJ (Art.75), minimum rules for criminal measures (Art.83), Europol's mission (Art.88) TEU (post-Lisbon), and the solidarity clause. This commitment is also evident from a wide range of secondary acts. EU Member States approximated their criminal laws, and developed frameworks for mutual assistance and recognition frameworks and simplified extradition and arrest warrant procedures.

Somewhat earlier than these developments, the Republic of Macedonia faced the terrorist menace on its own soil in the beginning of 2001. This triggered *inter alia* significant legislative and judicial action in order to combat terrorism. Also, on international level, it became a member of the anti-terrorist coalition and participated in almost all significant NATO and EU peace-keeping missions. Macedonia adopted a National Strategy on combating terrorism 2011-2015 and the Action Plan to implement it. Many institutional innovations were made in order to curb the financing of terrorism. This article will give insight of the legal and operational framework for combating terrorism in the European Union and Republic of Macedonia (in that order), and offer assessment of these so far.

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DEVELOPMENTS IN EU COUNTER - TERRORISM LAW

The counter-terrorism cooperation between the EEC member states dates back in 1975 with the creation of the TREVI network (Terrorism, Radicalism, Extremism and International Violence group) as well as the adoption of the Council of Europe's Convention on the Suppression of Terrorism in 1977. This group existed until the entry into force of the Maastricht Treaty in 1993, when it was replaced by the provisions of the Title VI regarding immigration, asylum, legal cooperation, policing and customs. Then in 1997 a preparatory group on counter-terrorism was established in order to anticipate Europol's activities in this area.[3] However, during the 1980s and 1990s there was apparent reluctance among the Member States to deepen cooperation in this field so sensitive for national sovereignty. But the terrorist attacks of 9/11 in New York and Washington dramatically changed the situation, and after that significant political and legal counter-terrorism action followed. In 2002 the Council Framework Decision on Terrorism was adopted, aimed at greater harmonization of the Member States' legislations in this field.[4] The Framework decision defined what acts shall be deemed as terrorist offences, and posed an obligation for the Member States to define them as criminal offences in their national law.[5] Also, the Member States were to ensure that also inciting, aiding or abetting and attempting terrorist offences will be punishable under their jurisdiction. These offences should be punishable by effective, proportionate and dissuasive criminal penalties. Liability and penalties should be also established against legal persons. Member States are also obliged to provide the families of the victims of the terrorist attacks appropriate assistance.[6]

The most important piece of legislation nevertheless was the adoption of the Framework Decision on the European Arrest Warrant.[7] The Decision entered into force on January 1, 2004 and replaced the existing extradition procedures between the Member States. EAW is based on the principle of mutual recognition of the court decisions among the Member States and genuine trust in their respective legal systems. The aim was to improve judicial cooperation between the Member States, to simplify the procedures for the surrender of suspected or sentenced persons, and the warrant should be executed without delay by the requested state. Moreover, this should put an end to political influence in these procedures and precludes the Member States from refusing to surrender their nationals to another Member States. This is particularly important for persons suspected for terrorism. That's why the terrorism is listed among the offences for which surrender can be requested and executed without the verification of the double criminality of the act.[8]

There are vast array of legal and political acts regarding terrorism. The European Security Strategy adopted in 2003 identified terrorism as a threat that is "more diverse, less visible and less predictable" and … "it poses a growing strategic threat to the whole of Europe". That's why "concerted European action is indispensable".

In November 2004 the European Council introduced the European Strategy for enhancing security over a five year period – the Hague Programme on Freedom, Security and Justice. The latter was focused on preventing illegal migration, terrorism, organized crime, while prescribing concrete objectives like: regulation of migration flows, repression of the threat of terrorism, realisation of potential cross border agencies and increase of the cooperation in civil and criminal matters.[9]

The EU Action plan on combating terrorism of 2001 (updated several times) emphasizes the need for enhancement of the capabilities of EU and its Member States to deal with the consequences of a terrorist attack. This means that improvement of emergence response, protection of critical infrastructure, protection of citizens, detection and identification of threats and support for victims of terrorist attacks is envisaged. Also, the Union is under obligation to target priority third countries where counter-terrorist capacity or even commitment to combat terrorism needs enhancement.[10]

EU counter-terrorism financing is available for 8 main areas identified by the UN Counter –Terrorism Committee: drafting of counter-terrosim legislation; financial law and practice; customs law and practice; immigration law and practice; extradition law; police and law enforcement at work; illegal arms trafficking and capacity building for the judiciary. In 2006-6 for exaomle EU provided roughly 400 million euros for ongoing counter-terrorism programmes in around 80 countries.

One of the most important counter-terrorism tools is the so called Atlas Network – informal cooperation established among special intervention units in EU Member States through which technical training is

3 Rachs, G. and Koenig, J., "Europol", in: Koenig, D.J. and Das, D.K. (eds.), *International Police Cooperation*, New York, Lexington Books, 2001, pp.43-62

4 COUNCIL FRAMEWORK DECISION of 13 June 2002 on combating terrorism (2002/475/JHA), *Official Journal*, L 164/3, 22.6.2002.

5 Art.1

6 Art.10

7 Council Framework Decision of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States (2002/584/JHA), Official Journal L 190, 18/07/2002

8 Art.2.

9 European Council: The Hague Programme

10 EU Action Plan on Combating terrorism

provided.[11] These units performed a common exercise in 2013 called Common Challenge 2013) and again in 2014 ARETE 2014 exercise was performed jointly with civil protection units to improve coordination.[12]

Another significant step in combating terrorism was the adoption of the European Arrest Warrant, which applies all over EU, without the need for compliance with the domestic requirements of any given EU Member State. This means that the warrants are no longer country-specific, there are not any more untimely delays, jurisdictional issue etc. EEW is mutually and uniformly recognized instrument.[13] Also, in 2007-8 EU introduced penalties for incitement to terrorism through the internet and establishing an early warning system connected with that.[14]

In 2007, the Commission proposed measures to: criminalize terrorist training, recruitment and public provocation to commit terrorist offences;[15] prevent the use of explosives by terrorists;[16] and make use of airline passenger information in law-enforcement investigations.[17]

In order to prevent terrorist funding, measures aimed at the freezing of funds and economic resources of certain persons, groups and entities have been taken, including Regulation (EC) No 2580/2001, and Council Regulation (EC) No 881/2002. To that same end, measures aimed at protecting the financial system against the channeling of funds and economic resources for terrorist purposes have been taken. Directive 2005/60/EC of the European Parliament and of the Council contains a number of measures aimed at combating the misuse of the financial system for the purpose of money laundering and terrorist financing. Those measures do not, however, fully prevent terrorists and other criminals from having access to payment systems for moving their funds.

The Third Anti-Money Laundering Directive *expressis verbis* prohibits money laundering and terrorist financing. Terorist financing is defined as provision or collection of funds, by any means, directly or indirectly, with the intention that they should be used or in the knowledge that they are to be used, in full or in part, in order to carry out any of the offences within the meaning of Articles 1 to 4 of Council Framework Decision 2002/475/JHA of 13 June 2002 on combating terrorism.[18]

Regarding cash flows, the Cash Control Regulation prescribes that any natural person entering or leaving the Union and carrying cash of a value of EUR 10 000 or more shall declare that sum to the competent authorities of the Member State through which he is entering or leaving the Union in accordance with this Regulation. This declaration *inter alia* must state the origin of the cash, their recipient and intended use.[19]

The Regulation on fund transfers is specifically designed to obtain information on the payer to accompany transfers of funds for the purposes of the prevention, investigation and detection of money laundering and terrorist financing, and applies to transfers of funds, in any currency, which are sent or received by a payment service provider established in the Union.[20] On 28 June 2010, in Brussels, representatives from the European Union and the United States signed an agreement on the processing and transfer of financial messaging data for the purposes of the Terrorist Finance Tracking Program. [21]

The purpose of this agreement is to ensure that financial payment messages referring to financial transfers and related data stored in the territory of the European Union by providers of international financial payment messaging services, that are jointly designated pursuant to this Agreement, are provided to the U.S. Treasury Department for the exclusive purpose of the prevention, investigation, detection, or prosecution of terrorism or terrorist financing; and relevant information obtained through the TFTP is provided to law enforcement, public security, or counter terrorism authorities of Member States, or Europol or Eurojust, for the purpose of the prevention, investigation, detection, or prosecution of terrorism or terrorist financing.[22]

11 Ven der Herik, L. et al (eds), Counter-Terrorism Strategies in a Fragmented International Legal Order, Cambridge, Cambridge University Press, 2013, p.161.
12 http://europa.eu/rapid/press-release_MEMO-15-3140_en.htm.
13 Ibid. p.161
14 Kaufmann, M, Ethnic *Profiling and Counter-Terrorism: Examples of European Practice and and Possible Repercussions*, Munster, Lit, p.42.
15 IP/07/1649, Fight Against Terrorism: stepping up Europe's capability to protect citizens against the threat of terrorism; COM(2007) 649 final.
16 COM(2007) 651 final, Communication from the Commission to the European Parliament and the Council on enhancing the security of explosives.
17 COM(2007) 654 final, Proposal for a Council Framework Decision on the use of passenger name records (PNR) for law-enforcement purposes.
18 Art.1, DIRECTIVE 2005/60/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 26 October 2005 on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing, *Official Journal of the European Union*, L309/15.
19 Art.3, REGULATION (EC) No 1889/2005 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 26 October 2005 on controls of cash entering or leaving the Community, L309/9, 25.11.2005.
20 Arts.1-3, REGULATION (EC) No 1781/2006 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 15 November 2006 on information on the payer accompanying transfers of funds, OJEU,
21 Agreement on the processing and transfer of financial messaging data from the European Union to the United States for the purposes of the Terrorist Finance Tracking Program (OJEU). 27.07.2010, No L 195/5, pp. 5-14.
22 Art.1.

The data obtained must be necessary in order to prevent, investigate, detect or prosecute acts of a person or entity that involve violence, or are otherwise dangerous to human life or create a risk of damage to property or infrastructure, and which, given their nature and context, are reasonably believed to be committed with the aim of: (i) intimidating or coercing a population; (ii) intimidating, compelling, or coercing a government or international organisation to act or abstain from acting; (iii) seriously destabilising or destroying the fundamental political, constitutional, economic, or social structures of a country or an international organization. Also, preparatory and accessory activities are subsumed under these article like: (b) a person or entity assisting, sponsoring, or providing financial, material, or technological support for, or financial or other services to or in support of, acts described in subparagraph (a); (c) a person or entity providing or collecting funds, by any means, directly or indirectly, with the intention that they should be used or in the knowledge that they are to be used, in full or in part, in order to carry out any of the acts described in subparagraphs (a) or (b); or (d) a person or entity aiding, abetting, or attempting acts described in subparagraphs (a), (b), or (c).[23]

Requests are made by the US Treasury Department to the Europol and Designated Providers, and vice versa, where a law enforcement, public security, or counter terrorism authority of a EU Member State, or Europol or Eurojust, determines that there is reason to believe that a person or entity has a nexus to terrorism or its financing, it may request a search for relevant information obtained through the TFTP.[24]

Also, EU took course of action to prevent radicalisation and recruitment of potential terrorists. With this aim in 2005 a Strategy for Combating Radicalisation and Recruitment to Terrorism was adopted by the Council. According to the Strategy, the radicalization should be averted by: 1) disruption of the activities of the networks and individuals who draw people into terrorism; 2) ensure that voices of mainstream opinion prevail over those of extremism and 3) promoting vigorously security, justice, democracy and opportunity for all.

The first goal should be achieved *inter alia* by spotting such networks and people by community policing, effective monitoring of the Internet and travel to conflict zones, exchanging assessments and analysis between Member States' authorities. Also, by preventing individuals to obtain terrorist training, putting in place a legal framework that prevents from inciting and legitimizing violence. Also, the measure are to be taken to prevent Internet to be used as means for recruitment.

In 2010 the Commission adopted the EU Internal Security Strategy,[25] where among the key objectives in order to secure a more secure Europe the prevention of terrorism is listed. The Strategy notes that threats from terrorists attacks come not only from organized terrorist groups, but also from so called "lone wolves" who often develop their radical beliefs on extremist propaganda usually by visiting jihadists' websites. That is why a coherent European approach is needed including preventive action. Particular attention should be given to devising plans to protect critical infrastructure which is vital for functioning of the society and the economy. Three key steps are foreseen in order to prevent future terrorist attacks: 1) empowerment of communities to prevent radicalization and recruitment; 2) cutting off terrorists access to funding and materials and follow their transactions and 3) protecting transport.

In December 2014 the Council adopted conclusions on the need to adopt an renewed Internal Security Strategy. The Council stressed that terrorism remains among the main common threats and challenges in the coming years. Most concern is associated with foreign fighters and returnees and lone actors who pose a very serious threat, curbing financing of terrorism remains very important tool as well as the strengthening of the direct and unprecedented threat to the EU security. Again, strengthening the cooperation with third states and partners, dissuading people from turning to radical Islam and eliminating online material that promotes radicalization are of utmost priority.[26] Also, comprehensive and coherent approach is needed in order to reach high flow of information regarding the prevention and fight against transnational crimes and terrorism. One of the most important tools is the Passenger Name Record the respect of the Prüm decision. Future projects include the European Police Record Index System (EPRIS) and the swift cooperation by investigating and prosecuting authorities in access to electronic evidence across jurisdictions, The prevention and anticipation of criminal acts and terrorist attacks requires a proactive and intelligence-driven approach, civil society, NGOs and educational institutions could make difference in the fight against radicalisation and recruitment to terrorism,[27]

23 Art.2.
24 Arts.4 and 10.
25 COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT AND THE COUNCIL The EU Internal Security Strategy in Action: Five steps towards a more secure Europe, COM(2010) 673 final, Brussels, 22.11.2010.
26 Press Release, Development of a renewed European Union Internal Security Strategy, Justice and Home Affairs Council, 4 December 2014.
27 Ibid. p. 4.

In June 2014 the European Commission published the final Report on the implementation of the ISS[28]. In order to achieve the goals to prevent terrorist attacks, the following steps until 2014 were taken:

1) The Commission established in September 2011 the Radicalisation Awareness Network (RAN), empowering local practitioners to address problems of radicalisation and recruitment. The new Communication on preventing radicalisation to terrorism and violent extremism (2014) proposes prevention and building up resilience as well as to help radicalised individuals disengage and de-radicalise. The pressing issue of the foreign fighters (particularly those going to Syria) was also addressed by the European Commission.
2) The TFTP Treaty with the US, is increasingly used also by the EU and Member States, is valuable tool enabling the identification and tracking of terrorists across the world.
3) Safety and security by protecting and detecting dangerous goods such as explosives and CBRN agents was provided by the implementation of two action plans and the Regulation on the marketing and use of explosives precursors. A European Programme for Critical Infrastructure Protection (EPCIP) has begun which focuses on prevention, preparedness, response and in particular on interdependencies between sectors.
4) Risk assessment activities in the field of aviation security have been extended to a wide set of
5) passenger-related risks.
6) In preventing terrorist attacks Member States were supported by Europol, Eurojust, IntCen and by law enforcement platforms such as ATLAS. The EU ATLAS network, consisting of special intervention forces in 28 EU Member States, continued to develop capabilities.

In 2015 the Commission will finalize the implementation of the Chemical Biological, Radiological and Nuclear (CBRN) and Explosives Action Plans. The Commission also monitors the implementation of the Regulation 98/2013 on the marketing and use of explosives precursors.[29] This Regulation aims to limit the availability, introduction, possession and use of substances or mixtures that could be misused for the illicit manufacture of explosives/

Counter Terrorism Task Force was established in September 2001. This involved 20 members of MS law enforcement agencies and security services working together for the first time in the history of the EU. The Unit was disbanded by the end of 2002. But, ongoing projects became part of the regular operations of Europol's Counterterrorism Unit. There is a close cooperation between the Europol's Counter – Terrorism Unit and Eurojust's Counter Terrorism Team. They hold regular weekly meetings and exchange opinions about common projects and concerns. Europol attends the Strategic Meeting on Terrorism held by Eurojust, and the latter attends the Europol's Counter-terrorism week.[30] The Counter-Terrorism Group, established in 2001, has the role of bringing together the heads of national intelligence services. It supports operational measures. By contrast, the Joint Situation Centre (SitCen), established in 1999, undertakes situation monitoring twenty-four hours a day, seven days a week.

EU counter-terrorism was a top priority on the Informal Justice and Home Affairs Council held in Riga on January 29-30 in Riga, triggered by the terrorists attacks in Paris on January 7. The focus was on Prevention of radicalization, in particular in social media (ministers concluded that favoring cross-sectoral approach involving all policies- education, integration/social inclusion, media, detention institutions, health sector, rehabilitation is needed in order to prevent radicalization to Islam.); information sharing; identification of travel routes of terrorists and the need for an efficient EU PNR system (the EU PNR system should be operational as soon as possible); use of firearms. (The ministers discussed measures to strengthen operational cooperation, de-militarization of firearms, prolong traceability of firearms and control of the trade of firearms via the Internet). One of the key issues in combating terrorism will be the adoption of the General Data Protection Regulation and the draft Data Protection Directive.

According to the Europol's TE – SAT Report for 2012, 17 people died as a result of terrorist attacks, and 219 terrorist attacks were carried out in 7 Member States, an increase of 26% in comparison to 2011. In 2012 Syria emerged as the destination of choice for foreign fighters. A number of EU nationals (who were travelling to and from Syria) were put under arrest in France, the UK, Belgium and the Netherlands. Three of these arrests were made in the Netherlands intending to travel to Syria. The police had found knives, a sword, a crossbow, farewell letters, packed backpacks and terrorist propaganda. Several Belgians aged between 18 and 24 left Belgium and travelled to Syria. Such individuals who tried to leave or had already left for Syria were identified in Finland and Sweden. Jihadists originating from the EU were reportedly killed during the conflict in Syria. Some of these fighters were banned from entering the EU on their return from

28 The final implementation report of the EU Internal Security Strategy 2010-2014, COM(2014) 365 final, Brussels, 20.6.2014.
29 OJEU L 39/1
30 Coninsx, M., "Strengthening Interstate Cooperation: The Eurojust Experience", in: Salinas de Frias, A., Samuel, K. and White, N., *Counter-terrorism: International Law and Practice*, Oxford, Oxford University Press, 2012, p.981.

Syria, due to the danger that they can recruit new fighters or incite new volunteers to go to Syria. Moreover, such terrorists would be even greater danger if they used their training, combat experience, knowledge and contacts for terrorist activities inside the EU.[31]

During the year, 537 individuals were arrested for terrorism-related offences. Most arrests were made in France (186), the Republic of Ireland (66), the Netherlands (62) and the UK (84). Most of the arrests were linked to separatist terrorism, followed by those linked to religiously inspired terrorism. Arrests linked to right and left-wing terrorism remained at low rate.[32]

During 2012, in 13 EU Member States there were 149 concluded court proceedings on terrorism related charges. The charges were related to terrorist cases dating from 1970s until 2012. These proceedings were conducted against 400 persons of whom 18 had multiple offences. Besides natural persons, in Denmark and France legal entities were also found guilty of terrorist offences. The total amount of verdicts was 437.

Most of these proceedings were concluded in Spain, followed by Belgium, Denmark, France, Greece, Italy and the UK. In the Netherlands there was a decrease in concluded proceedings. In the Czech Republic there was for the first time conviction for terrorism charges.[33] Majority of the verdicts were related to separatist terrorism (Spain and France), then religiously inspired terrorism (Austria, Belgium, Czech Republic, Netherlands and Sweden) and left-wing terrorism (France).[34]

Interestingly, a Belgian court considered that the offence of participating in the criminal activities of a terrorist group did not have to consist of actually committing a terrorist offence. Five accused persons managed websites recruiting people for armed struggle. An al-Qaeda link was also established. The defendants' role was to spread propaganda promoting terrorist views on the Internet forums, aiming to recruit volunteers to support the terrorist group. This was a concrete and tangible act of participation in the activities of a terrorist group. Four of the accused were convicted of terrorism-related offences, either solely of leadership or participation in the activities of a terrorist group, or of the crimes in combination with other crimes charged. One defendant was acquitted.

Of all verdicts, 30% resulted in acquittals of the defendants. Of the 13 Member States, 6 have no acquittals (including traditionally Germany and the Netherlands). To some extent, the acquittal rates can be considered to be the result of the fact that conspiracy to commit terrorist activities and preparatory acts, such as recruitment, training and public provocation, are criminalized in the EU Member States and prosecuted to prevent terrorist attacks from occurring.[35]

In all 13 EU Member States the average duration of the prison - time was approximately eight years, while they ranged from two months to life imprisonment. Interestingly, the highest average prison sentence was reported in Greece - up to 34 years' imprisonment for left-wing terrorist offences.[36]

During 2013, 7 people died as a result of terrorist attacks in EU, total of 152 terrorist attacks were carried out and 535 individuals were arrested. Most of the terrorist attacks occurred in France, Spain and the UK. In 2013 the number of arrests increased for preparation and execution of attacks; financing of terrorism; and travelling, facilitating travel or sending fighters to conflict zones, especially Syria. Fifteen EU Member States reported a total of 150 concluded criminal proceedings for terrorism related offences. The cases dated as early as 1980s. These proceedings were conducted against 313 persons, 12 of whom were prosecuted for several offences. Besides natural persons three verdicts were rendered against three legal entities (in Denmark and France).

Most verdicts (which totaled 336) were related to separatist terrorism. These convictions were dominantly in France and Spain. Convictions for religiously inspired terrorism dominated in Austria, the Czech Republic and the Belgium. In the Netherlands, two Dutch individuals preparing to go to Syria and join the armed rebel groups there were convicted. One of the charges was (preparation for) the commission of a terrorist crime. The Rotterdam District Court established that the defendant committed all the charges with a view to preparing to commit murder. The defendant's acts were deemed preparatory for his departure to Syria in order to take part in the armed 'jihad' against the Syrian regime and to establish an Islamic state. But the defendant suffered a mental disorder, so the Court decided to put him in a psychiatric clinic for 1 year.

The second defendant was found guilty by the same Court of preparing to commit arson and/or cause an explosion, and distributing material inciting a terrorist crime. The verdict was 12 months of prison-time, with a probationary period of two years. The defendant intended to join Syrian rebels, but was arrested in Germany before he could reach Syria.

The defendant had visited websites and made queries about home-made bombs and explosives, purchased ignition fuse and a kilogram of aluminum powder, with intention to build bombs. He posted videos

31 Europol, EU Terrorism Situation and Trend Report 2012, p.22.
32 Ibid. pp.10-11.
33 Ibid. p.14.
34 Ibid.
35 Ibid.p.15.
36 Ibid.

showing the execution of violent attacks and some extremist texts on websites and engaged in discussions about armed 'jihad' on the Internet. In both verdicts the Court stressed the seriousness of the offences and the dangers posed by the possible participation in the armed "jihad" in Syria.[37]

In 2013 acquittals constituted 23% of all verdicts pronounced for terrorist offences. This fact suggests that the prosecutions in comparison with the previous years had higher percentage of success. Most successful were religious related terrorism prosecutions, with a conviction rate of 99%, followed by separatist terrorism with 66%, and left –wing terrorism with 57 %.

The rendered verdicts ranged from prison-time from 3 days up to life imprisonment (such verdicts were present in France, Ireland and UK. Spanish courts rendered verdicts cumulatively of 3860 years of imprisonment for separatist terrorism. The average prison sentence in 2013 was higher than the previous years (10 years), with highest sentences rendered in Greece (27 years), Spain (14 years) and Ireland (12 years).

Some verdicts resulted also with restriction of the civil rights of the convicted persons, bans from entering the national territory upon completion of their prison term or with orders to perform community service. Regarding legal persons, it is interesting that in Denmark, the two TV stations were sentenced to pay a pecuniary fine, while the legal entity found guilty of terrorism in France was dissolved. In Germany, youth sentences were handed down to two defendants, in the UK, the court issued a hospital order, and in the Netherlands one individual was placed in a psychiatric clinic.[38]

All these strategic documents were put on test on January 7, 2015, when the ferocious terrorist attack was carried out in Paris. Twelve persons were killed in the premises of the French newspaper Charlie Ebdo. This attack showed that it is very difficult to influence lone terrorist, particularly if they obtained training by some terrorist organization or state sponsoring terrorism and they receive their orders by such entities or states (as they did from Yemen in this case). The Foreign Affairs Council on its meeting on 9th January reached an agreement to have security attachés in the European Union Delegations in relevant Arab countries in order to maintain regular contact among professionals to develop cooperation on security issues and counterterrorist issues. Also, the EP should work on the Passengers Name Record - the PNR. Furthermore, Foreign Ministers agreed to raise the level of cooperation both bilaterally and multilaterally with Arab and Mediterranean countries starting with the League of Arab States.[39]

DEVELOPMENTS IN THE COUNTER- TERRORISM LAW OF THE REPUBLIC OF MACEDONIA

The most significant source of the Macedonian counter-terrorism law is the Penal Code which criminalizes several offences related to terrorism. Also, Macedonia has adopted Law on Prevention of Money Laundering and Financing of Terrorism, and a special Law on International Restrictive Measures. Besides national, Macedonia is a Party to all UN and Council of Europe conventions against terrorism.[40] In 2011 Macedonia adopted a National Counter-Terrorism Strategy, demonstrating also its political commitment and solidarity with the rest of the free world in tackling this modern evil. This Strategy identifies 5 counter-terrorism measures: 1) Prevention, 2) Defence, 3) Protection of citizens and property, 4) Prosecution and 5) Coordination. At institutional level, a special counter-terrorism working party was established within the Ministry of Interior, establishing a common database, constant exchange of information between the relevant institutions and creation of joint operative teams to tackle specific files concerning terrorism. At international level, the Strategy stresses the need to conclude new bilateral agreements with other states to combat terrorism, and particular attention is given to the further developing the cooperation with NATO, the Counter Terrorism Committee of the Council of Europe, Europol, Eurojust, SECI and INTERPOL.[41]

The criminal offence of terrorism existed before Macedonia gained independence from Yugoslavia. After the proclamation of independence, several amendments were made to this criminal offence and new related to terrorism were introduced. These criminal offences are located under the heading "Criminal Offences against the State" of the Penal Code. These offences are directed at jeopardizing and threatening of

37 Europol, European Union Terrorism Situation and Trend Report 2014, p.17.
38 Ibid.pp.18-19.
39 http://eeas.europa.eu/top_stories/2015/200115_fac_january_2015_en.htm.
40 Like UN's Convention on Offences and Certain Acts Committed on Board Aircraft(1963); Convention for Suppression of Unlawful Seizure of Aircraft (1970); Convention for the Suppression of Unlawful Acts Against the Safety of Civil Aviation (1971):Convention for the Prevention and Punishment of Crimes Against Internationally Protected Persons, Including Diplomatic Agents (1973), the International Convention Against taking of Hostages (1979), 1999 International Convention for the Suppression of the Financing of Terrorism, International Convention for the Suppression of Acts of Nuclear Terrorism, International convention for seizing of terrorist attacks with explosive devices, or Council of Europe's and Council of Europe conventions on: 1) the Suppression of terrorism and its Protocol, 2) Prevention of Terrorism, 3) on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism.
41 National Counter-Terrorism Strategy of the Republic of Macedonia, September, 2011.

the constitutional order and security of the state and inciting insecurity and fear to the citizens. For these offences, the Macedonian criminal policy is harshest. Before 1993, the minimum prison sentence was 3 years. Similarly, Art.138 sanctioned "the preparation of the criminal offences directed against the state", including "terrorism" with prison sentences varying from 1 to 10 years. From 1996, the criminal offence "Terrorism" was sanctioned under Arts. 313 and 326. In 2004, the prison sentence was set at minimum 4 years. The penalty for preparation of this criminal offence was set from 3 to 10 years imprisonment.

In 2008 this offence was renamed into "Terrorist jeopardizing the constitutional order and security" with prison sentences of minimum 10 years. Furthermore, Art.324 sanctioned the association and conspiracy for the purpose of committing acts of terrorism. The collaborators and accomplices to the perpetrators of Terrorism, are sanctioned under Art 325 ("Harboring and aiding a perpetrator after committing a criminal offence" and under Art.326 - Punishment for preparation. Most severe form of this criminal offence is sanctioned under Art.327 (1) – if the offence results with the death of one or more people or enormous property damage.

After the amendments in 2008 and 2009 several new criminal offences related to terrorism were introduced under heading 33 Crimes against the public order of the Penal Code: "Terrorist organization" (Art. 394-a). "Terrorism" (Art.394-b) and "Financing of terrorism" (Art 394-c).

Terrorism is defined as an offence perpetrated by …

"any person who commits one or more crimes of murder, corporal injuries, abduction, destruction of public facilities, transportation systems, infrastructure facilities, computer systems and other facilities of general use, hijacking of airplanes or other means of public transportation, production, possession, transportation, trade, procurement or use of nuclear weapons, biological, chemical weapons and other types of weapons and hazardous materials, as well as research in the direction of development of biological and chemical weapons, release of dangerous radioactive, poisonous and other dangerous substances or causing fire or an explosion, destruction of facilities for water supply, energy supply or other basic natural sources, with the intention to endanger human life and body and to create feeling of insecurity or fear among citizens, shall be sentenced to imprisonment of at least ten years or life imprisonment."

Criminal offence of Terrorist organization can be committed by any person

"who organizes a group, gang or other criminal enterprise[42] to commit the criminal offences of murder, corporal injuries, abduction, destruction of public facilities, transport systems, infrastructure facilities, information systems and other facilities of general use, hijacking of airplanes or other means of public transport, production, possession or trade in nuclear weapons, biological, chemical weapons and other types of weapons and hazardous materials, dispersal of hazardous radioactive, poisonous and other dangerous substances or arson or causing explosions, destruction of plants and facilities for supply of water, energy and other fundamental natural resources, with an intention to endanger the lives and bodies of the citizens and create a feeling of insecurity and fear, shall be sentenced to imprisonment of at least eight years."

On the other hand, if a person

provides or collects funds in any way, directly or indirectly, unlawfully and consciously, with the intention to use them, or knowingly that they will be used, fully or partially, to commit the criminal offence of hijacking an airplane or a ship (Article 302), endangerment of air traffic security (Article 303), terrorist endangerment of the constitutional order and security (Article 313), terrorist organization (Article 394-a), terrorism (Article 394-b), crimes against humanity (Article 403-a), international terrorism (Article 419), taking hostages (Article 421) and other crimes of murder or serious bodily injuries, committed with an intention to create a feeling of insecurity and fear amongst the citizens,

then such a person perpetrates the crime of financing/bankrolling of terrorism punishable by prison sentences ranging from 4 to 10 years.

A separate criminal offence is international terrorism defined as an act where "a person who with the intention of harming a foreign state or some international organization, commits a kidnapping of another or some other act of violence, causes an explosion or fire, or with some other generally dangerous act or by generally dangerous means causes a danger to the life of people and to property to a significant value."

This crime is punishable by prison sentences ranging from minimum 3 years up to life imprisonment.

There has been no criminal case regarding the articles 394-c and 419 of the Penal code, but there were regarding the articles 394-a and 394-b.

In 2011, Art. 39 was redrafted, and now it is a duty of the court to assess whether a criminal act was a hate crime and this will be an aggravating circumstance, which will have influence upon increasing of the punishment.

In 2014, following the trend in many European countries, including many Western Balkan countries, Republic of Macedonia reacted to the recruitment of the jihadist fighters for the conflicts in the Middle

42 In the Macedonian legislation the phrase "group, gang or other criminal enterprise" means more than three people.

East. New Article 322-a was introduced in the Penal Code, – "Recruitment in the service of a foreign army." It was consisted of only two paragraphs and it was not sufficient to the needs. In September 2014, this is article was replaced by new criminal offence: "Participation in foreign military, police, paramilitary or militia formations":

Any person who creates, organizes, recruits, transports, organize transport, equips, trains or otherwise prepares someone or a group for participation in a foreign military police, paramilitary or militia formations, organized groups or individually, against the law, shall be sentenced to imprisonment of at least five years.

Any person who against the law, in any way, directly or indirectly offers, gives, secures, demands, collects or covers financial means, funds, material objects or equipment which are fully or partially intended for committing the crime of the paragraph (1) of this article, shall be sentenced to imprisonment of at least five years.

A citizen of the Republic of Macedonia who participates in or is trained by the foreign army, police, paramilitary or militia formations, organized in groups or individually, out of the territory of the Republic of Macedonia and against the law, shall be sentenced to imprisonment of at least four years.

Any person on a rally who against the law calls with spreading or providing in any other way to the public a message, or recruits or instigates in any other way to commit the crimes of the paragraphs (1), (2), or (3) of this article, through written text, or with audio-visual tapes, through social networks or in any other way of communication, shall be sentenced to imprisonment of at least four years.

If the crime of the paragraphs (1), (2), or (3), or (4) of this article is committed against a child, the perpetrator shall be sentenced to imprisonment of at least five years.

Any person who covers a perpetrator of the crimes from the paragraphs (1), (2), or (3), (4) or (5) of this article, or helps in the preventing for the discovery of the crime or the perpetrator through hiding of the *instrumeta sceleri*, or the evidence, or in any other way, shall be sentenced to imprisonment of at least five years.

The perpetrator of the crime of this article who will uncover the other perpetrators of the paragraphs (1), (2), or (3), (4) or (5) of this article might be acquitted.

For the crime of the paragraph (3) of this article the perpetrator who has a citizenship of the country[43] in which regular army or police formations participates, or who is a member of military, or paramilitary or police forces under the control of the internationally recognized governments or international organizations, shall be acquitted.

The attempt is punishable.

Any real estate items and objects for committing the crime shall be seized.

Under the Law on Public Prosecution Office (2007), the Basic Public Prosecution Office for Prosecuting Organized Crime and Corruption is the only competent body to prosecute the criminal acts of: "Terrorist endangerment of the constitutional order and security" (Art.313), "Criminal association" (Art.394), "Terrorist organization" (394-a). "Terrorism" (Art.394-b), and other criminal acts against the humanity and the international law.

Macedonia faced the terrorist menace in back in 2001, but as a result of the political agreement many of the terrorist acts remained unpunished, since many of their perpetrators were amnestied with the adoption of the Law on amnesty (2002). Other instances include 1) the famous case of "Kondovo", where 11 citizens of the Republic of Macedonia (ethnic Albanians), were charged and convicted for the criminal offence of "Terrorism" and preparation to commit terrorism,[44] 2) the case of "Mountain storm" where six suspected Islamic extremists were killed, all of them wearing paramilitary uniforms (17 persons were charged and then convicted in 2008, with prison sentences ranging from 10-15 years), and 3) the newest case called the "Monstrum", involving indictments against 6 Islamic radicals for terrorism, because of ferocious killing of 5 young boys at the Smilkovo Lake. The Basic Court in Skopje rendered the guilty verdict, but the defendants submitted appeals and now it is up to the Court of Appeal to render judgment. This case triggered much unrest in and ethnic tensions Macedonian society.

In 2008 the Law on Prevention of Money Laundering and Financing of Terrorism was enacted, and a special Department for Financial Intelligence was established in order to implement this Law. Measures for prevention include: 1) following of clients; 2) following certain transactions; 3) collecting, storing, and transmission of data regarding these clients and transactions, and 4) introduction and application of programmes.[45]

43 Namely, this paragraph is addressing to the bipatrides also.

44 Speech by the Public prosecutor Misho Ilievski in Ohrid conference, organized by the US State Department and DIILS, Regional MET "Legal Aspects of Combating Terrorism & Stability Operations", 16.04.2013.

45 Art.6, Law on on Prevention of Money Laundering and Financing of Terrorism, Official Gazetgte 4/08, subsequently amended broj 57/10, 35/11 44/12.

This Directorate is entitled to enter into agreements with similar bodies of other countries or international organizations. The Directorate can seek relevant information from these bodies with an aim to prevent or discover money laundering or criminal offences regarding bankrolling of terrorism. Vice versa, the competent organs of other countries or international organizations involved in combating terrorism can seek relevant information from this Directorate.[46] All subjects (like banks and other financial institutions, notaries public, attorneys, audit or accounting offices, consultative services, the Cadastre, civil associations or organizations casinos etc) are obliged to notify the Directorate in all cases where there is a suspicion that there was a criminal offence of money laundering or financing of terrorism or an attempt to commit such criminal offence; in all cases of financial transactions exceeding 15,000 Euros or in cases of several connected financial transactions exceeding 15.000 Euros.[47]

In 2011 a Law on International Restrictive Measures was enacted. These are measures aimed at preserving of international peace and security, respect for human rights and fundamental freedoms, and development of the democracy and the rule of law. Such measures can be enacted in accordance with resolutions of the UN Security Council under Chapter VII of the UN Charter, legal instruments of the European Union or legal acts of other international organizations to which Republic of Macedonia is a member.[48] The types of restrictive measures are classified as follows: 1) embargo on goods and services 2) weapons embargo, 3) ban to entry Republic of Macedonia 4) financial measures or 5) other restrictive measures pursuant to international law.[49] These measures can be enacted against states (e.g. states sponsoring terrorism or harboring terrorists), international organizations, natural or legal persons. The decision to enact such measures is in competence of the Government of the Republic of Macedonia. Day-to-day follow up of such restrictive measures is delegated to a Coordinative body, consisting of representatives of the Ministry of Foreign Affairs, MOI, Defence, Economy and Ministry of Finance.

In 2014 restrictive measures were enacted against Syria,[50] Libya,[51] South Sudan,[52] Belarus,[53] North Korea, Zimbabwe. In 2013 restrictive measures were introduced against Belarus, Syria, Iran, Zimbabwe etc. In 2012 restrictive measures were introduced against Afghanistan, Burma/Myanmar and Guinea. As a rule, these restrictive measures were introduced for unlimited duration, i.e. until the Government decides to abolish such decisions. All these measures were introduced pursuant to the EU Decisions in CFSP/ESDP, which is an obligation of Macedonia under the Stabilization and Association Agreement. These restrictive measures mostly consist of 1) weapons embargo, embargo on goods and services, financial measures and ban to entry the country (Iran, Zimbabwe, Libya, Belarus, South Sudan), 2) going to more extensive measures like embargo on all equipment that can be used for internal repression on the population, ban to purchase, import or transport oil or oil derivatives from Syria and Ban to access Macedonian airports for all cargo flights by Syrian air companies or flights by the Syrian Arabic Air Company, ban on luxury products (Syria), or 3) target – specific sanctions like embargo on goods and services intended to monitor or tapping Internet or telephone communications, embargo on gold or precious metals and demands to and from the Government to Iran, ban on services regarding insurance and re-insurance (Iran), determining or updating the lists of persons, entities or groups established by EU decision 2011/872/CFSP.

CONCLUSION

The nature of terrorism as a threat frequently undergoes a metamorphosis so there is a delicate distinction between organized crime and terrorism. That is not only because terrorists use methods different from those used by organized crime to make profits for producing means which would be used for future terrorist actions, but also because some of the organized crime groups are using terrorist methods in their conflicts with the governments. Another similarity is the recent cluster formation of these two types of crime groups. The constructed net of these clusters is less dependable from the center and therefore harder to be tracked. Nevertheless terrorism has a greater destructive energy towards our societies than the organized crime, so Non statute of limitations should be in force for Terrorism as a crime-mala in se, just as it is for genocide, crimes against humanity and war crimes in the Macedonian positive criminal law.

46 Art.44.
47 Art.29.
48 Art.2, Law on International Restrictive Measures, Official Gazette of the Republic of Macedonia No.36, 23.3.2011.
49 Art.4.
50 Decision by the Government of Macedonia, Official Gazette158/2014, 30.10.2014.
51 Decision by the Government of Macedonia, Official Gazette158/2014, 30.10.2014.
52 Decision by the Government of Macedonia, Official Gazette 154/2014.
53 Decision by the Government of Macedonia, Official Gazette, 154/2014, 21.10.2014.

Terrorism presents a crime and that is why the primary mechanism of every liberal democracy in the counter terrorism should be the use of the criminal-legal system, backed up by the army and the secret service agencies. It is necessary all of these elements to be coordinated with the rule of law.[54]

The battle against the terrorism is a battle for the hearts and minds of the people. Only with this battle gain, the war on terrorism could be won. In the same way, this is a mission hardly to be accomplished, if we have in mind that we will be constantly attacked by the illusive and bestial terrorist. The Macedonian government and its agencies have few legal weapons to use against terrorism. They rely mainly on standard techniques of intelligence gathering and there is also the issue of cutting back the budget of these agencies. The national strategy in this field stresses that the processing counter - terrorism should be through implementation of the international legal obligations, as well as with the harmonization of the domestic legal norms with the international instruments for fight and the prevention of terrorism. But on the "battle" ground, sometimes, the only way to confront terrorism is through the motto: "If you are not gonn`a get them, they`r gonn`a get u". Not a popular policy. The answer to this threat might be in the comparative perspective like the USA Patriot Act, which is a model for the European democracies, also having in mind Republic of Macedonia. This is useful for preempting attacks and the unilateralist policy, but also for supporting and providing a healthy economical environment in the countries where the terrorists are born, primarily in the neuralgic regions like: the Balkans, the Caucasus and the Middle East.

The European Union began intensively to develop its counter-terrorism law following the terrorist attacks in New York and Washington in 2001. Since then, this framework was continuously upgraded and updated following the developments in the UN system. EU Counter-terrorism law made tremendous steps forward since those days. However, the recent terrorist attack in Paris on January 7, 2015 showed that constant alertness is needed and the most serious challenge today pose the lone wolves and returning jihadist fighters from Syria or ISIL. The more general approach to Muslim population advocated by the EU Internal Security Strategy or the Strategy for Combating Radicalisation and Recruitment to Terrorism cannot produce results in all individual cases.

Probably the most effective way is to prevent them to enter the EU territory again, that's why the work on the EU PNR is much underway. The tracking of such lone terrorists requires more close targeting by the intelligence agencies in EU in intensive cooperation with their counterparts, especially in the Middle Eastern countries.

Even before the latest developments after Paris attack in January 2015, EU worked intensively with third states to counter terrorism, particularly in the Middle East, but also in African countries, Pakistan, Afghanistan etc. It helped with institution building, financial and technical support, provided training, helped with strengthening the criminal justice system and border controls in these countries. These steps will be even more strengthened with the now greater inclination to bring closer internal security and EU foreign policy, as well greater networking via diplomatic and intelligence channels, in particular with Muslim countries.

Republic of Macedonia has modern and up-to–date counter terrorism legislation which is in line with international legal instruments and in particular with respective EU acts. This is a result of the fact that Macedonia is UN and Council of Europe member, a candidate country for EU membership and partner in the global Anti-terrorist coalition. Also, this is due to the fact that the country faced terrorist aggression back in 2001. Also, Macedonian judiciary rendered significant judgments against perpetrators of terrorism, which probably had deterrent effect to other potential perpetrators of such criminal offences. Macedonia has introduced various sanctions to third states, *inter alia* to counter terrorism. Mostly, this was aligning of Macedonian foreign policy with EU CFSP instruments.

Although the risk of terrorist attacks like those happening on EU soil to happen in Macedonia is much lower, it is evident that Macedonia still needs further strengthening of institutional capacities to combat terrorism, improvement of internal coordination and coordination with foreign stakeholders in countering terrorism. Also, although the national Counter-terrorism Strategy speaks of protecting important infrastructure and lives of citizens, and possible victims of terrorist, the impression is that in practice such detailed plans to protect critical infrastructure were not devised so far, so this would require action in the future.

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GLOBAL THREATS TO NATIONAL SECURITY AND NEEDS OF BELONGING TO THE REPUBLIC OF MACEDONIA IN NATO AND THE EUROPEAN UNION

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Abstract: After the Cold War, the risk of military conflict on a global scale is significantly reduced, meanwhile the world is still confronted with many traditional and new challenges, risks and threats to security. Essential feature of these challenges, risks and threats that they are becoming more unpredictable, asymmetric and have a transnational character. Furthermore in the paper, I'll elaborate global challenges and key threats to security such as terrorism, proliferation of weapons of mass destruction, regional conflicts, failed states, organized crime, energetic insecure, to fall short of equivalent economic and demography development, endangering the environment. At the end of the paper I give an overview of global trends and opportunities in the Republic of Macedonia to the development and promotion of the necessary defense and security capabilities and capacities to the same face modern threats to its national security. Macedonia is aware of the impact of global strategic changes and irrationality and lack of efficiency of an isolated system security. Macedonia is aware of the impact of global strategic changes and irrationality and lack of efficiency of an isolated system security, for this reason, the Republic of Macedonia is even more committed to building a system of mutual values and participation in cooperative activities and forms of collective security systems with the ultimate goal - membership in NATO and the EU.

Keywords: global challenges and threats, security-defense system.

INTRODUCTION

Last decades from the past and the beginning of this century are characterized with new safety movements in the world. Safety from mostly military sphere is extended to other areas, primarily to the economy, the energy, the social, and the ecological safety, including the safety of an individual and social at overall. The termination of block confrontations, spreading of democracy, creating of multipolar world, integration processes in the area of safety and the more intensive economic and cultural cooperation and the interdependence are reducing the risk of clashes between the states, also the opportunity of crises and conflicts. After the end of Cold War, risk of military clashes in global frames is considerably reduced. However, the world is again confronted with numerous traditional and new challenges, risks and threats of the safety. The circumstances which contribute to larger number of safety risks on global level are: big differences in the degree of economic and cultural development, which as consequences gain the poverty and social endangerment to the part of the population, which is conditioning occurrence of negative demographical and psycho-social, appears. Regional and local clashes, ethnical and religious extremism, terrorism, organized crime, proliferation of weapons for massive destruction and illegal migration, climate changes and more and more pronounced deficit of energy recourses are endangering the stability of separate states and all region at all, also the global safety. Essential feature of those challenges, risks and threats is the thing that they are becoming more and more unpredictable, asymmetrical and they have traditional character. The world is confronting with the challenges that the violation of The ON Charter is imposing and generally accepted norms of international law and especially the interference in the interior of sovereign states such as the conception and practice of preventive attacks and military interventions. The attempts of providing legitimacy for the creation of the state inventions on the territory of sovereign member states of the UN are disrupting the existing order and international legal system and substantially are endangering the general state of security in the world. Political, economical and cultural relations and military security relations in the world are taking place in global multipolar and multilateral environment in which more and more pronounced is manifesting the complexity of interdependence of the states. The progress made in implementing the common foreign and safety policy of EU and the involvement of European defense forces in solving of the safety problems is suggesting on the more significant role of EU in the harmonization of relations and interests of European states and taking part in the shared responsibilities in the creation of European and global safety.

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EUROPEAN UNION AND INTERNATIOAL SAFETY SOROUNDING

With the creation of European Union (hereinafter EU). Rather than violence which is characteristic of the first half of the 20th century, came a period of peace and stability in European history. European countries are determined to solve the disputes peacefully and to cooperate through common institutions. During this period, through the spread of democracy and the rule of low, authoritarian regimes are transformed into safe, stable and dynamic democracy. Through the process of multi expansion of EU the vision of united and peaceful continent is realized. The United States played a crucial role in the process of European integration and European security in particular through NATO. The end of the Cold War resulted in the US military position of the dominant factor. In the modern world, no state is able by itself to face with today's complex problems. Europe still faces security threats and challenges. The emergence of causing conflicts in the Balkans, is just a reminder that war as a phenomenon which has not disappear from our continent. Over the past decade, every region of the world was busy with armed clashes. Most of these collisions occurred within states rather than between them, and most of the victims were civilians. EU as a Union of 25 countries, with over 450 million people, creating a quarter of the world's gross national product (GNP) and a wide range of resources available, inevitably has presented as a global player. Previous decade, European troops were deployed overseas, on distant places such as Afghanistan, East Timor and the Democratic Republic of Congo.[2] Growing compliance to European interests and the strengthening of mutual solidarity within the EU doesn't make a convincing and effective player. Europe should be ready to take some of the responsibility for global security and building a better world. The progress made in implementing the Common Foreign and Security Policy and the inclusion of European defense forces in solving security problems indicate the larger role of the EU in harmonization of relations and interests of European countries and taking the part about shared responsibility in creating European and global security. Countries in the region of Southeast Europe accept and promoting values such as democracy, economic and social stability and security. In accordance with these determinations, they are committed to dialogue, which reduces the possibility of outbreak of conflicts and positively affect the security environment. Promoting regional security to a greater extent based on cooperation and joint and concerted action in the field of security, politics and economics and other areas that are focused on preserving the stability and warning of crises in the region . Inherited problems in the past, historical contradictions, and the consequences of conflicts between peoples and countries of Southeastern Europe, especially in the area of the Balkans , in recent history and today affect the state of security in the region. Geostrategic position of Southeast Europe, through which pass energy and communication routes connecting the developed countries in Europe, the Caucasus, the Caspian pool, the Middle East and the Mediterranean, significant and direct impact on the security situation of the countries of the European continent. The conflict of interests between states using transit routes and availability of resources can lead to a regional crisis and threatening the security and stability of Southeast Europe. The risks of outbreak of war and other armed conflicts in the area of Southeast Europe, although reduced, not eliminated. Separatist aspirations in the region is a real threat to its security. Terrorism and the expansion of organized crime, corruption, trafficking in narcotics and weapons, and human trafficking, significantly jeopardize the security situation in Southeast Europe. Inadequate resolving return of escaped expelled and internally displaced persons on the territory of former Yugoslavia and their unsatisfactory social status, they make the security situation in the region even more complicated. The security situation in the region is characterized by a pronounced national, religious and political extremism and destruction of cultural heritage, besides the existing economic and social problems and insufficiently developed state institutions, complicates the process of rapid and successful democratic transition of states in the region. Relations between the countries in the region are also burdened with the return of refugees and the return of their property and border issues, as well as specific problems arising from inadequate integration of certain minority communities and groups in the wider social environment. Because this is difficult and the integration of the region into the European and other international security structures, which increases the danger of renewed crises and armed conflicts. In such conditions, the continuity of international support and military and security presence with a UN mandate in the region, could contribute to the stabilization of the situation and to prevent the occurrence of conflicts and their transformation into the fray broad scale. Due to the complex nature of security in the region, the countries of Southeast Europe are more directed to the joint efforts to eliminate negative processes that threaten their security. The construction of joint mechanisms for prevention of risk and threats and crisis management, is derived assumptions for rapid democratic transition countries in the region, which generate conditions for convergence and connection of all countries of the region to the EU.

2 *European Security Strategy – A Secure Europe in a Better World*, Internet, 11/06/2004, http://www.iue.eu.int/cms3_fo/showpage.asp?id=391&lang=en.

Global challenges and key threats

Today Europe faces new threats which are varied, less visible and less predictable (terrorism, proliferation of weapons of mass destruction, regional conflicts, state failure in themselves, organized crime). In the era of globalization, there are threats that endanger the global, the vital functions of the international global community and they cause hazards individual security, national security, regional and global security.

Terrorism is one of the major risks and threats to the global, regional and national security. Modern terrorism is global in scope, and is linked to violent religious extremism. In terms of global terrorism, the Republic of Macedonia may be the target of terrorist action, directly and using its territory to prepare and carry out terrorist actions in other countries. From the perspective of security risks and threats facing the Republic of Macedonia, especially important link terrorism with all forms of organized transnational and cross-border crime.

As benchmarks of modern terrorism (in that differs from traditional) can be distinguished: globally (borders no longer present a barrier to terrorism); lethality (change tactics to which once aspired to public harassment and impressive fierce shares to a new tactic of killing as many people); significantly greater coordination of terrorists and a larger scale of violence; deleted classic boundaries between terrorism and the announcement of war between states; use of the most developed technology and focus on the destruction of the most developed technology that threatens sacred tradition of terrorists; organize and conduct transnational networks of conspiracy; enforcement fanatical extremists who are eager for more destruction using suicide methods, unprepared for negotiations and compromises, and more hatred towards target.[3]

Islamic radicalism

The opinion of many experts is that Islamic extremists are the spine of terrorist organizations in the modern world and pose a security threat as spreading false interpretations and Islamic principles. The aim of Islamic extremists is to attract people with economic and social problems and to kill other Muslims. Today people see Islam and Muslims as terrorists, fundamentalists, dangerous bombs waiting ideal opportunity to activate. There are institutions and individuals who apply dangerous segments of the religion with hate speech and thus inflame racial, religious and other intolerance. They separate people based on religion, which creates all those fears that later maintain actions of Islamic fundamentalists.

Radical Islam is a threat to the Balkan countries, and the influence of radical Islam to other people is negative, especially in multinational environments. It causes hatred among members of other religions, as main features its intolerance and exclusion.[4] For suppression of Islamic radicalism, achieving international cooperation between countries is proposed. It also proposes the adoption of a law that participation in wars abroad is punished with imprisonment up to 5 years, and for those who recruit 12 years in prison. The law's purpose is to warn of participation, citizens of Macedonia, Serbia, Croatia, Bosnia and Herzegovina in armed clashes all around the world, whether the reasons for war are religious, material or otherwise. The huge number of people who decide to fight abroad is manipulated. Often they become the promoters of radical political and ideological principles and generators of crisis. As a basis for the fight against terrorism and its warning, the EU strategy for combating terrorism, is focusing on prevention, protection, studying and responding to terrorism. The EU Council in 2005 allowed the strategy and every year complements it.

The proliferation of weapons of mass destruction represents potentially the biggest threat to global and European security , and thus a real danger to the security of the country. The risk of transmission of weapons of mass destruction in the possession of the structures on which the state has no control , especially terrorist groups and individuals, is a special danger to safety. International treaties and agreements to control arms exports have held back the spread of weapons of mass destruction, but new and dangerous times increased opportunities for race proliferation of weapons of mass destruction, especially in the Middle East. The progress achieved in the biological sciences can increase the power of biological weapons, and it can be used by various terrorist groups.

National and religious extremism, which has its roots in ethnic clashes and religious grounds in close and distant past, a risk factor and a significant threat to security. The slow process of democratization of economic and political processes can significantly contribute to the growth of inter-ethnic tensions and their potential to grow in the clashes.

Rregional conflicts - Problems such as those in Kashmir, the Great Lakes Region and the Korean Peninsula, affect European interests directly and indirectly, as well as geographically close collisions, primarily in the Middle East. Violent clashes or lurking also present at our borders, threaten regional stability. They destroy human lives and social and physical infrastructure; threaten minorities, fundamental freedoms and

3 Mijalkovic, Saša., Keserovic, Dragomir., *Osnovi bezbednosti,* Fakultet za bezbjednost i zaštitu, Bana Luka, 2010.
4 According to Milajlkovich, Milan - Professor at the Faculty of Security - Republic of Serbia.

human rights. Clashes can lead to extremism, terrorism and destruction of the state, and create opportunities for organized crime. Regional insecurity can spur demand for WMD. Sometimes, the most practical way to keep pace with often unpredictable new threats may be solving old problems with regional conflicts.[5]

The failure of states - Poor administration - corruption, abuse of power, weak institutions and lack of accountability - and civil strife review states inside. In some cases, it led to the undermining of state institutions. The most current examples are Somalia, Liberia and Afghanistan under the Taliban. Violation of the order and the failure of states, can be associated with obvious threats, such as organized crime or terrorism. The failure of states is a disturbing phenomenon that undermines global governance and contribute to regional instability.

Intelligence activities implemented by intelligence organizations through illegal and covert action, is a real threat to the security of the country. It is accomplished by weakening the political, economic and security capacities and through the influence of the direction and dynamics of social processes, contrary to the national interest. The combination of traditional intelligence methods by means of sophisticated features, makes the discovery of its action.

Organized crime in character, is a serious threat to global security and the development of society and the state, and especially reflected in the illicit trafficking of drugs, human trafficking and illegal migration, as well as economic - financial sphere, the proliferation of conventional weapons and the possibility of proliferation of weapons of mass destruction. Europe represents a target of organized crime, organized crime but often exceeds the external borders of the EU. Criminal activities are often associated with undeveloped, failed states, and with failed states. Especially emphasized the link to organized crime and terrorism failed states.

Corruption threatens the fundamental values of society and leads to a decline in confidence in state institutions, hindering the implementation of essential reforms, slowing down the process of transition, economic development, the influx of foreign investment and integration processes and to destabilize the situation in the country and the region.

The problems of economic development, have the effect of a number of adverse social phenomena of which the overall effect is an important factor in the transition process. High levels of unemployment and poverty of most of the population, in the presence of large number of expelled and internally displaced persons are potential hotbeds of serious social and political tensions that can produce a state of high risk. The departure of the higher education staff from the country, caused by the inability of Adecco Employment and work valuation, reduces the opportunities for faster economic recovery and any other country , relying on their own resources.

The challenges related to natural resources especially water (which in the coming years will be burdened with global warming) will create further unrest and migration movements in different parts of the world.

Energy dependence is a special concern for Europe. Energy interdependence and the sensitivity of the infrastructure for the production and transportation of energy, and the inevitable trend of depletion of non-renewable sources of energy resources represents a real basis of threats to energy security and a real challenge to stability and security in the region. Europe is the world's largest importer of oil and gas. Today imports provides about 50 % of energy consumption, while expected in 2030 to reach a level of 70 % . The highest energy imports from the Persian Gulf , Russia and North Africa.[6]

Uneven economic and demographic development, which in the past was a strong source of crises, still is a security risk in this region. The different levels of economic development in the individual regions, together with their demographic characteristics, causes major migrations of people from underdeveloped to developed regions; from areas with obvious overpopulation caused by demographic explosion to areas with obvious appearance of depopulation. Demographic trends and migration, despite the social problems and the growth of crime can lead to increased instability and occurrence of risks and threats to security.

The unresolved status and avoid the difficult position, exiled and internally displaced persons, the slow realization of their return and no guarantee of a safe existence, as well as failure to resolve the fate of the missing from this region, a potential source of instability in the region.

Unfinished process of demarcation among the states of the former Yugoslavia is a potential source of conflict and impedes the establishment of full cooperation among the states. Every attempted inadequately address the issue of the rights and protection of national minorities in the countries in the region can be a significant source of instability.

5 *European Security Strategy – A Secure Europe in a Better World*, Internet, 11/06/2004, http://www.iue.eu.int/cms3_fo/showpage.asp?id=391&lang=en.
6 *European Security Strategy – A Secure Europe in a Better World*, Internet, 11/06/2004, http://www.iue.eu.int/cms3_fo/showpage.asp?id=391&lang=en.

Uncontrolled spending of natural resources and endangering the environment reaches serious proportions. It primarily refers to the excessive exploitation of forests, not controlled with available energy potential, arable land and sources of drinking water, air pollution, water flows and soil and uncontrolled disposal. Besides irreplaceable material damages, such actions cause adverse changes in the macro and micro climate and seriously endanger the rights of people living in healthy environment.

The consequences of natural disasters and technical and technological accidents, and endangering the environment and health of citizens for radiological, chemical and biological contamination, permanent security risks for the country, its population and material goods. Significant risk represent technological accidents in which the effects of actions of hazardous materials can tackle not only the territory of the Republic of Macedonia and neighboring countries. Environment further endanger the objects with a high degree of risk in the region, as well as economic facilities with technology that does not meet international environmental standards.

The dangers associated with the emergence and spread of infectious diseases in humans and diseases in animals represent a security risk that may be more pronounced.

Drug addiction, as expressed by a social problem, and the character gets a security problem and affects the growth of the number of serious crimes.

Destructive behavior of certain religious sects and cults of families and society are becoming more pronounced problems and receive character of significant security risk.

The trend of increased use of Information and Communications Technologist sent to constantly increase the risks of high-tech crime and violation of information and telecommunication systems. The risk in this regard there is a threat from the outside, but Potential data for citizens and legal persons.

Climate change globally, particularly global warming negatively reflects changes in ecosystems and leads to disturbances in agricultural production in the area of the Republic of Macedonia, which could have implications on its overall security and economic stability.

There are also other risks and threats to security, with more or less likely to manifest and recognition, such as abuse of new technologies and scientific achievements in the field of information technology, genetic engineering, medicine, meteorology and other sciences. The specificity of these security challenges, risks and hazards is reduced opportunity for their timely detection and preventive action. Challenges, risks and threats to security at the global, regional and national level continuously multiply and change the nature, intensity and forms of manifestation.

Nuclear activities in North Korea, nuclear risks in South Asia, and proliferation in the Middle East is cause for concern in Europe. Terrorists and criminals are now able to act in the world; their activities in Central and Southeast Asia, can be a threat to European countries or their citizens. Meanwhile, global communication strengthen awareness in Europe of regional conflicts or humanitarian tragedies in any part of the world.

The content, scope and likelihood of manifestation of the challenges, risks and threats to the security of the Republic of Macedonia, directly affect the definition of national security policy and the construction of the adequacy of the system of national security.

Schematic representation of threats - 2003 - 2008

Threats	Perception of threats	European Security Strategy (2003)	Report on Implementation (2008)
International terrorism	First on the list of threats in 2003, and the second on the list in 2008	Also the tendency that "Europe represents meta base and terrorist actions"	This tendency is still present, but the perception of threat is established connection with organized crime. Special importance has the strategy for combating terrorism in the EU. In the fight against terrorism, the EU will respect human rights and international law.
Fight against the proliferation of weapons of mass destruction (WMD)	Second on the list in 2003, and first on the list in 2008	Despite global efforts aimed at its reduction, the threat of proliferation was assessed as" potentially the greatest". Warned about the possibility of starting a new " arms race " especially in the Middle East.	The risk of proliferation is increased. Although Libya gave up developing nuclear program, Iran and North Korea", but you need to gain the confidence of the international community". Special, and it seems even greater problem represents the possibility for development of " dirty bombs" (which will contain biological WMD).

Regional conflicts	Third threat list in 2003 and the change is from a report in 2008.	As the two most problematic potential regional conflicts are evaluated conflict in Kashmir and the conflict on the Korean Peninsula.	New threats Cyber - crime (security) Modern economies depend on critical infrastructure - traffic flow of information and energy supply. All of them are vulnerable and become the target of criminal acts committed by the use of the Internet". Strategy for Development of the Information Society" is not enough: it is recognized as a comprehensive approach should be developed within the EU.
Failed states	Fourth threat list in 2003, the change is from a report in 2008.	Defined as "bad management" and includes corruption, abuse of power, the existence of weak institutions and lack of accountability. Recognized in Afghanistan (under the Taliban regime) Somalia and Liberia, and is the source of terrorism and organized crime.	Energy security or energy dependence is treated as the biggest threat to the economic development of the EU". Up to 2030, 75 % of the oil and gas needed for the economy of the EU member states will have to be imported. Energy will come from a limited number of countries, including some security will be endangered ".
Organized crime	Fifth threat list in 2003, change the report in 2008.	Emphasized the external dimension of organized crime or cross-border trafficking in drugs, women, illegal migrants and weapons.	Climate Change It provides prevention of conflicts caused by natural disasters, disruption of the environment and competition for resources. EU calls on other actors of cooperation, particularly the UN and regional organizations.

SECURITY AND DEFENSE SYSTEM OF THE REPUBLIC OF MACEDONIA IN THE GLOBALIZATION

The Republic of Macedonia sees its future integrated into NATO and the EU. Peace and stability are the basis for sustainable development, globalization and integration are imperative to the modern world. In this respect, European integration is the best alternative for the future of the Republic of Macedonia and the Balkans, NATO and the EU is our strategic priority. Macedonia is aware of the impact of global strategic changes[7] and irrationality and lack of efficiency of an isolated system security. Defensive systems to small and insufficiently powerful economic countries becomes even more sensitive to global change. Because Macedonia is even more committed to building a system of mutual values and participation in cooperative activities and forms of collective security systems with the ultimate goal - membership in NATO and the EU.

Macedonia faces no direct conventional threat to its national security, but such threats should not be excluded or be ignored in this regard, the Republic of Macedonia will remain cautious and ready to face the threats to its national security and will continuously monitor global trends and opportunities for development of the necessary defense and security capabilities and capacities.

The defense system of the Republic of Macedonia is completely ready to assume the responsibilities and obligations arising from membership in NATO, including the long-term contribution to regional and Euro-Atlantic security and stability.

In support of national security, the defense system of the Republic of Macedonia is trained to support and fulfill the following strategic missions:

- defense and protection of the territorial integrity and independence of the Republic of Macedonia;
- Participation in the collective defense of NATO;
- contribution to operations in a wide range of missions of the UN, NATO and the EU;
- protect the broader interests of the Republic of Macedonia.

National security objectives of the Republic of Macedonia require effective organization of the national security system and represent a practical basis for inter-institutional coordination and joint actions. The development and maintenance of the national defense system as an instrument of national security policy

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is a continuous obligation of all state institutions. To this end, government continually enhance capacities and capabilities:

– Development and implementation of effective tools and methods for collecting data and information vital to the security, quality expert analysis of the security environment and effective international cooperation;

– Compatibility of national defense capabilities in accordance with NATO and EU standards;

– Running a comprehensive foreign policy on implementation of national interests and objectives in accordance with international legal standards, building and strengthening of multilateral and bilateral relations with international actors;

– Dealing with transnational organized crime in all its forms, terrorism and corruption;

– Participation in international operations to preserve world peace and security led by the UN, NATO and the EU;

– Keeping an active neighborhood policy and participation in promoting regional cooperation.

Democratic change in SEE countries and the support of NATO and the EU,[8] have increased influence in the Euro-Atlantic integration processes. These positive changes create contemporary political and security landscape of the Western Balkans where peace, cooperation, economic and democratic development between countries visibly improve and contribute to the progress of the entire region, as well as the progress of the Republic of Macedonia. The region, which includes our country is still fraught with unresolved issues and faces complex security risks.

Membership in NATO and the EU is a strong motivating factor for comprehensive national security reforms in the country. Macedonia is completely ready to assume the obligations and responsibilities as a member of NATO and starting accession negotiations for EU membership. Seen from the perspective of the Republic of Macedonia, NATO is a key pillar of contemporary Euro-Atlantic security architecture, while the EU is seen as a major driving force for democratic, economic and social development of the whole European continent. When all the countries of this region will be integrated into the Euro-Atlantic family can speak of a united Europe, free and democratic community of states.

– Issues of safety and security challenges especially in the period when Macedonia and upcoming reform process of the security system and become part of Euro-Atlantic integration, (security system integration of Macedonia, NATO integration as an indicator of the degree of acceptance of Euro-Atlantic values and standards);

– Analyze and evaluate the experiences of the strategic partnership with the United States;

– Analyze and evaluate the challenges of a dispute over the name dispute with southern neighbor, the need of re-reading of history, the existence of language, canonical problems with the northern neighbor and host conditions that require thinking and building strategies of action of public authorities;

– The processes of globalization and the challenges of RM;

– The reform and restructuring of the security sector in Macedonia through perspectives of the Atlantic and European integration processes (clearly expressed will and energy of dedicated institutions RM to implement reforms in the spirit of Euro-Atlantic values and standards);

– Security and dealing with crime;

– Participation in peacekeeping missions, dealing with conflict through diplomatic channels;

Europe and security (Europe today faces security threats and challenges). European need to take responsibility for global security and in building a better world (Previous decad, European troops were deployed overseas in remote locations in Afghanistan, East Timor Democratic Republic of Cong. The growing interest of European harmony and the strengthening of mutual solidarity within the European Union, makes a credible and effective actor) .

– postcold war environment is marked by greater openness of borders which are inextricably linked internal and external aspects of security . The development of technology, trade and investment and the spread of democracy have brought freedom and prosperity to many people. These developments open space for non-state groups to play a role in international relations. Furthermore this increase European dependence and thus vulnerability - one interconnected infrastructure in the field of transport, energy, information technology etc.

The progress achieved in the implementation of the Common Foreign and Security Policy and the inclusion of European defense force in resolving security problems suggest everything more significant role in the EU the hramonization relations and interests of the European countries and taking part on shared responsibility in creating European and global security. Countries in the region of Southeast Europe accept

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the promotion of values such as democracy, economic and social stability and security. In accordance with these determinations, they are committed to dialogue, which reduces the possibility of outbreak of conflict and positively affect the security environment. The promotion of regional security to a greater extent based on cooperation and joint and concerted action in the field of security, politics and the economy and other areas aimed at preserving stability and warning of crises in this region. Inherited problems in the past, the historical contradictions and consequences of conflicts between peoples and countries of Southeastern Europe, and particularly in the Balkans in recent history and today affect the security situation in the region. Geostrategic position of Southeast Europe, which pass through the energy and communication routes linking the developed countries in Europe, the Caucasus, the Caspian pool, the Middle East and the Mediterranean, significant and direct impact on the security situation of the countries of the European continent. The clash of interests among states in the use of transit routes and availability of resources can lead to a regional crisis and jeopardizing the security and stability of Southeast Europe. The risks of outbreak of war and other armed conflicts in Southeastern Europe, thoug are reduced but not eliminated. Separatist aspirations in the region are a real threat to its security. Terrorism and the expansion of organized crime, corruption, trafficking in narcotics and weapons, and human trafficking, significantly jeopardize the security situation in Southeast Europe. Inadequate resolution of return escaped expelled and internally displaced persons on the territory of the former Yugoslavia and their unsatisfactory social status, make the security situation in the region even more complex. The security situation in the region is characterized by a pronounced national, religious and political extremism and destruction of cultural heritage, in addition to the existing economic and social problems and insufficiently developed state institutions, complicates the process of rapid and successful democratic transition countries in the region. Relations between the countries in the region are also burdened with the refugees return and restitution of their property and border issues, and specific problems arising from inadequate integration of certain minority communities and groups in the wider social environment. Because this is difficult and the integration of this region into the European and other international security structures, which increases the danger of renewed crises and armed conflicts. In such conditions, continuity of support and international military and security presence with UN mandate in the region can contribute to the stabilization of the situation and to prevent the occurrence of conflicts and their transformation into a clash of broad scale. Due to the complex nature of security in the region, the countries of Southeast Europe are increasingly made it to the joint efforts we suppress negative processes that threaten their security. With the construction of joint mechanisms for prevention of risk and threats and crisis management, are realized assumptions for rapid democratic transition countries in the region, which generate conditions for convergence and connection of all countries of the region to the EU.

CONCLUSION

The traditional concept of self-defense - the Cold War and its end was based on the threat of invasion. With the new threats, the first line of defense will often be abroad.The new threats are dynamic, asymmetric, transnational. The risks of proliferation are rising; left alone, terrorist networks have become more dangerous. It points to the need , we should be ready to act before a crisis happens to tip. Despite massive threats of the Cold War, none of the new threats is purely military nature, and none of the new threats cannot be prevented by purely military means. Each of them requires a combination of funds. Proliferation can be abolished with export control and control of the political, economic and other pressures that form the basis of this problem. For suppression of terrorism is necessary combination of intelligence, police, judicial, military and other means. In countries that failed, it can take military means to establish order, while aid funds are needed to respond to the immediate crisis. Regional conflicts require political solutions but military assets and effective police methods may be needed in the post-conflict phase. Economic resources are used for reconstruction, and civilian crisis management helps to restore civilian rule.

The European Union has the potential to be able to significantly contribute to the anger of the threats, but also to help achieve the possibilities. Active and capable European Union would have an adequate impact globally. This will contribute to an effective multilateral system, which will combine the capacity of member states in NATO with those of the EU institutions. Further EU implemented numerous political, diplomatic, military and civilian, trade and development activities. Also the EU is developing a strategic policy that supports early, fast and need the strong military intervention. Transnational and asymmetric nature of modern challenges, risks and threats to security, affect the fact that security is indivisible, and it was obvious that no country is able to independently solve increasingly complex problems of preserving and strengthening national security. Therefore, security in modern conditions is increasingly perceived globally, while national security is significantly related to the security situation in the near and distant surroundings. The answer to the transnational profiled asymmetric threats, lies in the integration of national security systems, the strengthening of multilateral forums and collective security system of international security, as key factors in ensuring peace, stability and democratic development of countries in the modern

world. In such circumstances, the need to strengthen the cooperative approach to the preservation and promotion of security based on cooperation and pooling of national security capacities of states. T h e threats described in the paper represent common threats on contemporary security, and it an international cooperation is necessary. We must accomplish our goals through multilateral cooperation in international organizations and through partnerships with key actors. Transatlantic relationship is irreplaceable. Acting together, the EU and the US can create an extraordinary force in the service of good in the world. Macedonia contributes to global peace through participation in international peacekeeping missions (participates in ISAF (Afghanistan), Althea (Bosnia and Herzegovina), KFOR (Kosovo) and UNIFIL (Lebanon). There is also an initiative to establish a Regional Center peace, in order to promote best practices for democratic values and peace initiatives for stability and prosperity.

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CENTRE OF EXCELLENCE OF SECURITY RESEARCH – SOME OUTPUTS

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Abstract: Part of the efforts to control terrorism and get more support in dealing with other important security challenges is a project that originated at the Police Academy in Bratislava at the beginning of this decade under the name "Centre of Excellence security research". The project centres focused on research in the field of safety and security of society and were oriented on forensic issues and purposely built for a multidisciplinary work, synergistically acting within the field of research no. 23 - Security services, with a focus on protecting against terrorism, the use of narcotic drugs, psychotropic, and abuse of illegal substances and their precursors, as well as research on biological methods, identification of documents and valuables protection against counterfeiting and development of resources to work on the crime scene. Some results of this project can now be presented as a partial fulfilment of project objectives. A special place is just 3.3 Activity "Research and development of new techniques in the detection of small quantities materials and detection of traces and people." Its specificity is in the cross-cutting targets and focus, its object and subject in a multidisciplinary activities and multi segmented in tasks. Last, but not least, link between criminalistics, police science and criminology, along with testing and application of the results of several activities. This is the content of this study, which is the result of the project implementation: "Centre of Excellence security research" code ITMS: 26240120034 supported by the Research & Development Operational Programme funded by the ERDF).

Keywords: security research, criminalistics and forensic research, research project, research results, illegal substances, biological methods, identification documents, work on the crime scene.

INTRODUCTION

With the increase in the area of availability of information, especially through information networks which have been frequently and intensively controlled, the development and production of new or known dangerous, controlled and prohibited substances and compounds has also extended. This is most concerned in the Internet field. This sector includes a number of interesting species, particularly explosives, narcotics, psychotropic and addictive substances and their precursors. The consequences of this global trend are also reflected in Slovakia. Some analyzes show, that there are in the context of terrorism. The aim of the state and its institutions is a timely response to this situation and the achievement not to allow the security situation to increases the amount of these substances on the black and shadow markets beyond a manageable level, or the effort when following the detection of new trends, analysis and preparation for their control. [3]

In the Slovak Republic, but not only limited to Slovakia, as reflection of such a need various research centres, departments and teams, and especially in the sphere of higher education arose. It turns out that it is absolutely necessary to create a specialized multidisciplinary teams which will primarily investigate, detect and possibly predict the directions of the development of materials and technologies that deliver safety risks at different levels, not only on the territory of the Slovak Republic.

Part of the efforts to control terrorism and get more support in dealing with other important security challenges is a project that originated at the Police Academy in Bratislava (APZ) at the beginning of this decade under the name "Centre of Excellence security research". The project centres focused on research in the field of safety and security of society and were oriented on forensic issues and purposely built for a multidisciplinary work, synergistically acting within the field of research no. 23 - Security services, with a focus on protection population against terrorism, people against use of narcotic drugs, psychotropic, habit

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forming substances and prohibited substances and their precursors [4] and to research on biological methods of identification[5], protect documents and valuables against counterfeiting and development of funds for work on the crime scene [6] [7].

Some results of this project can be already presented as the fulfillment of project objectives. This is the content of this study, which is the result of the project implementation: Centre of Excellence security research code ITMS: 26240120034 supported by the Research & Development Operational Program funded by the ERDF.

CONTENT AND PERSONAL ANALYSIS OF THE PROJECT OF THE CENTRE OF EXCELLENCE SECURITY RESEARCH AND ITS POSSIBILITIES

Project advised by the Academy of Police Forces in Bratislava, which allowed such „Security research center of excellence" – CEBV to be created, was fully funded by the European Structural Funds through the Agency for European Union structural funds and thus saved money that would otherwise be spent on such activities by Ministry of Interior of the Slovak Republic in the total amount of 3 969 854 €.

This project created excellent multidisciplinary scientific research body, which is now equipped with devices that allow a top level identification and analysis of particular chemical composition of unknown substances even in small quantities.

There are teachers, researchers and PhD graduates from Police Force Academy in Bratislava, Pharmaceutical Faculty, Comenius University and partners - Faculty of Chemical and Food Technology, Slovak University of Technology in Bratislava involved in the Centre, focusing mainly on research of unknown chemicals. The Centre is fully involved in partnership with as part of the Ministry of Interior of the Slovak Republic known under name: Institute of Forensic Science Police Force (hereinafter KEU PZ).

This cooperation between organizations has not only the potential of research and development as well as application of the results. It is clear and it is happening already, that after the completion of the project, all positive results will not only be useful for both regional and sub regional levels in daily practice (including eg. Transport, medicine, ICT, and so on.) [8].

At the same time, thanks to the power of initiating this project, efforts are made to continue the cutting-edge research at all four sites in the priority area no. 9 Security, with emphasis on the fight against narcotics and psychotropic substances as well as doping and other banned and abusive substances, detection and identification of energy compounds and their residues [9], detection and identification of compounds used in counterfeiting documents [10], detection of people and things that threaten the security of the Internet and digital communication, identification of persons on the basis of the minimum area of fingerprints [11],

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but also in other areas of detection and proof of criminal activity [12]. The continuation suggests a very close cooperation between the four participating workplaces, for example as creating specialized teams for solving specific safety problems [13] under the defined objectives of the project, which is currently expanding its actual task. The assumption is, of course, not only the dissemination of results, concepts of project [14] and internationalization of subsequent sustainability of projects for at least further than 5 years. Part of dissemination activities is the exploitation of research in the doctoral partner projects, but also by autonomous users - for example, from Serbia, the Czech Republic and other countries.

The current status of KEU PZ in the performance years of the project is to provide (and it already provides) guidance and professional supervision, to deliver unique research materials and validate methodologies in the police and other practice. Universities provide human resources[15], are starting and developing research methods of developing new methodologies [16] in four basic areas of research. From the results of measurements and observations a complementary technical support of this research and other technical databases, etalons, comparison of analysis databases [17] should be efficiently created. The results of the research activity is partially used [18] and the certainly also will be used more in educational activities such as running courses, seminars and workshops, including the International Conference as realized these days. Proven methodology, processes and created databases are already implemented in criminalistics practice[19]. First of all, KEU PZ will introduce in all expert activities specified outputs, thus ensuring the shortest way to transfer of science into practice. Similarly, not only the methodology[20], but also some modern technical equipment is even now distributed through academic teaching at the Academy of PZ in Bratislava and also through dissertations at the academy and the other two cooperating university partners and workplaces.

Research and the theoretical scientific assembly and cooperation between partners' guarantee the necessary scientific and professional level of project results, as well as the sustainability of research and results. Personnel assembly leaders' individual research project tasks and their prior experiences create opportunities for involvement in the project in larger amount of foreign researchers and the workplaces. This is at the same time one of the objectives for sustainability and hence its success.

Omitting already inactive researchers, which of course we thank for their contribution, we present the opportunity for possible involvement in the orientation of the 4 basic research objectives of the responsible senior researchers in the various activities:

Professor RNDr. Ferdinand Devínsky, DrSc. – Comenius University Bratislava - coordination of activities, focusing on the role of 1.1 - target research - Detection, analysis and the determination of minimum quantities of narcotic drugs and the psychotropic substances and the their precursors.

Associate professor PharmDr. Jindra Valentová, PhD. - Comenius University Bratislava - coordination of activities, focusing on task 1.2 - Target Research - Identification of drugs and their use in terms of their chiral characteristics and the stereo specificity metabolism and the effect.

Associate professor Ing. Ladislav Štibrányi, CSc. - Slovak University of Technology in Bratislava - coordination of activities with a focus on task-2.2 Research and development of methods for the detection and analysis of energy substances in connection with possible terrorist attacks and 3.3 Research and development of new techniques in the detection micro materials and detection of traces and people.

12 ZATKALÍKOVÁ, L. – BAZOVSKÝ, R. – TURANSKÁ, M. – ŠEVČÍK, I. – HOJSÍK, D. 2010. Forenzná biológia v praxi. In Forenzná genetika, podobne ZACHOVÁ, M. – ZELENÝ, M. – SCHNELLER, K. – PEXA, T. – KRAUS, I. – HIRT, M. 2010. Identifikace neznámého těla. In Forenzná genetika.

13 SVIEŽENÁ, B. – CHROMA, A. 2010. mRNA profilizácia – nová metóda identifikácie biologického materiálu vo forenznej stope. In IV. medzinárodní konference věnovaná kriminalistice a dalším forenzním vědám. Praha: Policajní akadémie ČR v Praze, 2010.

14 HIKKELOVÁ, M. – KUHN, M. – GABRIEL, H. – HIKKEL, I. – GENCIK, M. 2010. Analysis of the SCN1A gene for idiopathic epilepsy. In Varia – moderovaná diskusia pri plagátoch, podobne HIKKEL, I. – LOTT, A. – HIKKELOVÁ, M. – ČMELOVÁ, E. – GENČÍK, M. 2010. De Novo Paracentric Inversion Combined with Interstitial Deletions on Chromosom es 4Q and 14Q Revealed by Oligo-Array CGH in a Patient with Autism. In Varia – moderovaná diskusia pri plagátoch.

15 MARÁK, P. 2012. Automatizované spracovanie charakteristických vlastností odtlačkov prstov. Diplomová práca. Bratislava: Slovenská technická univerzita, 2012,

16 SVIEŽENÁ, B. – CHROMA, A. Skryté aspekty analýzy DNA – hranice našich možností. 2010 In Forenzná genetika.

17 CHROMA, A. – SVIEŽENÁ, B. – LOHAJ, R. 2011. Allele frequencies and population data for the new European standard set (ESS) loci and SE33 locus in the opulation of Slovak Republic. In 10th International symposium on forensic sciences – programe. Bratislava, 2011, podobne CHROMA, A. – SVIEŽENÁ, B. – HRÍBIKOVÁ, K. – ZATKALÍKOVÁ, L. – TURANSKÁ, M. 2011. Body fluid identification based on tissue-specific mRNA expression. In 10th International symposium on forensic sciences – programe. Bratislava, 2011.

18 JURKOVIČOVÁ, M. – MATTOŠOVÁ, S. – LUKÁČOVÁ, L. – PETROVIČ, R. – CHANDOGA, J. 2010. Geneticky podmienené poruchy metabolizmu bilirubínu. In 14. celostátní konference DNA diagnostiky. Brno: MEDIREX GROUP ACADEMY, 2010.

19 DOBOŠ, J. 2011. Can a trasological stain (earmark) be suitable for a DNA analysis as well? In 10th International symposium on forensic sciences – programe. Bratislava, 2011, LEHOCKÝ, I. – KRUPSKÝ, M. 2011. From the establishment of DNA database in Slovakia tothe implementation of the Prüminformation exchange. In 10th International symposium on forensic sciences – programe. Bratislava, 2011.

20 SVIEŽENÁ, B. – CHROMA, A. – SOMORČÍK, J. – JELENČIAK, V. 2011. Likelihood of reality – the reality of probability. Story of the corpse of unknown identity with an unclear outcome. In Folia Societatis Medicinae Legalis Slovacae 2/2011. Bratislava: Slovenská súdno-lekárska spoločnosť Slovenskej lekárskej spoločnosti, 2011.

Ing. Peter Šimonič – KEU PZ - coordination of activities and targeted research focusing on the task 2.1 research and development of methods of detection and analysis of energy substances in connection with possible terrorist attacks.

Associate professor JUDr. Jozef Meteňko, PhD. – A PZ - coordination of activities, focusing on the task 3.1 -Development and research on microscopic examination of fingerprint traces and task 3.3 - targeted research and development of new techniques in the detection micro materials and detection of traces and individuals, focusing on scents, digital traces and investigation of human voice, including criminology and other social effects in the study areas.

RNDr. Barbara Sviežená, PhD. - KEU PZ - coordination of activities, focuses on task 3.2 - Target research for identifying biological material of human origin.

Associate professor JUDr. Ján Hejda, PhD. –represented by A PZ - the only one of foreign researcher with the task of managing project and coordination of activities, focusing on task 3.3 - targeted research - scents, digital traces and exploring the human voice, including criminology and other social effects in the study areas. [21]

Mgr. Adriana Jabconová - KEU PZ - target research focusing on the task 4.1 Research and development in the field of microanalysis of materials and protective elements used for documents, valuables and papers of the Slovak Republic.

For project management is responsible JUDr. Iveta Cvopová staff Science Department Police Academy in Bratislava - the applicant's project.

Of course staffing matrix project is much wider and in the project is, or has been involved more than 65 researchers, scientists and engineers, 10 support staff and professional staff, including management and economics of the project. Direct research support and the project implementation or implementation knowledge is in addition of more than 20 other researchers.

TEMPORAL ANALYSIS AND CURRENT STATUS OF PROJECT TASKS OF THE CENTRE OF EXCELLENCE SECURITY RESEARCH AND ITS POSSIBILITIES

The project started in September 2010. Its duration has been prolonged with the consent of the agency into February 2015, that is to say almost five years and its subsequent evaluation and dissemination of results will take at least another five years after its completion.

The current status of the evaluation of the objectives and the project was carried out during the conclusion and the project, pointing to the different specific objectives intermediate results which justify its prior expectation that the project will be completed successfully and its potential is transferred to a follow-up researches and development activities.

In the last audit in September 2014 it was stated that:

Aim of the project - A unique multidisciplinary centers focused on research at area 23 - Security services which benefit mainly to protect the people and the fight against terrorism has been fulfilled. Measurable outcome indicators are filled in accordance with the implementation of the project and the project itself is now successfully finalized. The specific targets are presented in the ongoing project activities, and by entering the layout of the project.

Specific objective No.1

Activity 1.1.

Methods have been developed for trace analysis of new abuse of narcotic drugs and psychotropic substances, in particular from the group of stimulants, cathinones and synthetic cannabinoids. Methods have been validated and applied to the analysis of the forensic samples. At the same time there are compiled databases of mass spectra of new designer drugs.[22]

21 METEŇKO, M. 2012. Prieniky do IS. In Internet, Competiteveness and Organizational Security. Zlín: Univerzita Tomáše Bati, 2012, METEŇKO, J. – BACIGÁL, I. – BENEDEKOVÁ, D. 2012. Zneužitie umelej inteligencie z pohľadu kriminalistického a trestno-právneho. In Internet, Competiteveness and Organizational Security. Zlín: Univerzita Tomáše Bati, 2012.

22 DEVÍNSKY, F. – VALENTOVÁ, J. – FUKNOVÁ, M. – SVIEŽENÁ, B. – JANKOVIČOVÁ, K. 2012. Centrum excelentnosti bezpečnostného výskumu: Designérske Drogy. In EXPERT elektronický magazín KEÚ PZ. Bratislava: MAGAZINE EDITORS, 2012, VALENTOVÁ, J. – DEVÍNSKY, F. – KRAJNÍK, V. 2012. Syntetické kanabinoidy ako dizajnérske drogy. In EXPERT elektronický magazín KEÚ PZ. Bratislava: MAGAZINE EDITORS, 2012.

Activity 1.2

Advanced analysis was introduced to determine the enantiomers of chiral addictive compounds [23] and to determine the enantiomeric composition of substances of drugs and their metabolites in biological materials.

Objectives of the activity 1.1 and 1.2. are fulfilled as planned. The delay from the original timetable was presented in some cases due to slowness of public procurement of materials and equipment.

Within the managed activities the Treaty on joint research projects presented in the „field of research synthetic psychoactive compounds" with the Faculty of Pharmacy Veterinary and Pharmaceutical Sciences university in Brno.

Specific objective No.3

Activity 4.1.

The project objectives have been fulfilled in accordance with the schedule. After identification, classification and categorization of documents, they were subjected to a detailed analysis of the materials and printing techniques applied protective elements in a comprehensive sense constitute to a technical document protection. Research performance was performed on two types of security paper, with higher and lower levels of protection. The results obtained are valuable basis for determining a direction of trends in security paper in Slovak republic. [24]

Specific objective No.4

Activity 2.1.

Under activity 2.1 we have labeled the examination of special ammunition firing under various conditions and identified different incidence of marker element of GSR converter depending on its location in the hub. That gives a closer look at the production and dissemination of GSR converter and can also help in choosing the appropriate ammunition for the armed forces. [25] It also has acknowledged the benefits of ammunition, such as its unique identification at the crime scene and the easier answering questions of the type: who shot whom, with which weapon, from what distance and direction and with what ammunition. That can also facilitate clarification of ammunition escape from the police. [26]

Activity 2.2

Within the activity 2.2 a specialized facility was built for instrumentation of technicians for fireworks and other dangerous substances. We have analysed samples of explosives on instruments in order to develop the design methodology of samples of industrial and domestic explosives analysis micro impurities. Develop the special preconcentration technique for the analysis of movement flavouring spirits, which should allow for the analysis of trace composition identity of the manufacturer's spirits and made the unique device for testing thermal stability of domestic explosives, in particular triperoxiacetone. It prepares the equipment for the concentration of scents with a potential range of instrumentation for the evaluation and identification of the originator. A special device was created, enabling the laboratory testing of selected materials and energy analysis of detonation fumes. The partial results of the project were presented at the second World Conference in Singapore - November 2014. Estimated objectives are being met and continuous research was extended to trace the analysis of spirits, which could be used in the control of these products by customs officers. By the end of the project, we plan to develop the technique to be used as preparative liquid chromatography on a pre-cleaning and for concentration of samples analysed for trace elements.

Specific objective No.2

Activity 3.1., 3.2., 3.3.

In the context of research on microscopic examination of fingerprint traces [27] (Activity 3.1), the frequency and occurrence of different types of second-level details of papillary terrain fingerprints and palm [28] were

23 VALENTOVÁ, J. – DEVÍNSKY, F. 2012. Zneužívané liečivá a psychoaktívne látky z pohľadu chirality. In Farmaceutický zborník 5-6/2012. Bratislava: Slovenská zdravotnícka univerzita, 2012.

24 POVRAZNÍKOVÁ, J.- GALLIK, J. – MAJOVÁ, V. – KIRSCHNEROVÁ, S. – VIZÁROVÁ, K. 2013. Využitie FT-IR spektrálnej analýzy grafických kancelárskych papierov pre účely kriminalistického skúmania dokumentov. In *XVII. Medzinárodní konference Papír a celulóza 2013.* Tribun, 2013. ISBN 978-80-263-0397-8, BELÁNYOVÁ, E. – REHÁKOVÁ, M. – ČEPPAN, M. – JABCONOVÁ, A. 2013. The study of modern eriting means on documents with spectroscopic methods. In *XIth Symposium on Graphic Arts.* Pardubice: University of Pardubice.

25 POLOVKOVÁ, J. – SZEGÉNYI, I. – ŠIMONIČ, M. 2014. Náboje kalibru 9 mm Luger určené pre ozbrojené zložky a ich kriminalistická identifikácia. In *Policajná teória a prax.* ISSN 1335-1370, 2014, roč. 22, č.2, s. 164-173.

26 PALOVOVKOVÁ, J. – ŠIMONIČ, M. – SZEGÉNYI, I. 2014. A study of gunshot residues from sintox ammunition with marking substances, IALFS, 2014 *Forensic Midlle East Congress, Dubaj.*

27 NÉMETHOVÁ, Z. – ŠPANKOVÁ, M. – DEŠČÍKOVÁ, Z. – METEŇKO, J. – MASNICOVÁ, S. – BEŇUŠ, R. – KRAMÁROVÁ, D. – HAMBALÍK, A. – MARÁK, P. 2012. Vývoj a výskum v oblasti mikroskopického skúmania daktyloskopických stôp. In Kriminalistika v praktických príkladoch. Zborník z VIII. odborného seminára. Bratislava: KEÚ PZ, 2012.

28 KRAMÁROVÁ, D. BEŇUŠ, R. MASNICOVÁ, S. – NÉMETHOVÁ, Z. – ŠPANKOVÁ, M. 2012. Dermatoglyfické minúcie slovenskej populácie pre kriminalistickú prax. In *Slovenská antropológia (bulletin Slovenskej antropologickej spoločnosti pri SAV).* ISSN 1336-5827, 2012, roč. 15, č. 12, s. 30-36.

examined and the presence of triple-class details within the papillary field with the intention of drawing up a methodology for their use in the qualitative examination of fingerprint traces to uniquely identify a person was explored. The research was conducted on the known part of the population and partial results were validated by statistical methods, frequently published and also included in the two theses (Kramárová, 2012; Marák, 2012). A data collection of palms on a broad sample of the population was examined.

As part of research aimed at identifying biological material of human origin (Activity 3.2), we have focused on several areas. First of all, to verify the reproducibility profilaration mRNA fresh traces secured at the crime scene using singleplex PCR and RNA quantitation. The second part was to create a set of specific miRNAs for profilaretion miRNA, miRNA profilaration optimization using quantitative real-time PCR and proposed a panel of miRNAs in fresh and mixed samples. There was also an analysis and accurate interpretation of mixed traces within criminalistic biology for multiple use and subsequent implementation of new-generation sequencing technology, which has demonstrated the ability to identify minor alleles represented in the total sample in less than 0.1%.

All outlined, the milestones have been developed and the results reflected not only into the relevant publications, but also into creation of three of theses (Hríbiková, 2012; Jurčišinová, 2013; Žižkovičová, 2014) [29] and the three bachelor theses. Working group has managed to establish a cooperation with several research centers (Comenius University - Department of Genetics, Department of Molecular Biology, Institute of Biomedical Studies, company GENETON etc.). These results will be gradually introduced into forensic practice. [30]

In research and development of new techniques in the detection of micro materials and detection of traces and people (Activity 3.3), the possibility of introducing digital trace detection system, based on the distribution of their properties [31] has been studied, as well as the possibility of detecting a minimum quantity characteristics to enable detection of people using digital traces [32]. The possibility of detection micro amounts of residues odor olfactory people were also examined. After starting the operation, the work place at Slovak Technical University was subsequently realized as instrumental part of a comparation examination odorological traces olfaktronical. The research was conducted on the known part of the population and results were validated by statistical methods.

Given the primary responsibility of the author and co-authors will pay little attention to just 3.3 activity. Objective of the following terms: Research, development and education on the impact of new knowledge about modern techniques for identification and detection of traces and persons with emphasis on the impact on discipline: Criminalistic, Criminology, Security science of Protection of persons and property and Crisis management, Civil protection. The development of new detection agent, and techniques were based on chemical and spectroscopic aspects of interaction traces. It is a contribution to increasing the safety of the Slovakia in Euro region.

The planned budget activity was very low: € 26,912.

Detailed description of activities demonstrates what we pay in particular: Study of changes in the criminal environment as a result of the impact of current knowledge of new techniques in the identification and detection of traces and those applied by law enforcement agencies. Prediction of possible retaliation (new) Criminal action scenes in response to used new knowledge (Criminalistics methods) applied in the field of new techniques in the identification and detection of traces and people. The application of chemical knowledge and spectroscopic identification techniques in the reactions of trace amounts of contaminants left on the scene.

At the end of the project, in the process of evaluation we state the following results Activities:

Research activity focused on changes in the criminal environment due to the effects of current knowledge on the identification and detection of traces and people. The examination focused on the area of digital traces and scents, as no examination of specific sectors in other activities and new drugs which were examined in the activities of 1.1 and 1.2. The results were published in the studies referred to in this analysis. Based on these studies were conducted in the surveyed industries predictive estimates based mainly on the methods of historical analysis and analysis of available documents in the case of police work as well as qual-

29 KRAMÁROVÁ, D. 2012. Analýza dermatoglyfických minúcií slovenskej populácie pre forenzné účely. Diplomová práca. Bratislava: Univerzita Komenského, 2012, HRÍBIKOVÁ, K. 2012. Identifikácia druhu biologického materiálu v stope z miesta činu analýzou RNA. Diplomová práca. Bratislava: Univerzita Komenského, 2012.

30 SVIEŽENÁ, B. – CHOMA, A. – ŽIŽKOVIČOVÁ, P. 2014. SNP typing metodológie vo forenznej genetike – pre a proti. In *Policajná teória a prax.* ISSN 1335-1370, 2014, roč. 22., č. 1, s. 106 – 122.

31 METEŇKO, J. – METEŇKO, M. – HEJDA, J. 2013. Digital Trace criminalistics. In *dani arčibalda rajsa, Archibald reiss day. Belgrade: Academy of criminalistic and police studies,* 2013. ISBN 978-86-7020-190-3, s. 359-371.

METEŇKO, M. 2013. Police information systems in criminalistic. In *dani arčibalda rajsa, Archibald reiss day. Belgrade: Academy of criminalistic and police studies, 2013.* ISBN 978-86-7020-190-3, s. 433 – 438.

32 MARCINOV, M. 2013. Vyhľadávanie grafických súborov nie je jednoduchá záležitosť (Searching for graphic files is not esay). In *Kriminalistika v praktických príkladoch.* Bratislava: Kriminalisticko-experzízny ústav PZ, 2013.

ifications and professional work undertaken by students of the Academy PZ. The results were presented in the studies:

- *METEŇKO, J. - METEŇKOVÁ, M. - SCHMIDT, R. 2011. Investigation activities at the scene. In Criminology practical examples. Proceedings of the VII. the workshop. Bratislava: Keu PZ 2011*
- *METEŇKO, J. - HEJDA, J. 2012. Securing the crime scene investigation and Slovakia. In Criminology practical examples. Proceedings of the VIII. the workshop. Bratislava: Keu PZ, 2012*
- *METEŇKO, J. - HEJDA, J., 2012. New and Old Drugs - Threats for Europe, In: Panorama of global security environment 2012 / M. Majer, J. Ondrejcsák, V. Tarasovič. - Bratislava Centre for European and North Atlantic Affairs, 2012. - ISBN 978-80-971124-1-7. - S. 617-630.*
- *METEŇKO, J. - HEJDA, J. 2013 New drugs - threats for Europe, In .: International Conference „ARCHIBALD REISS DAYS", Belgrade, 1-2 March 2013 THEMATIC CONFERENCE PROCEEDINGSOF INTERNATIONAL SIGNIFICANCE, VOLUME II, ACADEMY OF AND CRIMINALISTIC Policy Studies, Belgrade, 2013, 2013 Academy of Criminalistic and Police Studies, Belgrade, ISBN 978-86-7020-190-3. ISBN 978-86-7020-260-3 S. 197-206. .....*

Development of the activity was focused on methods of investigation and verification of digital traces, options for control particularly the transmission and distribution phases of new drugs:

- *METEŇKO, M. 2012. Intersections in IS. In Internet Competiteveness and Organizational Security. Zlin: Tomas Bata University, 2012*
- *METEŇKO, J. - Bacigál, I. - Benedeková, D. 2012. Abuse of artificial intelligence in terms of forensic and criminal law. In Internet Competiteveness and Organizational Security. Zlin: Tomas Bata University, 2012*
- *METEŇKO, J. - METEŇKO, M. - HEJDA, J. 2013. Digital Trace criminalistics. In Rajsa tax Archibald, Archibald Reiss day. Belgrade Academy of criminalistic and Policy Studies, 2013. ISBN 978-86-7020-190-3, p. 359-371.*
- *METEŇKO, M. 2013. Police Information Systems in criminalistic. In Rajsa tax Archibald, Archibald Reiss* day. Belgrade Academy of Criminalistic and Policy Studies, 2013. ISBN 978-86-7020-190-3, p. 433-438.
- *METEŇKO, M. 2014. Digital traces as subject in criminalistics. ISBN 978-966-2517-16-3, p. 102-113.*
- *MARCIN M. 2013. Searching graphics files is not a simple matter (Searching for graphic files is not easy). In Criminology practical examples. Bratislava: forensic institute experzízny CA, 2013.*

Was implemented the first phase of the development of new detection reagents and techniques based on chemical and spectroscopic aspects of interaction traces focusing on traces by smell. Research verifying the best media interacting scent in small quantities, this was initiated as a support for the continued exploration and development using technical and mechanical support for the acquired activities 2.1 and 2.2. Research conducted primary distribution of suitable and less suitable matters, providing the subsequent investigation.

The specific area for this activity was part about education on the impact of new knowledge about modern techniques for identification and detection of traces and persons with emphasis on the impact on above presented discipline. This objective activity was conducted by educational activities in academic teaching and beyond. Very well organized seminar for doctoral studies in September 2013 in which leading project activities researchers presented lectures was very good and got around just beginning doctoral students from the Academy in research. Research and survey activities were assessed eligibility by semester work mainly from students in 2nd and 3rd year 1st (Bc) and 2nd (Mgr.) degree study, in Students Scientific Activity work (ŠVOČ) in 2012 - 2014. Besides academic teaching especially in functional studies of experts from the Police Force, specialized customs authorities and the military:

- METEŇKO, J. - MASÁROVÁ, M. 2011. Kompetezzentrum for Sicherheitsforschung. In MEPA Fachjournal. Vienna: Druckerei of the Bundesministerium für Inneres 2011

In pursuit of this goal was realized by the objective to further improve safety in the Euro region Slovakia. As the results of the activities themselves and their presentation on domestic events, as well as foreign presentations: MEPA - Central European Police College, Serbia, Ukraine, seminars Crime scene and international conferences.

Prospects for the development and exploitation of results 3.3 research activity we see in the next five years, in addition to training in the upcoming bachelor study program Criminalistics and Criminology, and particularly in three areas:

The results of the present activity will have an impact on the new knowledge from research and development of new techniques in the identification and detection of traces a person in police practice. The basic variant of the use activities result will be primarily the responsibility on the shoulders of the Department

of Criminology and Forensic Sciences in cooperation with experts Forensic Institute as primary and main verifier and main disseminator of this knowledge in police practice. Have ready projects available in Bank projects: "Methods and techniques geographic information systems (GIS) for police activities - research, development, testing." And "Examination methods of digital objects into Criminalistic".....

A detailed description and analysis of other results of the project cannot be the content of this study. We have tried to describe the main activities, their sponsors, however in the references and the bibliography you can find interesting research material and also an opportunity to work and develop your own research activities. The authors suggest that all in the study referred and leading researchers are and will be willing to promote the transfer of results and their presentation, whether it comes as invitation or offer from anywhere. Cooperation in downstream research is part of the responsibility of all participating researchers.

We note that, thanks to the possibilities that we have used for over last 4 years of performances at major international criminalistics events - Reiss Days in Belgrade, we were successful in fulfilling the indicators for the evaluation of the project. Our presentation related to the examination of digital traces, new drugs, or oriented to examination of work problems at the crime scene were the result of this project. Thanks to Scientific and Organizing Committee and Leadership Academy in Belgrade, for the opportunity and support you provided. We hope that cooperation will shift to a higher level also in the area of continuation of research projects.

DISCUSSION

The project was already in phase of its planning highly efficient with low personnel costs of 4.5% and a very high proportion of the distribution of new technologies into security research in Slovakia - at over 75%. It is now more than 95% of the instrument and technical basis available, despite the significant problems in the Slovak type of procurement. The main problem was mainly at the procurement of instrumentation equipment, which in our experience is excessive in its complexity, which is unprecedented in European proportions. This proved to be one of the biggest challenges of the objectives of the project. Although the project has already spent more than 85% of expected eligible costs it has already met the eligibility criteria. These results are still being under inspection by rechecking already 2 times controlled procurements to lower those costs even further. Any reasonable researcher in this case can see, that for the current research in Slovakia it is not essential what the methods and results, equipment or technology is, but it is rather oriented to the procurement process and the rechecking "until an error has been found, or rather two." Probably no researcher can thus support research in an acceptable way.

Departments and teams of the project of Excellence currently represent relatively compact unit sets of researchers that are able to implement relatively independent research and development activities with a view to at least another five years at projects defined areas of security activities. The actual outputs realized to date in the form of articles and studies, speeches at conferences, preparation and implementation of research activities of PhD students, whose number has exceeded 50, and the number of other researchers who already use the benefits of the project, demonstrates the successful progress towards a successful finalization. Nevertheless, all researchers will welcome each cooperation activity and initiative for cooperation at the presented research subject. Research teams allow qualified candidates to work on independent research itself and also the distribution of the knowledge base for application in security activities of European Union. In case, you would like find a suitable contact, please don't hesitate to contact directly researchers responsible for individual field of research. The project with its parameters and outputs significantly helped in the current accreditation process of the Police Force Academy at Bratislava, in meeting the expected parameters. We hope it will also contribute significantly to the successful accreditation of the applicant of the project. We assume that on the basis of existing results that these results will be useful for also other partners in their activities and assessments, at least at the accreditation of KEU PZ and partner universities.

The authors in this study, as members of the project research team of the Centre of Excellence of security research, realised temporal and personnel analysis of the project Centre of Excellence of security research and identify the sustainability according the current state of implementation of the objectives and tasks of the project Centre of Excellence of security research. They concentrated on the potential and possibilities to cooperate in the research itself and in the distribution of the knowledge base for application in security activities other states of the European Union. Project offered cooperation for the interests of individual researcher's possible involvement for Slovak and foreign researchers. The study is the result of the project implementation: Centrum excelentnosti bezpečnostného výskumu, kód ITMS: 26240120034 supported by the Research & Development Operational Programme funded by the ERDF).

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CONTEMPORARY VIEWS ON NEW FORMS OF TERRORISM IN THE XXI CENTURY CASE OF WHITE WIDOWS

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Abstract: In this paper, the authors examine the topic of suicide terrorists as the most radical form of terrorism. On the example of suicide bombers, the reasons for resorting to terrorism were explained, as well as the most optimal ways of eliminating or at least reducing this threat. The analyses often state that the main motives of suicide bombers are rewards in heaven or economic benefit or family's persuasion, but we believe that this explanation is too simplistic. We will prove that the main motive is the lack of sense of purpose in life, dehumanization of man, human activities, and different cultures. Special attention is paid to explanation of the motives of "white widows".

Keywords: terrorism, social and economic motives, "white widows".

INTRODUCTION

Although jihad is seen as a holy war, its meaning is much broader and includes "primarily devoted nationwide religious engagement in terms of affirmation and spread of Mohammedanism, which, however, includes the violence, but also is not reducible only to violence".[2] Should we be led only by a narrower understanding and reduce Islamic terrorism only to a holy war against the unbelievers, many questions would remain unanswered, because Islamic extremists as their enemies see not only the external enemies, but also unbelievers in their ranks.[3]

After years of U.S. involvement in the war in Iraq, women are now playing a significant role in terrorist attacks carried out by the insurgents. Iraq has a population of over 13 million women from which terrorist organizations can recruit. Over the past two years the insurgent force has increasingly turned to this pool to maintain strength. For example, in 2007 there were eight instances of a female suicide bombing in Iraq. As of August 2008, 27 female suicide bombers gave their lives in support of the insurgency.[4] Between 1985 and 2006, over 220 female suicide attacks occurred which constitutes roughly 15% of the total suicide attacks worldwide.[5]

TERRORISM IN THE MIDDLE EAST

Nowadays, the most famous Arab terrorist organizations operating in the name of Islam are Hezbollah and Hamas. Given that there are many similarities between the two mentioned organizations, by comparative analysis, both of them will be examined in this paper. Hezbollah translates into *Party of God*, and was founded in 1982, while today it has several thousand members. As the main objective, they state the struggle for the establishment of a Shiite government of caliphate in Lebanese *Umma*, that is, expulsion of Israelis from southern Lebanon. Their main enemy is Israel, but the list also includes all those who support Israel. Hezbollah was founded as a pro-Iranian paramilitary formation, and during Khomeini's it enjoyed huge financial support, which even today, although significantly reduced, is very important. Although they use different ways of struggle, suicide attacks are most prevalent.[6]

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1 mina.zirojevic@gmail.com
2 Simeunović Dragan, *Terorizam – opšti deo,* Pravnifakultet u Beogradu, 2009, p. 198.
3 Mina Zirojević, *Terorizam – međunarodni pogled,* Institutu za međunarodnu politiku i privredu, Beograd 2014.
4 Steve Niva, "Behind the Surge in Iraqi Women Suicide Bombers," Foreign Policy in Focus, (August 11, 2008), http://www.fpif.org/fpiftxt/5455 (accessed August 14, 2008).
5 Mia Bloom, Women as Victims and Victimizers, (April 11, 2008),http://www.america.gov/st/peacesec-english/2008/April/20080522172353SrenoD0.6383936.html (accessed April 13, 2009).
6 For more information please consult Zirojević, Mina, Djukanović Dragan, "The Challenges Of Terrorism in XXI Century", *International Scientific Conference Macedonia And The Balkans, A Hundred Years After The World War I – Security And Euroatlantic Integrations*, Vol. I, University "St. Kliment Ohridski"- Bitola, Faculty of Security- Skopje, 2014, pp. 157-168.

When it comes to Hamas,[7] their main objective is to establish a Palestinian state in the Israel territory and regardless of strategic or tactical goals that were being adjusted to changing conditions and situations, *violence for violence's sake* has always been their motto. Hamas was founded twenty-five years ago with the aim of liberation of Palestine, which in the opinion of its founders, has been missing due to the lack of aggressiveness of the PLO.[8] As is the case with Hezbollah, Hamas is also a great supporter of suicide attacks, and according to official data of the Israeli government, almost four fifths of all terrorist attacks in the past two decades directed against Israelis, were Hamas's and Hezbollah's acts. As is the case with Hezbollah, Hamas also receives great financial support from abroad.

Members of Hezbollah can only be those *who are completely possessed by passion for dying –istishad,*[9] and one can leave the group only by dying. There are shahids– martyrs for the faith who deserved heaven, while on the other hand, we have the death of traitors who by their actions lose the right to God's path and heaven. Members of Hezbollah differ apostates from the faith who in their opinion are not true believers, but sinners, and they can also be found among Muslims who do not allow them the achievement of set goals nor provide them with support. These are the so-called *mustakberins*, i.e. oppressors, and attacks are also directed against them. They see themselves as oppressed, or *mustazafin*, people who are of the right faith. On the other hand, members of Hamas see murder of brother Muslims as a serious offense, even if they do not support them, hence their struggle is directed solely against external enemies. With intention to become the legitimate government, Hamas also works a lot on social activities, builds roads, hospitals, schools, and tends to become a liberation movement, which is not impossible given that since 2007 it has had its representatives in the Assembly, and also enjoys great support from the people. However, an insurmountable obstacle is the fact that they see Palestine as "inalienable Islamic territory".[10]

FEMALE TERRORISM IN THE MIDDLE EAST

When speaking of women's participation in terrorist activities in the territory of Palestine, those are mainly suicide bombings committed by women. And it all began with the attack by Wafa Idris, a 28-year-old woman who strapped with explosives blew up herself in a busy street in the centre of Jerusalem, while killing one person and wounding about a hundred passersby. Wafa entered the annals as the first Palestinian woman who carried out the suicide bombing, and her name and the attack are celebrated as an act of heroism, while many girls want to be like her, believing that by sacrificing their lives they can pay respect and show love for the country. After her death, the streets of Jerusalem were plastered with posters of her, and after the funeral,[11] several thousands of people passed by her house to pay respect and honour. Perhaps modelled after WafaIdris, but we cannot claim that with certainty, the image of a woman who decides to join a suicide mission was created in the public. In fact, Wafa Idris, at the moment of the attack, was divorced, and doctors told her she would not be able to have children. Indeed, it was the reason for the collapse of her nine-year marriage, as well as the fact that she had already lost one child in her seventh month of pregnancy. When she divorced, she was 24, and her ex-husband got married after only two weeks, which was the reason of Wafa's depression. Since she lost her father earlier, and brothers who were now responsible for her have already had their families, she was also financially dependent. So, she was with no income, and without the chance to continue her life and re-marry, because she was considered *damaged* as she was already married once and could not have a baby, according to some hard-line Islamic beliefs she represented a burden, obligation and shame for her family.[12] These are exactly the most common reasons given on why Muslim women choose to become a terrorist. Therefore, when describing the reasons for women's participation in terrorism, private, family-related problems and reasons, unhappy, unrequited and forbidden love, the inability to become a mother, whether they are victims of rape or assault, are always first observed, while in the case of men, the political and economic aspects are emphasized. In the media, there are clearly defined stereotypical profiles of women who are connected to terrorist actions: technically untrained women suicide bombers; avengers; unfulfilled mother (either because they are not married or cannot have children); victims of manipulation and brainwashing; and beauties that have personal problems.[13]

7 The very name HAMAS, as an acronym, in Arabic means zeal to the point of fanaticism.
8 PLO or the Palestinian Liberation Organization is a political party founded in 1964 operating in the territory of Israel, where it takes part in political life and is trying to win the independence of Palestine. PLO is the only organization recognized by the UN and over one hundred countries around the world as the sole legitimate representative of the Palestinian people.
9 Op. cit. Simeunović D, p. 198.
10 Ibidem p. 200.
11 Wasfiyeh Idris, the mother of Idris Wafa, could not properly bury her daughter, as she did not have her body, so she only held a ceremony, which was attended by a large number of people.
12 Apart from these, there are also data that as a Red Cross worker she was shot twice by rubber bullets while helping the wounded Palestinians, which may have had an impact on her decision to commit a terrorist act.
13 Sternadori Miglena Mantcheva, Sexy, Tough or Inept?Depictions of Women Terrorists in the News, 22 November 2007, http://www.redorbit.com/news/health/1154128/sexy_tough_or_inept_depictions_of_women_terrorists_in_the/, 03 March 2013.

However, besides the personal reasons, a wider range of reasons of why women are joining terrorism is lately more observed, because, as numerous studies have shown, the reasons why an individual, man or woman, approaches a terrorist organization, are more or less identical. Therefore, suicide bombings carried out by women are all the more seen as an attempt of their emancipation, struggle for equality and a way of resistance, not only to oppression and occupation by foreign invaders, but the constraints of local customs and society's shackles. The truth is, this is considered as a desperate move, when all other forms of struggle fail. However, the question is whether this is the right way and whether it leads to emancipation and equality of women. In fact, as a compensation for the loss of their daughter in a suicide mission, a family receives $ 200 monthly, whereas if a male member died, this amount is twice as large, which certainly leads to the conclusion that men's and women's lives, even after death, are not equal![14]

The assumption that participation in terrorism leads to the emancipation of women and the improvement of their position can be also considered wrong, because regardless of their demonstrated dedication, which generally mostly women admire, this kind of action causes discomfort in men, while the public condemns such participation, because although they proved themselves as *good* citizens, they have failed in performing their main role, the role of mother. Regardless of whether they made their children orphans by carrying out their action, or are not able to become a mother, it is believed that their primary role is to keep the home and family together; therefore, regardless of the importance and contribution they have made in their political struggle, they once again become the object of conviction of that same society that forced them into such actions. When speaking of a patriarchal, conservative and closed society, in which the only way to escape from the harsh reality of the embarrassment and violation of family honour is seen in violent activities, we must note that there is one dominant way of thinking – the common good goes always before individual. This is even more evident when it comes to women living in Muslim countries, to whom family's wellbeing, sacrifice and blind subservience come first, where they have to be obedient in relation to the family, husband, brothers and even their male children. Since any form of relationship with males who are not part of the family is strictly prohibited to them, and may be the reason for their exclusion from society, many of them remain without the support of family members, first of all fathers and brothers, if they join terrorist organizations. To join a terrorist organization, they leave their homes and supervision of male family members; training is usually carried out by men, and for the family's honour to see a girl in the company of a man who is not her relative is a great shame, so many of them, even if they might want to give up their original terrorist plans, remain without choice, because they don't have the possibility of returning home, and often the very fact that they sacrificed for the greater cause is not enough to restore the family's reputation. This is an addition reason of why they become easy targets, since they are very sensitive and susceptible to manipulation. In addition, they often become victims of sexual violence, and since they have no one to turn to for help, these crimes remain unreported. In addition, in terms of equality with men, insoluble task is set before them to "fight against the occupying forces, while they are simultaneously required to accept and obey the patriarchal environment".[15] Therefore, it can rightfully be said that women in these environments suffer a double oppression, political and gender, which they are trying to overcome by their involvement in terrorist activities, which leads to a new failure, because the roles of a good woman and a terrorist cannot be achieved simultaneously.

The advantages of women's participation in terrorist activities are numerous, from the fact that it is easier for them to hide explosives, that they have easier access to targets and specific institutions due to weaker security measures, all the way to the greater media attention that these actions receive; however, they were not easily accepted. Female suicide bombers were embraced first by secular organization, and only later by religious. The former Hamas leader Ahmed Yassin strongly opposed the participation of women in terrorist activities, saying that there is no need for women's activism because there are already too many men willing to participate in jihad, while after two years he supported Reem Riyashi in the first suicide attack performed by woman sponsored by Hamas. This mother of two was only 22 when she had an affair with a member of Hamas, and she carried out the attack after their affair was discovered and, according to some claims, at his urging. She carried out the bomb attack on the Erez border crossing, in which four Israeli soldiers were killed. However, it is important to note that it is considered that the first Muslim woman involved in the terrorist attacks was Leila Khaled who participated in the aircraft hijackings in the 1970s. On 29 August 1969, Leila Khaled participated in the first hijacking of an aircraft that was en route from Rome to Athens, but she was defending herself by saying that she told the pilot to take the turn to see her hometown Damascus, which she was unable to visit. After several months, she participated in a new attempt of hijacking, after which she was arrested, and although armed with bombs, she stated that her task was clearly limited and that she was not allowed to harm the passengers. After several years spent in prison, she was released in an exchange of hostages, and today she is politically active and is a member of the Palestinian National Council. Although she herself was once involved in terrorist activities, she strongly opposes female

14 Friedman Marilyn, Female terrorists: martyrdom and gender equality, Springer Science + Business Media B.V, 2008, p. 57.
15 Rubenberg, Cheryl, Palestinian Women: Patriarchy and the Resistance in the West Bank, Boulder and London, Lynne Reinner Publishers, 2001, p. 75.

suicide terrorism "because everyone is equal in death – rich, poor, Arab, Jew, Christian, we are all equal. I would rather see women equal to men in life".[16]

What is specific to female suicide terrorism is that it is in most cases directed against an individual, that is, clearly defined target, and that in these attacks women proved to be very efficient. Specifically, one of the five attacks carried out by female suicide bombers was aimed at killing a specific individual, while this is the case with one of the 25 attacks carried out by male suicide bombers.[17] However, it would be incorrect to say that their participation is reduced only to participation in suicide attacks. Besides the role of suicide bombers, women often serve as support and assistance to male fellow fighters, including conducting various researches, observing targets or places of the next attack, because they attract less attention, and do not awake suspicion. Often they are the ones that follow another woman or man who embarked on their suicide mission, to ensure that the attack is actually performed, but also to not arouse suspicion by some of the security bodies. In addition, they are entrusted to find shelter for the other women participating in missions, to smuggle weapons under their clothes, to find information on the Internet, to escort men in recon. One of them was Ahlam Tamimi, known not only for collecting information and planting a bomb under a car near a shop in Jerusalem, shortly after she was recruited to Hamas, but also for escorting Izz al-Deen Masri, who was heading to his suicide mission, when in a bomb attack in front of a pizza restaurant 15 Israelis were killed and over a hundred people were injured. When speaking of the victims of manipulation, we can point out Iman Asha, a 27-year-old who tried to plant a bag with 5 kg of explosives at the main bus station in Tel Aviv, but was revealed. Iman was persuaded to this move by her husband, who was rumoured to have collaborated with the Israelis, and by this act, Iman wanted to restore the family's reputation.

The new threat comes from Al Qaeda, which has long resisted including women in their ranks. As reported by the world media, this terrorist organization, within its ranks, has formed a group consisting only of women. The group is called the Burkha Brigade, where women are trained and taught how to handle weapons, fire from rifles and pistols, handle explosives, how to pass unnoticed, and infiltrate the enemy lines. The previous attacks carried out by members of Al Qaeda were, as is the case with Hamas and Hezbollah, mostly small-scale, and as they shifted the boundaries of terrorist struggle by the 2001 attack, it is feared that the very activity of women within Al Qaeda will bring new dimensions to the phenomenon of "female terrorism".

PERCEPTION OF FUTURE DEVELOPMENT

The last decade has shown that women are increasingly participating in terrorist activities, and that in the future this tendency will grow. In fact, if we look at the beginnings of the "female terrorism", when the violence committed by female terrorists created fear and shocked the public, today it is just another form of terrorist struggle. It would be incorrect to say that attention and astonishment of the public are not high anymore, but they are far from what they used to be the day when a woman for the first time betrayed her *primary* role, and instead to give life, she decided to take it. From the role of assistant, logistics support, women have become the main protagonists of the attacks, and lately not only suicide attacks. They are trained on how to handle weapons, how to fight, and in some terrorist organizations, they also participate in preparation and designing of attacks, selection of targets, and are at the top of the organization. However, despite growing participation in terrorist activities, they still manage to pass security controls unnoticed, without raising suspicion, to reach the highly protected persons and places, and to do what their male colleagues could not. Precisely because of this, as well as the fact that the number of female terrorist is on the rise, that today there is almost no terrorist organization among whose members are no female fighters, we can claim that also in the future activities women will have a very important role. Besides the execution of tasks, the role of female terrorists will definitely also be in encouraging young girls and boys to join their activities, raising their children in the spirit of violence, by providing justification for their actions. However, their role will not end there, and judging by the current situation, in the future female terrorists will be just as skilled and trained as their male fellow fighters are. Although it may seem a premature conclusion, the fact that most terrorist organizations have a large number of female terrorists, that they are no longer *disposable* as *human bombs*, as well as the fact that the range of their responsibilities has expanded and that today they go through military training, indicate that male and female members of a terrorist organization are being equated. The fact that women are given the opportunity to directly participate in struggle can be somewhat considered as the way for the establishment of gender equality, especially if one bears in mind that "society, through its body of rules and its numerous institutions, has conventionally dictated their roles

16 Victor Barbara, Army of roses: Inside the World of Palestinian Women Suicide Bombers, 2003, pp. 63-64.
17 O'Rourke Lindsey, Behind the Women, behind the Bomb, The New York Times, http://www.nytimes.com/2008/08/02/opinion/02orourke.html?pagewanted=all&_r=0 , 03 March 2013.

within the boundaries of militancy. Assisting in subordinate roles is always welcomed and encouraged. Actually fighting in the war is not."[18]

Therefore, it should not be expected that in future women will leave terrorist activities, and it is certainly the reason to think about them as future protagonists, when designing strategies to fight terrorism. However, before we commit to the fight against terrorism, we will look back on their current role and motives for their participation. Today female terrorists are primarily involved in suicidal, bombing attacks, and the difference between men and women participating in a suicide attack is that "women consider combat as a way to escape the predestined life that is expected of them. When women become *human bombs*, their intent is to make a statement not only in the name of a country, a religion, a leader, but also in the name of their gender."[19] This brings us to one of the reasons why women participate in terrorist activities – to show that they are equal to men, that they can perform the same tasks as they do. For some of them, terrorism is the path to emancipation, however, the path filled with violence and victims. Thus the participation of Palestinian women had global reverberations, because "sacrifice for the Palestinian homeland would not be for men alone; on the contrary, all Palestinian women will write the history of the liberation with their blood, and will become time bombs in the face of the Israeli enemy. They will not settle for being mothers of martyrs."[20] With the aim to demonstrate their equality in action, female terrorists are often more willing to participate in dangerous actions, in order to demonstrate their commitment to the goal. However, can we talk about equity and equality if these equity and equality are confirmed by violence? How can terrorism be the path to emancipation, if a woman is worth less while living, than while dying in the name of a terrorist goal? In environments where women fight for equality, it will be difficult for men to give up their role of a man – saviour, holder of family honour, respect and responsibility, since it is a tradition that has lasted for thousands of years. It is possible that the role of women in the struggle will be recognized, that the importance of her role will exceed the belief that there is no place for women in the political, economic, military issues, but everything will very soon fall into oblivion when the *time of war* passes. After all, who would be left to fight for equality and the rights of these women if they all give their lives to prove that they can be just as violent, cruel and merciless as men. The path to the emancipation of these women should be directed against the shackles of their own society, should be in the education, so that they release themselves from the restraints of conservative society, and not to expect to be released by those who have oppressed them for years. Besides, another indication that terrorism can never really lead to the emancipation of women is the fact that women are proving their equality by playing by the rules created by men, trying to fit their standards, instead of setting their own. Even the reasons why they join terrorism are sought in the sphere of personal, revenge or love, psychological and emotional instability, and not only by members of their own society. Researchers and analysts from around the world also want to peek behind the violence committed by women by searching for ulterior motives, because it seems that ideology, religion and the desire for liberation, nationalist affiliation, do not motivate woman like they do men.

How to put an end to terrorism, prevent the spread of this disease of modern society which is expanding rapidly, without leaving behind healthy parts? By entering all pores of society, it is hard to predict the next step, and with new protagonists, new ways and forms of struggle, consequences are unforeseeable. Should this disease be *nipped in the bud* or *ad hoc* solved, is it possible to put an end to terrorism by individual actions, or is unity necessary when addressing the main obstacles to peace in the 21st century? As mentioned above, stopping and fighting terrorism is hampered by the lack of a clear definition that will determine what falls under this concept, what are its manifestations, actors, who supports this type of violence. However, not only the lack of a proper definition is the reason why the solution is slipping away. Terrorism as a secret activity knows how to cover its tracks well, but it is important to note that the previous (not quite successful) way of fighting terrorism sometimes suits certain interests. As a first step in solving this issue, it is necessary to set up a framework of the problem we face. Clear definition of terrorism as secret action and implementation of political violence, which is most commonly carried out by groups, and less frequently by individuals and institutions, which is directed towards the (mostly) randomly selected victims, with a view to discourage and intimidate opponents, violence whose method of fighting is intimidation, and fear its tool, will bring us a step closer to solving this danger. Since this plague has gained momentum, joint and united action by all relevant authorities is necessary. After all, more and more often we hear about *international terrorism*, as terrorism which transcends the boundaries of a state, because participants originate from several countries, their activities are not directed against only one country *in concretum* and go beyond the boundaries of a country in whose territory they operate, hence to stop these kinds of violence, cooperation at the international level is required.

The previous practice has shown that the violence creates even greater violence, and according to past experience, this certainly cannot come out well. In this game, both sides are at loss, the terrorists because

18 Frazier Lucy, "Abandon Weeping for Weapons: Palestinian Women Suicide Bombers", http://www.nyu.edu/classes/keefer/joe/frazier.html, 16 March 2013.
19 Beyler Clara, "Messengers of Death: Female Suicide Bombers", http://www.ict.org.il/Articles/tabid/66/Articlsid/94/currentpage/20/Default.aspx, 16 March 2013.
20 Bloom Mia, Female suicide bombers: a global trend, Daedalus, vol. 136:1 (2007), p. 5.

they are losing personnel, reprisal and intimidation measures are very harsh, while their set goals are not likely to materialize. On the other hand, the international competent authorities also face difficulties in terms of how to provide funds for the fight against terrorism, and victims of terrorist attacks are an indication of their failure to tackle this problem. The way of how to deal with terrorism should maybe be looked for in a less violent and more constructive fighting strategy. It is well known that the terrorism is a way of struggle to which weaker opponents are resorting, aware that their goals cannot be achieved by legal means. For these reasons, it may be reasonable to believe that a successful strategy to combat terrorism would be the one that would promote compromise and work on increasing the chances of legal achievement of some of the terrorists' goals. Of course, there is no question of establishing a legal framework that would allow the *extermination* of a nation at the expense of complying with terrorist goals, however increasing opportunities to achieve individual goals by legal way would reduce the need for radical ways of fighting. As already mentioned, activists join the violent, illegal action when they see that by regular way they cannot achieve their goals, and with the radicalism of their attacks, appetites of their goals are growing. The time needed to organize and prepare a suicide terrorist attack, personnel and necessary equipment, as well as the risk involved with these activities are great, and despite all these, suicide attacks and their impact on the achievement of political goals is limited, so if one takes into account the *costs* that are necessary to carry out a terrorist attack, it becomes clear that there is room for negotiation.

CONCLUSION

In addition to finding a compromise on a regular basis, in order to stand in the way of terrorism, it is necessary to provide the individual with more opportunities, so that terrorist activity would not have to be the only option for achieving their goals. Increasing the opportunities that are before the individual would also facilitate leaving a terrorist organization, and it would certainly contribute to disruption of cohesion within the members themselves. The current strategy of intimidation that has been used in the fight against terrorism has shown that cohesion and unity among the members is growing when they are faced with a common enemy who uses violence to fight against them. In addition, a better chance of starting a new life is more attractive to each individual, hence a tension in the ranks of terrorists is created due to suspicion that anyone can become a traitor. Breaking the organizational and psychological connections between the members may be the only way to put an end to terrorism.

On the way to achieving their goals, it is very important for them to attract attention and public support by making their very deadly attacks look spectacular, and it is therefore necessary to deny publicity to their activities and in that way prevent promotion of terrorists. It is not enough only to condemn such attacks, but the publicity should be reduced to a minimum. Competent authorities should avoid attributing attacks to terrorist organizations, because in that way they place them in the focus. Instead, who is responsible for attack should not be made public, but it should be pointed out that some of the many terrorist organizations may be behind the attack. In this way, the public is not acquainted with the goals of their struggle, and their activities cannot gain sympathy and future followers. One of the ways to confront terrorism is also by thwarting their goal to undermine the political and economic stability of a country, by dividing economic and political centres of power. On the economic plane, solution would be decentralization, so that if one centre is hit by a terrorist attack, the other can compensate for the loss and maintain stability. When it comes to the political scene, the solution might be in delegating and setting up several power functions, as well as the federal environment.

Even though this seems like an utopian solution to put an end to the violence that threatens to leave catastrophic consequences if it comes to the use of nuclear weapons that some terrorist organizations possess, the current strategy of intimidation has not recorded any greater success either. Terrorism continues to exist as an everyday danger lurking and waiting for the right moment to attack. The consequences are to some extent repaired, but the root problem is still elusive, and the symptoms of this disease affect all parts of the world, and no one is spared. World public remembers with horror September 11, when boundaries of terrorist activity were shifted, and given the scale of this problem, it is not impossible that same as today (although only a decade ago it was unthinkable) women participate in these forms of violence, children would be in their place tomorrow.

It is evident that women are increasingly involved in terrorism. Despite this obvious involvement, counterterrorism strategies tend to ignore gender as a relevant factor for now. The war on terror has restricted freedom of action within the security environment for terrorist organizations. Consequently, it has become more advantageous for terrorist organizations to use women to support or execute terrorist activities. In countries where terrorist originates and extremist organizations find safe haven and freedom of movement, the social environment also can play a significant role in leading women towards supporting terrorism. Discriminatory religious and social customs in these same countries leave women as a largely untapped resource in supporting the ideological causes of terrorist organizations. Female terrorist acts can also generate

much greater media attention than those conducted by males, further encouraging terrorist organizations to expand the recruiting of women. Although women taking part in terrorist and extremist acts is not new and dates back more than a century, their presence in terrorist organizations as both leaders and executors is increasing around the globe.

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DISASTER RISK REDUCTION THROUGH EDUCATION[1]

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Abstract: Education and public awareness are the cornerstones of approaches aimed at reducing vulnerabilities to natural hazards. The goal of education efforts is to change people's behaviour. Disaster education attempts to increase protective actions by people by presenting information about the hazard and the risk it poses. If planned effectively and well implemented, it will make, in the long run, people habituate safety practice in all forms of their action. Many of the countries impart basic disaster management skills informally through posters, seminars and drills without including it in the formal curricula. Also many of the countries have different school boards. Each board follows different curricula and there is no compulsory requirement for these school boards to include disaster management in the school curricula. Many countries have just started to implement disaster management subjects in their school boards, as this can be seen in the detailed report. In many of the countries the implementation of disaster related subjects is mainly because of the initiatives by NGOs and international agencies such as UN/ISDR, ADRC, etc.

Keywords: disaster risk reduction, disaster education, disaster management subject, school, safety.

INTRODUCTION

Disasters appear more often than before. They cause human victims and also big damages in many areas of life, like energy supplying, traffic, health care, education at all levels. In case of disasters, as a result of the effect of nature, the main victims are children and young people. In connection with this there is the necessity of integration of the disaster safety concept in all forms of daily life is an obvious condition to achieve the goal of disaster reduction. It requires that the disaster risk reduction knowledge should be a built-in component of knowledge block. Disaster awareness needs to be part of every individual's cultural heritage and the development of such attitudes should be encouraged in early childhood. Only schools give this opportunity to implant that culture to entire future citizens. As disaster risk management should be everybody's business, children of today must be appropriately educated and adequately trained to face the disaster risks that may be realized in the future in the wake of prevailing natural hazard potential.[4]

It is widely agreed that education for disaster reduction must become an integral part of any educational strategy aimed at promoting and creating thriving and sustainable societies. This is a very important issue because increasing the public's disaster preparedness may be crucial for saving lives and mitigating damage. The connection between social capacity building and education is also clear: building up national capacities is the best way to ensure the sustainability of educational activities over the long term.[5] Some countries have well organized systems of formal education for reducing risk of disasters in schools which reflects through prepared programs and by using official textbooks. On the other hand, many countries prepared their children for disasters using tools of non-formal education, like the education through voluntary activities, attending practicing of professional strengths for search and rescue or going in disaster museums. Problems are the countries with very low level of this kind of education.

International institutions, who are in charge of mitigation of the consequences of natural disasters through prevention, direct a lot of attention to improving the position of education the goal of which is to

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reduce risk of disasters. In this context, the Hyogo Framework for the 2005-2015 period has defined five priority actions, of which one involves the use of knowledge, innovation and education to build a culture of security and resilience at all levels with a focus on including disaster education in formal and informal education and protection of public facilities. It was adopted by 168 Governments at the World Conference on Disaster Reduction, held in Kobe, Japan, in January 2005. The Hyogo Framework sets a clear expected outcome and in order to attain this outcome this document emphasizes the importance of disaster risk reduction as a central issue for development policies and calls upon signatories to make disaster risk reduction (DRR) a priority.[6]

INCLUSION OF DRR IN FORMAL EDUCATION

By formal education we mean education in institutions (usually schools) and institutionalized contents by the curricula. Formal education can include all the means, tools and approaches of education.[7] Question which exists in many school programs is: when is the most appropriate period for starting with education about disasters? Taking into account the development and communication aspects, there is no reason for education not to begin as soon as possible or at least in primary school. Education for DRR with major emphasis upon mitigation, but with attention to disaster response, should begin in the early years of schooling and continue into secondary school. At that age, children have a smaller spatial perspective and are more attracted by the developments in their local region, which they know well.[8] Some approaches advice that children can start with learning about threats and consequences which cause disasters in preschool. Regardless of when children start to get knowledge, in this way formal education for disaster risk reduction can be used in both long-term and short-term. In long-term view this kind of education in formal way gives the opportunity for each country, which includes programs about natural hazards in their curricula, to establish culture of risk or a culture of resilience or prevention. In short-term, by different activities, children prepare and train themselves to escape hazards and to be ready to administer first aid.

At the primary-school level, education should rely on moral and humanitarian aims. Special attention should be paid to six- to seven-year-olds because they are a sensitive group and are usually interested in "risk prevention culture". Teachers that are in direct and everyday contact with their pupils can perform education about natural hazards with a focus on games and practical implementation. The cognitive and physical approach to safety instruction should be integrated with regular school activity and disciplines: geography, nature studies, physics, biology, chemistry, physical training, games, sports activities, and travel. The textbooks make the main tool for teachers who give lectures to their pupils. This approach usually involves the curriculum arm of the Ministry of Education on the national level, often working in conjunction with national body which is in charge for emergency situations or sometimes with international non-governmental organizations, in designing textbooks of particular subjects to include, or broaden the pre-existing treatment of, hazard-related or disaster-related topics. Among the participative school-teaching methods, the question-and-answer method and role play are useful, in which pupils take an active part answering precise, clear, concrete, and easily understood questions. Also, the teachers who work with children and give them lectures about natural disasters must be prepared for this job. They would pass some kind of special trainings, like seminars, practices or drills. Those activities can help them to be aware and sure about what they talk about. In many cases, the teachers who work with children at this school age are not specialized to give lectures about disasters.

At the high-school level, on the other hand, the general principle is less theory and more practice; it seems that involvement of high-school level is a key to building social capacity as regards education. Education about natural hazards can be performed by teachers of different subjects, by specialized teachers, and/or by invited researchers and professionals such as doctors, firemen, policemen, and rescuers. Children of this age are able to identify, foresee, evaluate, and monitor various types of natural hazards, especially those related to their activities, and to actively participate in their local communities.[9] They may already contribute actively to the prevention of major natural hazards, especially the ones they may cause or encounter in their region in the future as adults during sports activities, while playing games, at home, on the road, during free time, or at work.

At the level of tertiary education, the process of learning about natural hazards has to be continued by specialized courses in seismology, volcanology, climatology, computers, and geographic information

6 Panić, M., Kovačević-Majkić,J., Miljanović D.& Miletić R.(2013). Importance of natural disaster education-case study of the earthquake near the city of Kraljevo-First results. Geographical Institute "Jovan Cvijić" SASA, Belgrade, p. 2, available online at www.gi.sanu.ac.rs

7 Komac, B., Ciglič. R., Erhartič. B., Gašperič, P., Kozina, J., Orožen Adamič, M., Pavšek, M., Pipan, P., Volk, M & Zorn, M., (2010). Risk Education and Natural Hazards CapHaz-Net WP6 Report. Anton-Melik Geographical Institute of the Scientific Research Centre of the Slovenian Academy of Sciences and Arts. Ljubljana, p. 37

8 Ibid., p. 38

9 Ibid., p. 40

science are also relevant for natural hazards. At the university level, students graduate in DRR because the majority of universities around the world also offer programs connected with natural hazards. But, the problem is for the students who attend universities where they learn about something which is not strongly connected with the phenomena of disasters. For them, the country has to organize special trainings or courses so that they can have continuity of progress.

TOOLS OF NON-FORMAL EDUCATION FOR DRR

Various methods of non-formal education actually are available around the world. There are many examples how countries make efforts through tools of non-formal education to improve awareness about natural disasters. Some of the most used tools are: trainings, awareness raising activities, publications, workshops and seminars, demonstrations, exhibitions and simulations, games (in recent period available also on the Internet), education through voluntary activities and similar.

Training category includes any form of training activities such as classroom-based, lectures or field exercise. It includes trainings given by the Red Cross Societies or in training centres at national level. Among the various methods of disaster education, training is the most used method for non-formal education.[10] Awareness raising activities include public awareness programs/campaigns, community empowerment, education campaigns, public information campaigns and information exchange. Publications category include any publications related to disaster education such as related newsletters, publications, pamphlets, posters, booklets, books, guidelines and education materials related to disaster training materials, etc. In many cases seminars and workshops are used as a tool of non-formal education for preparing teachers how to teach children about natural hazards. This way of education can be very useful, but one of the disadvantages is because they take only a few days and many experts have doubts if the teachers can get appropriate knowledge for teaching children about disasters in that time. Demonstrations, simulations, and exhibitions are categories which are usually performed by some specialized persons in the area of rescuing and searching, like fire fighters or special teams for rescuing in inaccessible fields. In many countries, children's games serve as important aids in learning about natural hazards. They are useful because they make children participate and involve them in a project that is a fun. Games have very strong influence on people's perception of the outside world because most of them focus on visual capacities, and may improve behaviour, and therefore also influence children's awareness and consciousness.[11] Some examples of games which are very frequently used are crosswords or learning by associations. Also the UNICEF board game Riskland was adapted to South African conditions and additional educational material was prepared for teaching ten- to twelve-year-old children. At present the Internet is frequently used from early ages and onwards. For children it is very interesting to play games which are available on the Internet. The Internet is also an important multi-channel (reading, viewing, writing, talking, and listening) mode of communication. It has also become very important in natural-hazard education because it provides a great deal of information in very different forms that allow multiple uses.[12] As a social network, the Internet is ideal for holding video-conferences and distance education.

BRIEF OVERVIEW OF IMPLEMENTATION OF DRR THROUGH EDUCATION IN SOME COUNTRIES

On the basis of different analyses about how education is used to increase awareness of children about natural disasters, there is a conclusion that there is not one compulsory manner of execution.[13] In not a large number of countries around the world we can find the program about natural hazards included in formal education. Each country in their schools follows different curricula and there is no compulsory requirement for including disaster management in the school curricula. Recently in many countries non-formal way of education has been very popular where schools through seminars, publications, posters or similar teach children how to protect themselves and others in cases of natural disasters. In accordance with an increasing number of catastrophes, the cause of which are natural phenomena, many countries have just started to implement disaster management subjects in their school boards. In many countries the implementation of disaster related subjects is mainly because of the initiatives by NGOs and international agencies. Through the examples of a few countries below it will be described how they implemented education for DRR.

10 Building Research Institute (BRI) and National Graduate Institute for Policy Studies (GRIPS). (2007). Project Disaster Education. Japan. p. 33

11 Komac, B., Ciglič. R., Erhartič. B., Gašperič, P., Kozina, J., Orožen Adamič, M., Pavšek, M., Pipan, P., Volk, M & Zorn, M., (2010). Risk Education and Natural Hazards CapHaz-Net WP6 Report. Anton-Melik Geographical Institute of the Scientific Research Centre of the Slovenian Academy of Sciences and Arts. Ljubljana, p. 25

12 Ibid., p. 30

13 Building Research Institute (BRI) and National Graduate Institute for Policy Studies (GRIPS). (2007). Project Disaster Education. Japan. p. 1

France offers an example of the systematic preparatory provision of risk-related education in the primary school, with in-depth treatment in college (secondary school, ages 11-14) and lycee (high school, ages 15-18). Consideration of risk features as a component of both citizenship education and education for sustainable development.[14] At the primary school first in grade 3 pupils learn about volcanic and seismic activity as phenomena and after that in grade 4 they learn about seismic and volcanic risk and their prevention and mitigation, and also about tsunamis, a 'risk at a planetary level'. They continue in grade 5 to learn about major risks and security issues through subjects Civic Instruction while in Geography they consider inequality in the face of risk by comparing and contrasting a catastrophe in an economically developed country and an economically poor one. In college major catastrophes are studied in Geography, Civic Education and Earth and Life Science with contributions from other subjects. Teachers direct efforts to make students aware of the management of security problems within which natural and technological catastrophes are treated. At the general lycee, students learn about places that are at risk, the unequal level of vulnerability within and between societies and the politics of risk prevention.

After a massive 8.9-magnitude earthquake struck off the coast of north-eastern Japan, a subsequent tsunami destroyed towns, villages and large swathes of infrastructure along the coast. Globally, Japan has been the leader in developing education programs for DRR at all school stages. Schools play a major role in Japan's DRR campaign, as a critical element in enhancing disaster resilience.[15] According to the Japanese Ministry of Education, Culture, Sports, Science and Technology, DRR related topics and themes appear in a few subjects in both primary and secondary school curricula. The examples at the primary level are: Social Studies (locally specific disasters and accidents, grades 3-4; local disaster response initiatives and mechanisms, grade 6); Science (mechanisms of volcanic activities and earthquakes, grade 6); Physical and Health Education (prevention of injuries and first aid skills for minor injuries, grades 5-6). The examples from the lower secondary level (with no specification of grade level) include: Geography (geographic characteristics of the country and natural disasters); Science (mechanisms of volcanic activities and earthquakes; human and natural relationships including natural disasters); Physical and Health Education (causal effects of injuries; preventative behaviour and attitudes towards injuries; first aid skills); Technologies and Home Economics (safe and convenient home environments).[16]

In the United States of America until now many projects are realized about DRR through education. Also, in schools subjects include the topics about natural hazards. In February 2003, the government institution for emergency management has established national public service advertising (PSA) with name Ready. It is a campaign designed to educate and empower the Americans to prepare for and respond to emergencies including natural and man-made disasters. The goal of the campaign is to get the public involved and ultimately to increase the level of basic preparedness across the nation. The Federal Emergency Management Agency (FEMA) in 2006 launched Ready Kids, a tool to help parents and teachers educate children ages 8-12 about emergencies and how they can help get their family prepared. The program includes family-friendly web pages and online materials developed by Sesame Workshop and Discovery Education.[17] Experts try to improve this service by many researches and also to include emergencies which appear in the recent years. Through those actions they want to prepare children for any kind of disaster which can happen in everyday life.

Millions of Russian pupils and students studying at general educational schools, grammar schools, lyceums and colleges, vocational-technical colleges, higher educational institutions and non-school educational establishments make the basic human capacity for the future of the country. Russia offers an example of the systematic inclusion and enhancement of DRR at full scale in the core curriculum through a carrying subject and also through infusion in all other subjects. Basics of Life security is the main carrier subject matter, with cooperation between the Ministry of Education and the Ministry of Emergencies to define curriculum content. Subject Life security is a key carrying subject and is also infused across other subjects with contents to give right knowledge to pupils about natural hazards. There must be mentioned that Russia has an established school system with eleven years and the cumulative impact of grades 1 to 11 is considered to comprise a full secondary education. Primary education can be compared to grades 1 to 4, while secondary education can be compared to grades 5 to 11. Main basics of Life Security pupils get at least through grades 7 to 9 but from grades 5 to 9 in some regions (equivalent to secondary education). An additional facultative programme is also available for grades 10 and 11. Basics of Life Security is mainly managed by the Ministry of Emergency Situations.[18]

14 David Selby and Fumiyo Kagawa.(2012). Disaster Risk Reduction in School Curricula: Case Studies from Thirty Countries. United Nations Children Fund.Spain. p. 133
15 http://www.brookings.edu/research/opinions/2011/03/14-japan-disaster-education-anderson, 14.12.2014.
16 David Selby and Fumiyo Kagawa.(2012). Disaster Risk Reduction in School Curricula: Case Studies from Thirty Countries. United Nations Children Fund. Spain. p. 137
17 http://www.ready.gov/about-us, 16.12.2014.
18 David Selby and Fumiyo Kagawa.(2012). Disaster Risk Reduction in School Curricula: Case Studies from Thirty Countries. United Nations Children Fund. Spain. p. 73

Turkey offers a singularly well-developed example of a structured interdisciplinary approach to primary level DRR curriculum. It is also remarkable in its thorough and systematic approach to teacher training that preceded the programme by two years, thus helping to pave the way for the launch of a reformed primary curriculum with a cross-cutting DRR dimension.[19] For example, in grade 3 they investigate hazard reduction at home and are familiarized with the experience of an earthquake because it is the most frequent disaster in Turkey. Also curriculum materials to support a nation-wide school-based basic-disaster preparedness education program for children and adults are completed. A 32-page Basic Disaster Awareness Handbook, covering all hazards was developed for middle school children and adults.

DIFFICULTIES IN THE USE OF EDUCATION FOR DRR

The use of education with the main aim to reduce DRR is not easy for many reasons. First of all in many countries this kind of education only depends on local efforts without clear policy, strategy and programs which have to be determined by the government. Sometimes the activities have been sporadic and conducted at local level, such as visits by fire-fighters to schools and these need to be systematized. Without strategy and programs adopted at government level, the country cannot have unique access to all schools at different levels. Many countries also have a problem with funding education for DRR in schools. It is especially the problem in countries which are very vulnerable from different kinds of natural hazards. In this way they increase possibility for more victims in case of natural disasters because they lack money at national level and cannot invest funds in prevention, such as education. The questions who should be educated and who should be the educator still need to be answered. Focus should be put on children but also older population has to be taught –parents, teachers, professionals, citizens– because they are responsible for children, not forgetting the teaching of the poor and other vulnerable groups.[20] One important obstacle regarding the education for DRR is the lack of trained teachers in this area. In situation where funds are the problem, schools cannot employ those specialists and resort to sending their teachers to some seminars where they will get very poor and not sufficient knowledge for teaching pupils about natural hazards. The problem of responsibility refers to responsibilities of institutions involved in risk education – who should be involved in planning and preparing the curricula? In many countries only the institution in charge of emergency management is responsible for developing the programs and procedures, and after that including the education for DRR in school curricula. On the other hand, the Ministry of Education at national level is only responsible for this topic. In both cases the results are very inadequate because of the problems in coordination and exclusion of experiences from other institutions. Problems which are very frequent in this kind of education are connected with the decision to use different tools and methods. In many cases children learn about natural disasters only by classic means, like textbooks. The Internet, social networks, various media can be useful for teaching children how to protect and behave in case of a natural disaster. Responsible institutions at national level follow programs which are old and the same and as such were in use few decades ago. Local knowledge in few countries is included in risk education because children need to be safe from local risk in the first instance.[21] Other countries have a problem to pay special attention to this. Contents of textbooks or other materials which pupils use in schools include global characteristics of all natural disasters. In this way they will obtain broad spectrum of knowledge without performances of hazards which are common in some region. A 'one-size-fits-all' approach to curriculum development not allowing for local and regional divergence. Also, many researches show that teachers use only theoretical methods to implement disaster education. For young people it is very hard to take knowledge without some practice, such as trainings and simulations in real conditions.

RECOMMENDATIONS FOR IMPROVING THE IMPLEMENTATION OF DRR THROUGH EDUCATION WITH SPECIAL FOCUS ON THE REPUBLIC OF SERBIA

Disaster risk education (DRE) at schools should be embedded as a key pillar of broader public DRE to enhance community resilience to disasters, gain support for school-led activities, and motivate citizens to participate in local and regional risk mitigation and planning. DRE should be integrated into school curricula because children are among those who are the most vulnerable during a disaster and they are very effec-

19 Ibid., p. 81
20 Komac, B., Ciglič. R., Erhartič. B., Gašperič, P., Kozina, J., Orožen Adamič, M., Pavšek, M., Pipan, P., Volk, M & Zorn, M., (2010). Risk Education and Natural Hazards CapHaz-Net WP6 Report. Anton-Melik Geographical Institute of the Scientific Research Centre of he Slovenian Academy of Sciences and Arts. Ljubljana, p. 88
21 Ibid.,p. 89

tive communicators and disseminators of DRR and preparedness messages at the family and community level.[22] Responsible institutions at national level have to look at this as something very important in terms of prevention and decreasing the number of victims during natural disasters. National Platforms, through the Ministries of Education, should embrace as part of their work plans the inclusion of DRR knowledge in relevant sections of school curricula at all levels and the use of other formal and non-formal channels to reach the youth and children with information. The institution which is in charge of emergency management should find common approach with the Ministry of Educations and only in that way the result will be appropriate. One very important issue in this regard is the necessity to train teachers in new knowledge and skills related to natural hazards. Increasing knowledge and skills raises their awareness and changes their perception of risk and personal responsibility, and therefore their impact on behaviour.[23] Teachers should go periodically go some seminars or other forms of short-term acquisition of knowledge. Also, it is recommended that only people who are specialized in this area teach children. DRE should be integrated into formal education at pre-primary, primary, secondary and tertiary levels. Why do not start to learn children about hazards which come from nature as soon as possible, for example starting from kindergarten? In this regard, the programs for different stages of school period need to be planned very systematically and also adopted for each stage. Schools should teach about all stages of the DRR cycle, therefore education materials should introduce students to disaster prevention, mitigation, preparedness as well as response and recovery. Education materials should introduce pupils to land use planning, building codes, insurance and environmental stewardship, where applicable, as the means of managing and reducing disaster risk. Education materials should supplement a range of school subjects, should be rooted in the existing learning materials, should suit the local context, and should be culturally sensitive taking into account indigenous and traditional knowledge.[24] Materials should be well planed and before final version it is recommended to test materials through pilot project in one or several schools. Also, the existing education materials in DRR should be updated in an orderly fashion, including new developments and key topics such as climate change adaptation, thus keeping the initiatives relevant to the changing world scenario.[25] Children have to be aware what actually threats and how the world around them will look like in the future. Nowadays from an early childhood there are modern things available like computers, the Internet and social networks. Combination with classic methods in classrooms which depend on textbooks and lectures and also practical work in the field and simulating real conditions will give the right results. Local community and civil society stakeholders should be involved in the development of DRE materials for schools to help identify local risks and response measures. Children have to learn, in addition to the general characteristics of all natural hazards, also special details about the threats which appear in the local environment. It can be useful to describe some historical events which took victims and caused huge damages and introduce it as real as possible. In this way the pupils will have better picture what can happen in their community. Equally, DRE policies should be taken into account in local development planning and future growth strategies. To ensure the effectiveness of DRE, regular monitoring and evaluation should be carried out.

Special focus in this paper will be given on the current state of education for DRR in the Republic of Serbia with several recommendations. In schools the program for DRR through education is not defined. However, actually there are examples of the use of knowledge to develop a culture of safety. The Sector for Emergency Management, a body responsible for emergency management, regularly holds the Month of Education campaign in primary schools. As part of the campaign fire-fighters visit schools to give lectures and organize practical exercises with school children on fire safety. Sometimes in cooperation with the Red Cross or similar organizations the members of the Sector for Emergency Management organize public exercises which are specially intended for children. The Sector for Emergency Management has initiated the negotiations with the Ministry of Education on defining the most efficient ways for inclusion of DRR in school curricula. For deeper analysis of current state PESTLE analysis will be used. Through the template for PESTLE analysis the current situation is presented of the use of education in order to reduce disaster risk in the Republic of Serbia.

22 APEC Emergency Preparedness Working Group, (2009). Disaster risk education at schools Report from APEC Emergency Management Senior Disaster Officials Forum. Jointly hosted by Australia and Vietnam. Hanoi, p. 2

23 Komac, B., Ciglič. R., Erhartič. B., Gašperič, P., Kozina, J., Orožen Adamič, M., Pavšek, M., Pipan, P., Volk, M & Zorn, M., (2010). Risk Education and Natural Hazards CapHaz-Net WP6 Report. Anton-Melik Geographical Institute of the Scientific Research Centre of the Slovenian Academy of Sciences and Arts. Ljubljana, p. 10.

24 Ibid., p. 52.

25 The United Nations Children`s Fund (UNICEF) and The United Nations International Strategy for Disaster Risk Reduction (UNISDR), (2011). Children and disasters: Building resilience through education. p. 186.

PESTLE analysis: DRR through education in the Republic of Serbia

Political factors	**Economic factors**
- National Assembly has recognized the importance of DRR through education in National Strategy for the Protection and Rescue in emergency situations, - Serbian authorities have established the cooperation with international organization to develop disaster education. For example, the Sector for Emergency Management of the Ministry of Interior in partnership with the OSCE has prepared and printed Family handbook for reaction in emergency situations, which was subsequently distributed to the general population. This handbook has not been distributed to all who need it.	- Limited funds are available to support projects that tackle the DRR through education, - Natural disasters cost a large sum of money in the Republic of Serbia. Investing in DRR, in this case for education, as a kind of prevention, for sure will reduce the costs during and after the disaster.
Social factors	**Technological factors**
- Serbian public awareness on disaster prevention and mitigation is not so strong, because disaster education in Serbian education system has not still been implemented, - The last emergency situation in the Republic of Serbia, the flooding in May of 2014, showed that people come together to solve this community problem. Most of them have never had some kind of education for DRR and they had problems in the field. - The problem which is also connected with the lack of disaster education at all school levels in Serbia is very poor awareness among citizens about local hazards. It is very important to teach citizens through education of what can threaten them in their environment.	- Increasing the use of information technology will provide the opportunities to implement disaster education in a modern way and thus occupy more attention among pupils. The problem can appear in small places in Serbia where the use of this technology is not on the required level. - The growth of social media and mobile technology presents disaster education with opportunities to engage with a wider audience and to conduct non-formal education more quickly compared to traditional media outlets such as newspapers, but also presents reputational risks.
Legal factors	**Environmental factors**
- The Serbian National Assembly adopted the new Law on Emergency Situations which in Article 119 defines: "Training is done in the framework of primary and secondary education in order to acquire knowledge about the dangers of natural and other accidents..."[26] - So far the Ministry of Education together with the Sector for Emergency Situations of the Ministry of Interior have not drafted, in cooperation, any bylaw acts which will exactly define how DRR will be implemented through education. - The Republic of Serbia is in the process of accession to the European Union. In accordance with the known fact that in the European Union there are laws relating to the area of DRR through education, Serbia will have to specify laws and bylaws relating to this.	- The Republic of Serbia is vulnerable to a number of disasters caused by natural hazards, including floods, earthquakes, extreme temperatures, wildfires, epidemics, landslides and wind storms. - Climate change affected the environment in the whole world, and also in the Republic of Serbia so in the future the number of emergency situations will increase. There is a need to include the topics about climate changes in disaster education through formal or non-formal forms of education. - In the last few years in the Republic of Serbia have occurred more emergency situations than before, and also with larger damages and more victims.

There is official recognition that to date there is inadequate use of knowledge and education to achieve DRR in Serbia. To address the situation, it is recognized that it is important to define school curricula on DRR and recovery concepts for all levels of the education system and implement them as soon as possible. The Ministry of Education in partnership with the Sector for Emergency Management and all responsible institutions should define how education will be used for DRR. This can be achieved by defining some bylaw documents which will be a starting point for the next actions. In those documents the responsibilities of all members in the process of disaster education will be clearly determined. Later, there is a need to write programs for all school stages and to create textbooks or similar teaching materials. It is necessary because children need to get the knowledge about natural hazards as soon as possible because of the increased number of emergency situations now and, on the bases of predictions, in the near future also. Attention should be paid who will teach children in schools about natural disasters. There are a few solutions. In the first place this process could be in charge of the Sector for Emergency Management. Employees, who are

26 Law on Emergency Situations, The Official Gazette of the Republic of Serbia, no. 111/2009, 92/2011,93/2012

working in this sector and are specialized for natural hazards, would be the main teachers and would go to teach school children. The second solution is to employ the persons who graduated in this area, like are the Academy of Criminalistic and Police Studies, the Faculty of Security Studies or the Military Academy. In addition to formal ways of disaster education the responsible institutions should develop parallel non-formal methods of educations. The awareness of volunteering is very strong in the last year and could be used for this purpose.

CONCLUSION

Many researches support the hypothesis that children who are involved in the school educational program about natural disasters show a more realistic perception of risk, they are less afraid, have more knowledge and greater awareness of the importance of knowing the correct behaviour, compared with the children who were not involved in this form of education. It is a fact that natural disasters occur more than before for many reasons. If DRR through education starts in the earliest days of school programs, or better in pre-school, it can be better. However, school programs should be adapted in particular to different stages at school. Education about disasters, and how to protect from them, should have the characteristics of permanent education. Climate changes, industrialization and other reasons bring a lot of novelties so what people used to learn before ten or twenty years ago is definitely old nowadays. The main goal could be to educate children about natural disasters during primary and secondary school, but it is also important to continue with this process later. DRR through education is a long-term activity and it should be put to all levels of the risk management cycle, but with different emphasis.

The current state of implementation of disaster education in schools shows many differences between countries. Some of them look very seriously and invest resources to improve this kind of prevention from natural disasters. There are examples of the countries which are at a starting point and make a lot of efforts to establish the appropriate system in formal but also in non-formal way of education. On the other hand, there are countries which have many different problems to start with this process, especially with finds, educated teachers or governments do not have enough interest to commence DRR through education. Situation is special in the vulnerable countries without disaster education. Regardless of all, governments should constantly improve education at all school levels and build safety culture starting from the earliest period of life of their citizens.

We are witnessing the increasing use of information technologies, social networks and similar. It is important to include those tools in school programs. Training and practicing, with simulation of real conditions in case of disaster, can help children better to build skills how to behave in emergency situations. Special Forces that are part of the country system of rescuing and protecting, as fire-fighters, military forces, the Red Cross, would be responsible for those methods of teaching children. Special attention needs to be paid to preparing the teachers who will be in charge to teach children during different school stages. These are the main points and it depends on them how the pupils will be prepared for protection from natural hazards.

We can conclude that it is necessary to make the guidelines on appropriate ways to respond to natural disasters, as a part of formal education in general—and not just at the level of individual, positive examples. Non-formal education is also important part and should not be neglected. The need for DRR through education is obvious and priority must be given to it because of the increased number of emergency situations.

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MODERN APPROACHES IN THE CREATION OF THE SECURITY POLICY

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Abstract: Security as a concept is a prerequisite for the existence of life - individual and societal, and refers to the absence of threats and protection from them. The understanding of security as an innate interest of each individual and the broader human collectivity - family, society, nation, state, international system, indicates the need to expand the concept of security to these collectivities. In theory, therefore, concepts such as national and international security are formed, and in recent times the concepts of individual, societal and global security, emphasizing a significant expansion of new dimensions of security.

Security policy is a very complex activity and it is difficult to determine which policy is successful and which one is not. From the multitude of factors which influence the success of the security policy development in the first place should be put those relating to the objective detection of security-related phenomena, mutual cooperation and coordination between the security institutions. Those responsible, competent and obliged to develop security policies should have at their disposal security information timely and objectively. It will enable them to make real security assessment, to determine the security situation and to predict future security events.

A successful or good security policy is the one that is able to resolve the security issues with minimum resources and damage. The contemporary economic, political, legal and cultural conditions in the world determine the need for concerted security policy at the world level, as well as at the levels of coalition of states or regions, and the national state.

The content of the security policy is determined or is a "product" of the real situations and the real life in the particular state, region or in the world. It should be in the function of the society, the state and the citizens so as to provide for safe improvement of the overall community relations.

Keywords: security policy, risks, threats, security system, security, concepts, theories.

INTRODUCTION

The survival of the state and society is a basic condition and the aim of every state policy. Its security is a requirement for the survival of the state and society. Therefore, the purpose of the acting of all state institutions is aimed, in part, to do it. Additionally, it has been the framework of security policy, which has tasked to create an organization and through it the state conduct the internal and external security of the state and society, or national security.

The security policy is a kind of framework for describing how a country provides security for the state and its citizens, and is often presented as an integrated document. This document can also be called a plan, strategy, concept or doctrine[3].

Security policy has a present and future role, outlining the core interests of the nation and setting guidelines for addressing current and prospective threats and opportunities. Security policies are hierarchically superior to other subordinate security documents that treat national security such as military doctrine, security strategy, defense strategy, etc. It also differs from these other policies by the range of subjects that it addresses, attempting to outline both internal and external threats.

Finally, it seeks to integrate and coordinate the contributions of national security actors as a response to the interests and threats that deemed most important. Some countries, such as the United Kingdom, France and China, do not have a joint document on security policy. They rely on defense policies or white papers

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that focus only on the national defense. Other states classified their security and policy documents, or do not have comprehensive written policies on security or defense.

There are five main reasons why states should have integrated and comprehensive security policy. Through this policy they should: ensure that governments consider all threats in a comprehensive way; increase the effectiveness of the security sector by optimizing the contributions of all security actors; guide the implementation of the policy to build a domestic consensus; and promote common regional and international understanding, mutual trust and cooperation.

First, security policy requires a full analysis of all threats to national security in order to establish comprehensive framework. Internal and external threats have been addressed separately for a long time. However, the security policy increasingly includes a comprehensive assessment to the domestic and international security environment. In creation of these policies, each country should seek the assistance and participation of all relevant governmental stakeholders dealing with security. And ideally, they should seek assistance from international and non-governmental sectors.

Second, the security policy may help harmonize the contributions of the growing number of security actors, including those at the national level, local government, the business community (for example, in the protection of vital infrastructure), various civil society organizations, as well as regional and international institutions. A centralized process of policy definition could include an input from a variety of sources which might help in a common understanding of security.

Third, one of the most important issues is that the security policy provides policy guidance to the other involved actors in conducting national security. This is very important for aligning operational decisions with the short- term and long-term goals of national policy, security policy provides specific benchmarks. For the optimal use of resources, in the phase of drafting and implementation, the centralized process allows, avoiding discrepancy, redundancy and deficiency of the limited resources.

Fourth, security policy provides comprehensive approach and ownership of security policy by deepening discussion and cooperation across professional, departmental and party lines. This dialogue could help to achieve a consensus on national core values and interests which are important for dealing with treats to the society and state security.

Fifth, the security policy is a tool for building confidence at regional and international levels. A coherent and transparent policy communicates the state security concerns related to the international community thus facilitating international common understanding and mutual cooperation.[4]

Security policies of modern states should really synchronize all their policies with the main focus aimed at achieving total (social, economic, political, environmental, health, etc.) security of its citizens. In that sense, national security nowadays is a significant mechanism in the developed liberal democratic states. Through those mechanisms, and activation of the security and defense system states realize and protect essential human rights. Today, the protection of these values, from internal and external treats, is not only in the hand of state security structure. Furthermore, this function is connected with the ability of a state to provide economic, political, scientific, technological and technical, and social development and welfare. In the society there are constant system interactions between the national security system and security environments. The first seeks to justify its existence and to provide adequate legitimacy.

A civil society and the state policy have set appropriate requirements and expectations to the national security system. All are connected for function conducting, security guaranty, including the request for its implementation in accordance with the law and rules of democratic and political system. In case of non-functioning between the national security system and its environment, it is possible to come in the situation that will prevail requirements or the national security system or requirements of its environment. In both cases, we have the same results with negative consequences for the state national security. The ideal solution to this problem would be a balancing of values and expectations that will be founded on the existence of mutual trust among the public, political leaders and the national security system. Such confidence can only be achieved when the actions of all relevant stakeholders is transparent and open to constant criticism and supervision of all involved subjects.[5]

According to the analysis of modern national security systems, there are researches that these systems are considered at the national/state level. It is very important and necessary, for a security policy system, to analyze various empirical indicators which enable knowledge of its structure and organization on the state level. Moreover, it is important to pay attention to other factors which affect the states security capabilities. These include political, economic, geographic and demographic factors, geostrategic, political and military situation, the rights and obligations of the state arising from international agreements and membership in international organizations, public opinion, as well as the military-industrial complex and its impact on the so-called 'security policies myth'.

4 Siniša Tatalović, Anton Grizold, Vlatko Cvrtila: Suvremene sigurnosne politike : države i nacionalna sigurnost početkom 21. Stoljeća, Golden marketing / Tehnička knjiga, Zagreb, 4/2008

5 Usp. M. Edmonds, *Armed Services and Society,* Leicester University Press, 1988, p. 132

In that case the so-called 'security policies myth' is a face analyzing and owning the evaluation on the general as well as specific factors that come from both environments: internal in the some state and in the international system.

DEFINITION OF EFFECTIVE SECURITY POLICY

The definition of the security policy is a very difficult and complex issue. It requires coordination of many views and dilemmas for those sensitive topics. The security policy should give the answer to the following questions: When should a review be initiated? Which actors should be involved in the review process? Is there an independent leading agency that facilitates and consolidates committees input in security policy? How did we define national security? What are the current and possible future challenges to national security? What are available tools for national security and what new instruments may be required? How do security policies address the balance between transparency and the need to preserve confidentiality in vital areas of national security? Is there an established supervisory body to monitor and audit the security policy? Is the monitoring body inclusive? What measures should be taken to distribute the security policy and the public awareness of its content? All these dilemmas require appropriate answers including a decision making process. The decision making process in the state security framework, de facto is conducted according to internal and external forces which affect a subject behavior in the political process.[6]

LEVELS AND METHODS OF POLICY CREATIONS

Each process has weaknesses in a decision making process regarding the creation of national security policy. The same is in the case of the Republic of Macedonia. The issue is of particular importance to specified reluctant approach, inappropriate formulation of the problem, and thus the absence of analysis as currently adopted policy decisions on security policy and previous analysis and assessments. Having in mind this, we will analyze phases which are important to build and implement security policy. The main issue in defining security policy is what the essence of the problem from the policymakers' viewpoint is and whether and how it is reflected on the vital national interests.

This opens the challenge for the definition of the basic elements by the holders of security policy. It is very important to know the steps how to define the issue, and the roles of the participants.

This theme favors a very adequate and comprehensive response that can be initiated with the quote "what is not forbidden by law is allowed and irreversible".

Consequently, the procedural actions, in "the procedural sense", are based on a legal framework regardless of what it is. The problem will pass through execution acts, and then through other system processes. There is another wide range of participants as well. Each of them, according to their powers and responsibilities, take their proper place in defining the problem. They can be servants in the security institutions, or other indirectly competent authorities. In the case of Macedonia, from a methodological point of view, it is recommended to put attention to access in the formulation of the security problem (problems). We have to use methodological tools through the research process (hypothesis, general and scientific knowledge of issue research as well as results from previous researches. The most important phase is the formulation of the research subject and clear definition of used terms. Furthermore, it is recommended to study previous strategic documents from governmental institutions or non-governmental organizations. If we have a clearly formulated research subject, it will produce clear goals, tasks, hypothesis, forms and statements. According to Pande Lazarevski, the preliminary subject formulation in the research context is an issue which concerns national security, security policy, and political stability. With this phase starts the shaping of the state's security policy. This is a fundamental phase in the creation of the security policy. In other words, assuming there is a clearly defined goal which has to be achieved, the selection of the strategic approach following comprehensive analysis of all relevant factors act as an outcome of specific policies.

We have to take care what is the relation between the approaches of the security policy holder in a given political moment to the analysis of the situation. Here again we meet with the same inconsistencies in creating the security policy of the Republic of Macedonia. How does the process go and who participates in the implementation of the analysis of the political situation in a security point, as methodological analysis is designed and where is it focused on the subject term (which subject is to be analyzed).

Through situational analysis starts the process of shaping the security policy regarding a specific issue. Having in mind the previous research results from the strategic analysis connected with basic trends/processes in the country, a region/or at the global level, the goal will be conducting a SWOT analysis which

6 Usp. D. Murray и P. R. Viotti (ur) *The Defense Policies of Nations. A Comparative Study,* The John Hopkins University Press, Baltimore and London, 1994, p. 15

will identify all needed elements of the country. That will give a clear picture about political views of the Government and country. Now we have a new phase in the creation of security policy, because the holder of the security policy (Government) is ethnicity which is different from the state as a political community. Namely, the Government is a part of the state, but the Republic of Macedonia cannot be reduced to the Government – the Government and state are two organizations with different kinds of rank.

However, considering a particular dispute, it is inevitable to raise a question if there is an overlap of the interest position of the Government (i.e. the party / parties and individuals that comprise it) and the nation (political community). The dilemma is where the places and positions of the Parliament of the Republic of Macedonia and the President of the country are, as part of the security system of the Republic of Macedonia. Accordingly, we may conclude that there are overlaps in terms of the target of interest and of course the level of concern and participation in the security policy.

Deeply analyzing the adopted documents that include security policy, we can see that most of them are outdated and need to be updated or to create new ones Therefore, it is important to decide which approaches will be taken in the prediction of future (possible) situations regarding the political environment and the country's position, as well as the security policy context of the holder (holders).

Political prediction is a phase which creates basic assumptions about future situation of the security environment. This is the basis of information about the nature of the problem and the problem situation which has been created around it. That integrates previously obtained analytical findings: the key moments that mostly affect the development of security policy and they can be identified as a threat or an opportunity (convenience).

In other words, predicting the future security constellation and security threats means real knowledge of the nature and behavior of the key factors that shape the security environment. In fact, the knowledge about the past is a condition for understanding the present. And both are conditions for anticipating the future. The main objective of the prediction is to provide active attitude towards development, or to refer to: the possible development, direct and indirect implications of possible developments of the country and / or the Government, the possible ways to treat the problem and implications of the application of a policy in a given constellation of relationships.

This leads to the necessity of creating and simulating different scenarios for development. Such scenarios should test different variants of behavior of direct and indirect stakeholders in the problem situation and gradually build optimal performance for security approach that the government and other elements of the security system of the Republic of Macedonia should apply in reality.

The analysis of the environment basically indicates how the President of the State, the Parliament and the Government real set targets should be achieved. Then, that stage together with the prediction of the future security environment situation suggests: (a) in which direction modalities of security policy should be sought and (b) what the Government or security policy holder (holders) should do to be in a position to implement the policy and to achieve the objectives that they have set. Having that in mind, we need to move to the next stage which is the choice of security alternative.

At this phase, we should shape views on the options which particular action allows the most appropriate way to achieve the desired goal. In this sense, the choice of a specific security policy approach has implied a previous comparative analysis or assessment for the possible consequences for political and security action implicated by each of the considered options. In this context, the question is: *What is the optimal alternative and why?*

According to Pande Lazarevski, in "determining" which of the alternatives is true, an inevitable questions are as follows: goals (What we want?), cost (How much will the achievement of the objectives cost?), restrictions (What factors limit / hinder achievement to the end?), side effects (What can result from the efforts to achieve the goals or the attainment of the objectives?), time (When are consequences of the choices made regarding the alternative?), risk / uncertainty (What risk implies choice and how much is it likely to cause effects that are expected?).

Hence, in practice, the evaluation and selection of security policy and its strategies and concepts, implies a constant orientation to future situations that a security system must have in creating the security policy of the Republic of Macedonia.

This is a constant clarification of new created relations (in the context of the dynamics of the security process) and, in that sense, there is a constant alignment of the organization and procedures of the security policy holder (holders) in a way that would optimize it (its) position in the changing security constellation.

As already mentioned, the political and security process is absolutely dynamic without a real beginning or end. Each security situation, understood as an overview of the dynamics of politics or as a process, implies choice. It can be further developed in different directions, depending on the value of specialization, rigidity of the objectives, analytical power, strategic imagination, intuition and operational security of an actor's performance. All these are in the range of opportunities provided by specific historical time and space.

The choice of approach used to solve the current issue completes the process of modeling a security policy. The next phase is the implementation or enforcement of the chosen way of security and political action. Certainly, the implementation phase may include corrections and updates. But, if we want to speak of any corrections or updates of the security policy that is in progress, first of all we should follow, or track the results it has achieved.

The following functions of the evaluation could be identified through the implementation and monitoring process: to provide reliable and established knowledge for the subject of analysis and the performance of the security policy; contribute to the improvement of the criteria - selection of security strategies and concepts; to contribute to the restructuring of the security problem, redefining the political and security guidelines and goals and replacement, correction or upgrading administered security strategy and concepts. The security policy performance assessment may affect its future implementation in one of the following ways: setting (modification) of the security policy of the Republic of Macedonia in accordance with the new conditions and knowledge; continuing with specific security policy without additional modifications (the results are expected); stop security policy if the goal is already achieved. However, if we want to evaluate security policy, strategies and concepts, they should meet following requirements: it should be clearly defined and specified, clear assumptions that link security and political activities with the objectives should be set.

CONCLUSION

Considering the subject of this research and impact of modern theoretical and conceptual approaches to the creation of the security policy of the Republic of Macedonia, and having in mind what has been said previously, we can define clear need for the development of the so-called strategic research / studies on security policy and its concepts of security. According to Pande Lazarevski, it is necessary to consider the following: What is the real problem and why should we explore in a Centre for Security Policy (State Institute for Security Policy)? What is the situation at the moment (status)? In which direction should it evolve (dynamics and trends)? If it comes to more problems, then what is their common denominator? From what point of view (perspective) can these problems be analyzed (in terms of individual, group, specific institution / authority, order)? What countries (dimensions) have these problems (e.g. political - internal and international, economic, organizational, social, psychological ...)? Who are the stakeholders for these problems? Whether and how these problems are interconnected and how they are reflected in the environment (relations).

The issues and problems in the area of security and its policies should be subject to strategic research that can have political, legal, organizational psychological, security, economic, technological and military dimension. Of course, this division is conditional, because in practice their combination is almost inevitable. However, for the moment, depending on the research approach the focus is on the analysis in preparation for the appropriate security policy.

The political analysis should put its emphasis on: the functioning of the political system and the security and political situation and stability of the country; political process when making decisions relevant to security and its policies and logistics process; strategic aspects of security policy and the ability of the political leadership to mobilize national resources; international relations and foreign policy of the country relevant security.

A special issue on the approach of strategic research for security in the State Center (Institute for Security Policy) is the subject of research. The adequacy and value of analytical and prognostic methods / techniques used in one of the key moments are undoubtedly the evaluation and selection of analytical paradigm which remains the key to understanding and interpretation of the problems analyzed and predicted future.

The process of the formulation of security policy should pass through two steps. The first phase will include a broad and inclusive socio-political consultation leading to a non-binding report to the government with suggestions for main principles for security policy. The second phase should involve prepared proposals for security policy by a governmental body. The compliance will be achieved by different actors involved in the security system, then an input during the preparation of the policy should be looked for, and that initial drafts should be sent to all involved actors, whether internal or public, or a combination of both.

If we take into account the current institutional, staff and methodological construction in terms of monitoring, selection, analysis and evaluation of information relevant to national security and its policies, it can be concluded that there is no clear established procedure and the institutional framework for determining the comprehensive security policy, and effective and efficient protection of the defined national interests.

Moreover, the key political entities are not in agreement in terms of the priorities in the domain of security policy. There are differences between immediate and long-term interests and goals and a consensual agreement how to protect the vital interests of the country.

The main pillars of the security policy of the Republic of Macedonia are democratic pluralist institutions, their legal framework and institutional ramifications, and human resources potential and the management and governance. The security policy is a basic guarantee for the protection of constitutional values, as well as protection and personal security of citizens, ensuring the independence and territorial integrity of the state, political freedoms, civil and human rights of the citizens. Security policy of the Republic of Macedonia establishes global conceptual-doctrinal and strategic views and definitions of security, as well as specific strategies for diplomatic, political, economic and military sphere.[7]

The security policy of the Republic of Macedonia has to implement a single conceptual system for security of the entire territory of the country, with a strict hierarchy, to determine the structures of specific subsystems (Defense, Homeland Security, Crisis management, protection and rescue and others), to determine the objectives, functions, methods and means of action, and to provide quality vertical and horizontal coordination at all levels of a unique security system.

There are three levels of functioning (administration) of the security system: political, security level, defense security level institutional and organizational level.

In the future, a multifaceted procedure should be prescribed for adoption of important documents in the field of security. This procedure should include more actors in the security policy, as well as main stakeholders and competent structures. They share a lot of common functions, which are not clearly identified and specified between institutions.

The extension of the observations to issues related to national security has a goal to show how complex the material work is. Taking into account the situation in the region and their variability, dynamism and intensity, we can say that the security system should be flexible, adaptable to changing security environment. That should include comprehensive review and update of the security policy of the Republic of Macedonia in every three to five years.

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IS THE WESTERN BALKANS A SAFE GEOPOLITICAL CONSTRUCTION?[1]

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Abstract: In this paper, the author analyzes the current and contemporary security challenges in the Western Balkans, a region that is highly burdened by the legacy of a bad disintegration of the former Yugoslavia. In this zone of potential new escalation of ethnic hostilities in Southeastern Europe, numerous bilateral problems between the countries remained unresolved, which affects organized crime, religious fundamentalism and various forms of extremism.

"The European perspective" of the Western Balkan countries often appears in the dominant public discourse as a substitute for the otherwise very weak and very fragile state structures in the fight against contemporary security challenges. However, it has been shown that the very membership in the European Union is not a sufficient mechanism for preventing these challenges. This has been confirmed by insufficiently consolidated internal political, economic and other conditions in Bulgaria and Romania, which have been facing certain forms of systemic corruption and economy-related crime after 2007 despite joining the EU.

Keywords: Western Balkans, former Yugoslavia, Serbia, Bosnia–Herzegovina, Macedonia, Montenegro, Albania, European Union, United Stataes of America.

INTRODUCTION

During the modern political history of the continent, that is to say during the past two centuries, the southeastern parts of Europe have been extremely unstable and unpredictable security-wise. In addition, conflicts between various empires, especially after 1800, and their impact on the Balkans, have left deep scars that cannot be ignored even today (Austria-Hungary, the Ottoman Empire, the Republic of Venice, etc.).[3] The divisions between these empires and their different cultural and other influence on ethnic groups in the Balkans have contributed to the fact that the ending of the Cold War (1989) and the dissolution of the former Yugoslavia (from 1991 until 2006) happened in this region in a highly conflictive atmosphere, most often followed by brutal armed conflicts and the emergence of new exclusive (ethno) national states.[4] Such newly "reconfigured" Balkans, and particularly its western part, in spite of the intention to be fully integrated in the European Union over the past 15 years, that is, after 2000, remains faced with deep divisions and existing latent tensions.

The Western Balkans, as a geopolitical coinage created in late1990s, was basically supposed to mark the countries and entities established on the territory of the former Yugoslav Federation and neighbouring Albania, and thus terminologically and geopolitically distinguish this region in relation to the countries of the Central and Eastern Europe.[5] In addition, this phrase was supposed to be much narrower and more specific in relation to a wider phrase – Southeast Europe, which in addition to the Western Balkans, also includes Slovenia, Romania, Bulgaria, Greece, Cyprus and parts of Turkey.[6]

Even today, the region of the Western Balkans is full of deep ethnic divisions, which followed after the disolution of the former Socialist Federal Republic of Yugoslavia, which most realistically reflect in fundamentally and deeply divided tri-ethnic Bosnia and Herzegovina, bi-ethnically divided Republic of Macedonia, as well as *de facto* ethnically divided Kosovo between the dominant ethnic

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4 Dragan Đukanović, „Zanemareni građanin i 'svemoćni' etnos — legitimacijski temelji postjugoslovenskih država i entiteta", in: Milan Podunavac, Biljana Đorđević, *Ustavi u vremenu krize: postjugoslovenska perspektiva*, Beograd, 2014, str. 103–118.
5 See: Dragan Đukanović, „Evropska unija i Zapadni Balkan: očekivanja i isčekivanja", *Kultura polisa*, god. XI, posebno izdanje, Kultura — Polis Novi Sad, Institut za evropske studije, Beograd, Novi Sad, 2014, str. 25–38.
6 Ibidem.

Albanians and minority Serbs in enclaves in the central and northern parts of this entity.[7] All previous attempts of the newly established political elites in the Western Balkans (especially after 2000) to overcome the "heritage" of the armed conflicts in this region, that is, bilateral issues related to the crash of Yugoslavia, and to somehow remove them through the European and Euro-Atlantic integration, do not provide a reasonable basis for the hope that certain forms of latent tensions in the region will be eliminated in the future.[8] On the contrary, the Western Balkans region is still in the "vicious circle" of its own internal problems, economic underdevelopment and inter-ethnic distrust.

THE WESTERN BALKANS IN THE GLOBAL SCALE IN 2015 BETWEEN "THE EAST" AND "THE WEST"

The current outlines of a global "East-West" conflict, related to the Ukraine crisis, ie. local internal conflicts between pro-Russian rebels and the central government of the country, as well as the annexation of the Crimea in 2014, also replicated in the Western Balkans to a certain extent.[9] On the one hand, over the past year Albania, Montenegro and Kosovo have introduced economic and other sanctions against the Russian Federation, thus actually joining the efforts of the European Union, as well as the United States, to change the situation in Ukraine through pressures directed towards the official Moscow.[10] In this way, primarily Albania, which has been a member of NATO since 2009, and Montenegro, which has been invited to join this organization, have shown a willingness to fully support the efforts to stop the conflict in Ukraine and to condemn the annexation of a part of its territory.[11]

However, Serbia, Macedonia and Bosnia and Herzegovina have not imposed restrictive measures against the Russian Federation, among other things due to the fact that they, on a foreign policy plane, are trying to maintain reserved position and open alternative to fairly close relations with the Russian Federation.[12] This was done despite the fact that essential and key foreign policy priority for these countries is the very membership in the European Union. Especially strange is the behaviour of the official Skopje, which did not introduce sanctions against Russia despite the fact that this country's orientation and *de facto* key foreign policy goal is membership in the North Atlantic Alliance. At the same time, the failure of the project "South Stream", which has been promoted by the Russian Federation in the past and the present decade, which tried to start it – construct it in cooperation with the governments of the countries of Southeastern Europe, primarily Bulgaria, Serbia and Hungary, in December 2014, after notice of withdrawal of the Russian side from this project, resulted in energy uncertainty in the Western Balkans. In this sense, the question of energy procurement in the Western Balkans and Southeastern Europe will further gain in importance in the future.[13]

The further evolution of the Ukraine crisis will certainly influence how some Western Balkan countries will position themselves towards certain global actors. In this regard, Serbia has a special responsibility, given that during this year it is chairing the Organization for Security and Cooperation in Europe (OSCE).[14] In this regard, both the Russian Federation, as well as the Western countries, will influence Serbia. Macedonia will try to maintain a similar position, by trying to not disturb the relations with Russia in the coming period. Bosnia and Herzegovina will, primarily owing to undoubtedly strong influence of the official Moscow in the entity with Serbian majority, the Republic of Srpska, also retain a similar foreign policy position.[15]

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7 See: Dragan Đukanović, *Institucionalni modeli i demokratizacija postjugoslovenskih država*, Institut za međunarodnu politiku i privredu, Beograd, 2007, str. 137–162.

8 Jelica Minić, Dragan Đukanović, Jasminka Kronja, *Regionalna saradnja na Zapadnom Balkanu – kako dalje?*, (urednik doc. dr Filip Ejdus), Istraživački forum, Evropski pokret u Srbiji, Beograd, maj 2014, str. 2–20.

9 See: „Ukrajinska kriza: Balkan između Zapada i Rusije", *Radio Slobodna Evropa – Balkanski servis*, Prag, 26. mart/ožujak 2014, Internet: http://www.slobodnaevropa.org/content/balkan-izmedjuu-zapada-i-rusije/25310548.html, 12/12/2014.

10 See: Dragan Đukanović, „Države Zapadnog Balkana i Zajednička spoljna i bezbednosna politika Evropske unije između normativnog, deklarativnog i stvarnog", *Godišnjak FPN*, Fakultet političkih nauka Univerziteta u Beogradu, god. VIII, br. 12, Beograd, Decembar 2014, Beograd, 2014, str. 9–40. See also: "Council Regulation (EU) No. 269/2014 of 17 March 2014 concerning restrictive mesures in respect of actions understanding of treathing the territorial integrity, soverenity and independence of Ukraine", *Official Journal of the European Union*, L 78/6, 17 March 2014.

11 See: „Tanilir: Crna Gora će biti pozvana u NATO krajem 2015. godine", Portal Analitika, Podgorica, 7. decembar 2014, Internet, http://portalanalitika.me/clanak/169343/tanilir-crna-gora-ce-biti-pozvana-u-nato-krajem-2015, 12/12/2014. i "Ruski ambassador u Crnoj Gori: sankcije Rusiji nisu u redu", *Večernje novosti*, Beograd, 9. maj 2014, Internet, http://www.novosti.rs/vesti/planeta.300.html:490785-Ruski-ambasador-u-Crnoj-Gori-Sankcije-Rusiji-nisu-u-redu, 12/12/2014.

12 Dragan Đukanović, „Države Zapadnog Balkana i Zajednička spoljna i bezbednosna politika Evropske unije između normativnog, deklarativnog i stvarnog", *Godišnjak FPN*, op. cit., str. 9–40.

13 Darya Korsunskaya, "Putin drops South Stream gas pipeline to EU, courts Turkey", *Reuters*, December 1st, 2014, Internet, http://www.reuters.com/article/2014/12/01/us-russia-gas-gazprom-pipeline-idUSKCN0JF30A20141201, 12/12/2014.

14 See: "2015 OSCE — Serbian Chermanship", Ministarstvo spoljnih poslova Srbije, Beograd, Internet, http://www.mfa.gov.rs/en/themes/osce-2015, 12/01/2015.

15 See: "Rusi pomažu budžetu RS i šalju mazut", *Srpska24.com*, Banja Luka, 16. septembar 2014, Internet, http://srpska24.com/rusi-pomazu-budzetu-rs-i-salju-mazut/, 12/12/2014.

THE WESTERN BALKANS AND THE PRESENT AND "FUTURE" EUROPEAN UNION

Even the European Union, in which all the countries of this region have seeked a membership over the past few decades, especially after the adoption of the Lisbon Treaty of 2009,[16] is experiencing a certain transformation with quite uncertain and unpredictable ending. In this regard, different ideas for its further deepening are evident (strengthening of its institutions and powers); however, strengthening of right-wing political options in some member states, which in a way challenge the credibility of today's European Union, is also evident (e.g., the National Front in France, or right-wing political parties in Hungary – Jobbik and Fidesz).[17] However, these forces, which perhaps are substantially more dominant in some member states of the European Union, are not enough influential in relation to those who are in favour of deepening integration within the institutional framework of the Union.

One of the potential scenarios related to the future of the European Union is that after a possible referendum on the staying of the United Kingdom of Great Britain and Northern Ireland in this organization, which is expected to be held in 2017, and GB's eventual abandonment of the Union, building of stronger, federal and, in a way, state structures would follow (restoration of the idea about the United States of Europe). In this case, it is evident that the Federal Republic of Germany would undoubtedly have the most influential role in this redefined European Union, which would then, much easier than the present Union, manage to actually integrate western parts of the Balkans. On the other hand, the scenarios of potential internal, dominantly regional divisions within the European Union[18] would bring new challenges in Southeastern Europe, that is, on those potential "boundaries" that would divide the spheres of influence in Central Europe and Balkans. This primarily refers to central, northern and western parts of Bosnia and Herzegovina inhabited by Croats, Boka Kotorska and the Budva Riviera in Montenegro and the far north and northwest of Vojvodina inhabitated by Croats and Hungarians. The same applies to the parts of Transylvania inhabitated dominantly by Hungarians. In case of such a scenario, it should be stressed that the instability of the Western Balkans is certainly evident again, with quite unforeseeable and negative consequences.

However, one should note the fact that the European Union is a very important stakeholder in the Western Balkans when it comes to reducing the evident tensions between the newly formed countries in this region. The EU, owing primarily to development of the regional approach (1996-7) and the Stabilisation and Association Process (1999-) in the last and this decade has managed to initiate the solving of numerous open issues between the countries and entities of the Western Balkans.[19] This was done first and foremost through the conditionality policy towards all stakeholders in the region, in the context of EU accession.[20]

Slovenia and Croatia became members of the Union in 2004 and 2013, but still have not fully resolved problems in interpersonal relationships, and Croatia has not resolved issues with the other "new" neighbouring countries (Bosnia and Herzegovina, Serbia and Montenegro).[21] The dominant issues in this regard are related to the dissolution of the former Socialist Federal Republic of Yugoslavia; however, they (such as determining borders, the status of refugees, succession of property of the former federation, the status of the newly established ethnic minorities, etc.) are not that huge to substantially and in long term jeopardize the regional stability.[22]

On the other hand, the European integration process, as well as joining the North Atlantic Alliance (NATO), in a certain way very often "blur" the real situation in the Western Balkans, since in the process of integration, objective interethnic problems remain unrecognized, or they simply get bypassed. In this context, the inter-ethnic tolerance and multiculturalism are often (over)emphasized and manifested in the Western Balkans through the display of certain "good qualities" before the European Union, for the sake of full membership in this organization, and not as a real result of internal "maturity" of these communities. Therefore, it should be noted that in fact most of these communities of the Western Balkans are still reluctant to truly and essentially accept any kind of collective specificity (ethnic, religious, ideological, sexual, etc.).

16 "Treaty of Lisbon", Lisbon, 13 December 2007. Internet, http://eur-lex.europa.eu/legal-content/EN/ALL/;ELX_SESSIONID=-1f0NTtZYXps2nTtZLvvD2X4yJpL6hqRJRpJP1gDLJxC2Qh8bYP2n!-590115125?uri=OJ:C:2007:306:TOC, 12/12/2014.
17 Branislav Omorac, "Uspeh desnice u Evropi", *Srpski akademski krug*, Beograd, 9. jun 2014, Internet, http://akademskikrug.rs/uspeh-desnice-u-evropi/, 12/12/2014.
18 The ideas on the division of Europe into Western Europe, Central Europe, the Nordic-Baltic region and the Balkans have been emerging several times and in several variations since 1990 onwards. See in: Dragan Đukanović, „Attempts to restore Austria-Hungary after 1918 — between austronostalgia and reality", in: Duško Dimitrijević (ed.), *The Old and New World Order – between European integration and the historical burdens: Prospects and Challenges for Europe of 21st century*, Institute of International Politics and Economics, Belgrade, 2014, pp. 222–223.
19 See: Duško Lopandić, „Sukcesivna proširenja Evropske unije i Zapadni Balkan", *Review of International Affairs*, Vol. 64, No. 1150, Belgrade, 7–20.
20 See: Duško Lopandić, "'Evrokriza' i budućnost Evropske unije", *Međunarodna politika*, god. 62, broj 1144, Beograd, 2011, str. 5–18.
21 Dragan Đukanović, "Bilateral Relations Between The Western Balkan Countries — Historical Background And Contemporary Challenges", in: Duško Dimitrijević, Ivona Lađevac and Ana Jović-Lazić (eds), *Regionalism and Reconciliation,* op. cit., pp. 111–127.
22 Ibidem.

Often these processes can be seen even after the accession of some countries of Southeastern Europe to the European Union. After the accession of Bulgaria and Romania to the Union in 2007, first followed only dissatisfaction of some leading countries of the European Union (primarily the Federal Republic of Germany) due to insufficient fulfilment of criteria regarding the accession, and then this dissatisfaction evidently grew. In fact, these countries were mainly "pressured" to carry out judicial reform and fight against organized crime and corruption, however all these did not happen.[23] Even today, these countries, despite the fact that they have already been eight years members of the European Union, are facing a certain type of atrophy of functional judicial, political and economic institutions.[24]

Some of the above-mentioned countries are projecting certain problems to neighbours that are not members of the European Union, thus in a way abusing their membership in this organization. In this regard, 3 years ago "artificial" problem of the status of the Vlach population in Eastern Serbia occured, which was emphasized by Romania,[25] and similar conditions regarding the status of the Bulgarian minority in Serbia were set from time to time by the official Sofia.[26] At the same time, Bulgaria and Greece deny the specific identity characteristics of Macedonians, which beyond any doubt arose as a *specificum* of ethnogenesis of these ethnic communities. This refers to the name of the country, its symbols, Macedonian language, the status of the Macedonian Orthodox Church, etc. This situation, bearing in mind the extremely complex inter-ethnic relations in Macedonia between Macedonians and Albanians, can only further weaken the stability of this, already, very unstable country.

THE WESTERN BALKANS IN THE "MIRROR" — BILATERAL ISSUES, INTER-ETHNICAL CHALLENGES AND CROSS-BORDER CRIME

After the analysis of the situation in the Western Balkans in the global and European scale, it is necessary to analyze how this region is facing its internal problems. It should be noted that the multilateral forms of regional cooperation in the Western Balkans have been producing results over the past decade and a half, both in terms of spreading mutual trust between countries and entities in the region. In addition, these forms of intergovernmental cooperation in the Western Balkans, although they disappeared under the decisive influence of the United States and the European Union, are now developing a completely different institutional forms and outlines, primarily due to deepened multilateral cooperation within the framework of the Regional Cooperation Council.[27] Since its establishment in 2008, that is, after the institutional transformation of the former Stability Pact for South Eastern Europe, it has become a respectable factor of regional stability, recognized both in relation to the European Union and other non-regional stakeholders.[28]

The mentioned unresolved issues in the bilateral relations between the countries of the Western Balkans, which are related to the process of dissolution of the former Yugoslavia, such as interstate delineation, issues of succession of properties of the former common state, the status of refugees, etc., together with minority issues, all leave trace in intergovernmental relations.[29] Today, the minority issues burden Serbian-Croatian, Serbian-Albanian, Montenegrin-Kosovo and the Montenegrin-Albanian relations. Despite the fact that there are significant issues relating to the status of ethnic communities in the Western Balkans, primarily to "new" minorities, the fact is that these issues, however, are not radicalized to the extent that they can lead to drastic destabilization of the Western Balkans.[30]

However, no such conclusion can be drawn when it comes to religious fundamentalism in the Western Balkans. The above-mentioned is a quite realistic basis for the emergence of certain forms of terrorism and ethnically/religiously motivated violence. A similar activity was evident in Macedonia when on April 12, 2012 five Macedonians were killed in Smilkovski Lake near Skopje.[31] Similar terroristic activities in the Western Balkans would cause certain related reactions in the wider region and the potential spiral of

23 G. K., "Romania and Bulgaria: Depressing reading", *The Economist*, London, January 22nd, 2014, Internet, http://www.economist.com/blogs/easternapproaches/2014/01/romania-and-bulgaria, 12/12/2014.
24 Ibidem.
25 The official Romania seeks to integrate the entire population of Vlachs in Serbia in the Romanian national corpus, although they in census in this country declarate themselves using a different ethnic determinant. See: „EU Expansion – Romania bloks Serbia's Candidacy", *Deutsche Welle*, Berlin, Internet, http://www.dw.de/romania-blocks-serbias-eu-candidacy-for-now/a-15774734, 15/01/2015.
26 Žarko Petrović, Igor Novaković, *Bulgarians in Serbia: a Serbian-Bulgarian relations in the light of Serbia's European integration,* ISAC fond, Friedrich Ebert fondacija, Beograd, 2013, str. 4–47.
27 Jelica Minić, Dragan Đukanović, Jasminka Kronja, *Regionalna saradnja na Zapadnom Balkanu – kako dalje?*, (urednik doc. dr Filip Ejdus), op. cit., str. 2–20.
28 Ibidem.
29 Dragan Đukanović, "Bilateral Relations Between The Western Balkan Countries — Historical Background And Contemporary Challenges", in: Duško Dimitrijević, Ivona Lađevac and Ana Jović-Lazić (eds), *Regionalism and Reconciliation,* op. cit., pp. 111–127.
30 Ibidem.
31 „Skoplje: islamisti izvršili ubistrva", *RTV B92*, Beograd, 1. maj 2015, Internet, http://www.b92.net/info/vesti/index.php?yyyy=2012&mm=05&dd=01&nav_category=167&nav_id=605483, 12/12/2014.

ethnically motivated violence. One should add to this as an illustration a constatation of the truly heated situation related to the release of a drone with a flag of the so-called "Autochthonous"Albania on the JNA Stadium, on the football match between Albania and Serbia, in mid-October 2014.[32] After this unusual incident, members of the Albanian community in Macedonia, Kosovo, southern Serbia and Montenegro – in the whole region where they lived – began gathering with the aim of supporting the public display of the mentioned flag.

There are dditional capacities for potential further destabilization of the already fragile inter-ethnic relations in other countries of the region, and this primarily referes to Bosnia and Herzegovina and some parts of Serbia (primarily Sandzak). This in the first place could be the potential radicalization of previously outlined objectives of Croatian political parties and leaders in Bosnia and Herzegovina, concerning the establishment of a separate territorial unit within this otherwise extremely complex state.

Another potential and very strong form of challenge to regional stability is related to the strengthening of radical right-wing organizations, which promote open chauvinism and intolerance. There are more and more of them in the Western Balkan region, and they are more often registered not only as classical political parties, but also as civic associations or NGOs.

Transnational aspects of cross-border crime cannot and have not circumvented the Western Balkan countries, as it is the region at the borders of the European Union. In this regard, the Western Balkans are exposed to numerous activities that have the classic features of organized crime. This primarily refers to a number of activities such as human trafficking, drug smuggling, illegal migrant smuggling and money laundering.[33] In addition to these activities, recently specially organized groups of sports fans appeared that provoke and incite violence at sporting events, and whose functioning is often associated with certain radical right-wing organizations.[34] At the same time, according to some analysts of the security situation in the Western Balkans, there are also new security challenges, primarily trade in counterfeit products and the emergence of organized groups of motorcyclists (aka bikers), as organized criminal gropus.[35]

However, the above-mentioned problems can be repaired both by better operational police cooperation between the Western Balkan countries, and by developing more adequate cooperation in the field of justice. Here certainly the most significant role is played by the Southeast European Law Enforcement Centre (SELEC Center), located in the Romanian capital – Bucharest.[36]

In the forthcoming period, one should not underestimate the possibility of new security challenges to the Western Balkans, which will also contain capacities for instability. In this respect, all the countries of the region are facing a serious task related to reducing the potential impact of criminal groups and organized crime to holders of political power. This also applies to the judiciary, as well as the police structures. "The European perspective" of the Western Balkan countries often appears in the dominant public discourse as a substitute for the otherwise very weak and very fragile state structures in the fight against contemporary security challenges. These countries expect that the sole membership in the European Union will solve their internal problems. Objective disadvantages of insufficiently "strong"countries and their structures are "hidden" behind such assessments, which are related to the dominant lack of will of political actors to deal with problems of organized crime and corruption at the national level.

Nevertheless, so far it has been shown that the membership in the European Union is not a sufficient or fully adequate mechanism for preventing the above-mentioned numerous challenges to regional stability and national security. This has been confirmed by insufficiently consolidated internal political, economic and other conditions in Bulgaria and Romania, which after 2007, despite joining the EU, have been facing certain forms of systemic corruption and economy-related crime. In this regard, the administration in Brussels often applies certain restrictive measures towards these countries, as a specific form of continuing the policy of conditionality even after their accession to the European Union.

CONCLUSION

However, the Western Balkans, despite certain progress in relation to the period of armed conflicts in this region in 1990s, remain considered by the Western Europe as a problematic region, without enough strong arguments for its admission into the European Union. In this sense, at times exaggerated intentions of political elites and professional circles of the Western Balkans to highlight as the main argument for join-

32 See: „Skandal, dron, zastava i tuča", *RTV B92*, Beograd, 14. oktobar 2014, Internet, http://www.b92.net/sport/fudbal/vesti.php?yyyy=2014&mm=10&dd=14&nav_id=911662, 12/12/2014.
33 Sergej Uljanov, Željko Jović, Dragan Đukanović, „Bezbednosni izazovi evropskih integracija Zapadnog Balkana", u: Dragan Đukanović i Vladimir Trapara (urs.), *Evropska unija i Zapadni Balkan,* Institut za međunarodnu politiku i privredu, Beograd, 2014, str. 58–72.
34 Ibidem, str. 69–72.
35 Ibidem, str. 69–72.
36 See – www.selec.org.

ing the EU the potential new instability and conflicts in the region, do not provide the possibility to perceive the importance of this process differently, primarily in the countries of the Western Europe.

Besides, the United States administration in a way shows a certain type of disinterest to provide impetus to the Western Balkans to join the European Union as soon as possible. The United States are currently busy with other areas and regions of the world, primarily with the Ukraine crisis, which escalated in 2014 and which still has the potential for new escalation. In this context, it can be concluded that the current global developments, primarily in connection with the Ukrainian crisis, can potentially affect the Western Balkans, especially in the case of possible stronger escalation of the conflict between the East and West.

It should be emphasized that in the future the Western Balkan countries should strengthen their institutional capacities to successfully cope with numerous challenges to their own safety, and they should do so with the support of the European Union, instead of unrealistically presenting their institutional frameworks (judicial and other structures) and thus essentially bluring their own impotence.

The basic concept related to the emergence of geopolitical determinant "Western Balkans", although coined in the period of post-conflict stabilization in the region (1999), failed to fully reaffirm the image of this part of Europe and to promote it as a safe and economically progressive region. On the contrary, the Western Balkans are still linked to, in the first place, bad legacy of former armed conflicts, as well as potential new instabilities. It should be noted that the economic crisis that has shaken the whole world since 2008, further destabilizes the situation in the region, given the high rate of public debt of countries in the region, unemployment and reduced ammount of direct investments. These are just some of the additional indicators that the instability in the Western Balkan region may grow in the future.

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PROMOTION OF THE REGIONAL SECURITY COOPERATION: THE BALKAN COUNTRIES APPROACH

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Abstract: The end of the Cold War brings to the fore a new, nontraditional security threats that have risen in prominence marking the emergence of a new context for the international order and security environment. This particularly is important in the post conflict areas such as Balkan. Countries in the Balkan are struggling to find sustainable frameworks for dealing with new security challenges more systematically. Through capacity and state institutions building for the improvement of primarily public safety, stability and overall prosperity in Southeast Europe, the integration process is well advanced so that today many countries of Southeast Europe are fully integrated in European Union. In this paper, the author gives an overview of existing regional mechanisms in South East Europe, related to confidence building and creation of a more secure region in today's world, emphasizing the objectives of those initiatives.

Keywords: region, security, initiative, cooperation.

INTRODUCTION

The post Cold War period has marked a new, nontraditional security threats that have risen in prominence, marking the emergence of a new context for the international order and security environment. Today's major security challenges such as terrorism, trafficking of drugs, weapons and people, environmental and healthcare crises and natural disasters increasingly require regional cooperation due to their cross–border nature. While the countries in Balkan are embarking on the process of institutionalizing patterns of regional cooperation, more attention needs to be paid to creating institutions that are able to address these nontraditional security issues.

We have also seen the development of international partnerships to fight new security threats between and among nations that aren't connected by an alliance. At the same time, the dividing line between military and nonmilitary has become increasingly blurred, and those "grey areas" where it is difficult to differentiate between times of conflict and times of peace, have been expanding.

Countries in the Balkan region are struggling to find sustainable frameworks for dealing with new security challenges more systematically. Doing so will require broadening the way we think about security and looking at these security challenges from a wider range of perspectives. It will also require taking into consideration the role of new sets of actors, both as instigators and as potential agents in addressing these new challenges.

As noted in this paper, while regional institutions in South East Europe (SEE) have made enormous progress over the past 15 years, they still do not have much of a track record for implementing effective policies in the region or addressing some of the most serious challenges facing countries in the region.

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MORPHO-GEOGRAPHICAL CHARACTERISTICS OF THE REGION

The Balkan Peninsula, popularly referred to as the Balkans, is a geographical region of Southeast Europe. The region takes its name from the Balkan Mountains that stretch from the east of Bulgaria to the very east of Serbia. The region is inhabited by different nations. The largest religion on the Balkans is Orthodox Christianity, followed by Catholic Christianity and Islam. The total area of the Balkans is around 790.000 square km and the population is around 57 million.[4] The Balkans meets the Adriatic Sea on the northwest, Ionian Sea on the southwest, the Mediterranean and Aegean Sea on the south and southeast, and the Black Sea on the east and northeast. The highest point of the Balkans is mount Musala 2,925 meters (9,596 ft) on the Rila mountain range in Bulgaria.

The Balkans has been inhabited since the Paleolithic and is the route by which farming from the Middle East spread to Europe during the Neolithic.[5] The first attested time the name "Balkan" was used in 1490 [6] although the concept of the "Balkans" was created in 1808.[7] As time passed, the term gradually acquired political connotations far from its initial geographic meaning, arising from political changes from the late 19th century. This political connotations are newer and to, a large extent, due to oscillating political circumstances. After the dissolution of Yugoslavia, the term "Balkans" again received a negative meaning, even in casual usage (see Balkanization).

Due to the historical and political connotations of the term "Balkans", especially since the military conflicts of the 1990s, the term "Southeast Europe" is becoming increasingly popular even though it literally refers to a much larger area and thus isn't as precise.[8] The abstracted term "The Balkans" covers those countries which lie within the boundaries of the Balkan Peninsula.

The Balkan Peninsula

Broadly interpreted, Balkans comprises the following territories: Albania, Bosnia and Herzegovina, Bulgaria, Croatia, Greece, Macedonia, Montenegro, Romania, Slovenia, Serbia and Turkey.[9] Recently, the region is sometimes designated as Western Balkans, which is today, more of a political than a geographic designation for the region of Southeast Europe that is not part of the European Union (Serbia, Bosnia and Herzegovina, Montenegro, Macedonia and Albania). Each country has the objective to join the EU and reach transmission scores (except those who have already done so), but until then they will be strongly connected with the pre-EU waiting program as CEFTA. [10]

4 The Balkan Nations, Chapter 13 section 4 at: http://mrparmele.com/notes-balkan.html, Retrieved 01 Oct 2014.
5 In 7th millennium BC. Borza, EN. (1992), *In the Shadow of Olympus: The Emergence of Macedon*, Princeton University Press, pg. 58; Perlès, Catherine (2001), *The Early Neolithic in Greece: The First Farming Communities in Europe*, Cambridge University Press, pg. 1.
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REGIONAL SECURITY COOPERATION INITIATIVES

Regional cooperation in the security sphere, with all its mechanisms of cooperation, primarily promotes and raises the overall security and stability in the region to a higher level and in this sense, the distinctive importance of regional cooperation is recognized. This is why Balkan countries actively participate in many regional initiatives, either as a full member or as an observer. At the beginning of the 20th century in SE Europe have been launched a number of political, economic and regional security initiatives with the purpose to preserve peace and stability in SE Europe. In further text the most prominent will be mentioned in some details.

South-Eastern Europe Defense Ministerial (SEDM). This forum has had a role in strengthening peace and stability in the region of SE Europe and importantly has contributed to peace efforts further afield. SEDM forum has been effective, with dialogue aimed at building a more secure and prosperous region through close regional cooperation and sharing common goals between member countries and observer nations.[11] It has achieved an internationally recognized image, including being held as an excellent model of mutual cooperation among States that are committed to strengthen international peace and stability: Albania, Bosnia and Herzegovina, Bulgaria, Montenegro, Greece, Croatia, Italy, Macedonia, Romania, Slovenia, Serbia, Turkey, Ukraine and the US (14 countries). Within the SEDM initiative member countries actively participate in the implementation of the following activities:

1) SEESIM (the SEE Simulation) - networking of SE Europe countries in the event of natural disasters,
2) SEEDIRET (SEE Defence Industries, Research and Technology), SE Europe countries cooperation in the military industry, research and technology,
3) SIMIHO (Satellite Interconnection of Military Hospitals of the SEDM countries), satellite linking of SEDM members military hospital,
4) CBSC (Counterproliferation, Border Security, Conterterrorism), includes cooperation in combating the proliferation of weapons of mass destruction, security of borders and the fight against terrorism.
5) SEMEC (SEE Military Education Cooperation), cooperation in the field of military education.

Within the initiative, the Political-Military Steering Committee (PMSC) has existed with a purpose to track implementation of MPFSEE (Agreement of the Multinational Peace Force in South-East Europe). Full member nations of the Committee of the Multinational Peace Force are actively involved in the work and participation in SEEBRIG-in, ie. active contribution (financial and manpower). SEEBRIG (Southeastern Europe Brigade) is a brigade composed of the units of the MPFSEE armed forces. According to this document, the purpose of SEEBRIG is contribution to regional stability and security and the expansion of good-neighborly relations among the countries of SE Europe (currently 7 nations participate). Units assigned to SEEBRIG remain in their bases and will be subordinated to the exercises and operations following a decision by the participating countries and relevant guidance and coordination of PMSC. This initiative is seen as a comprehensive mechanism for regional cooperation in SE Europe.

Balkan countries Chiefs of the General staff Forum B9 was established at the initiative of Greece and Turkey in 2006. The purpose of the Forum is to review and strengthen the model of military cooperation of the Balkan countries, as well as model of answer to all security challenges, risks and threats in the region. Most of the Forum activities are training and education or activities aimed to acquisition of the required level of interoperability that enables joint engagement in a variety of situations. This is primarily related to the implementation of joint military exercises, as well as making the annual estimates of asymmetric threats in the Balkans. Conference of the Forum has been implemented once a year for the purpose of its implementation. There are meetings of coordination groups, sub-groups for training, education and exercises (cooperation centers, joint exercises, networking of simulation centers, shared web sites, etc.), subgroups of asymmetric threats and team project configuration SEEETN, if necessary, and conferences for the realization of joint exercises. So far there has been seven conferences of the Forum.

US-Adriatic Charter (A-5) initiative was formally launched in 2003, when the foreign ministers of the USA, Albania, Croatia and Macedonia in Tirana signed a document entitled "US-Adriatic Charter". The objective of this initiative is to strengthen security and stability as a prerequisite for faster integration into Euro-Atlantic integration as well as strengthening of democracy and minority rights. The main areas of cooperation are: combating terrorism, combating cross-border crime and proliferation of weapons of mass destruction, corruption and drug trafficking. The initiative encourages the ongoing reform of the armed forces of member states and their mutual military cooperation. In addition to US, five countries: Albania, Bosnia and Herzegovina, Montenegro, Croatia and Macedonia, take part as full members. Serbia and Slovenia have observer status in this initiative. It is intended to be a supplement or an additional instrument for accelerating euro integration, but also a good mechanism to further strengthen regional cooperation and stability, which will significantly support focus of security and defense institutions in the direction of

11 SEDM. http://www.mapn.ro/sedm/concept/MPFSEE-SEDM/index.php. Retrieved 26 Sep 2014.

creating relatively dimensioned, efficient, modern and affordable armed forces. As a concrete way of participation in security cooperation, in 2011 and 2012, under the umbrella of A-5, states participated with a group of military instructors in ISAF in Afghanistan.

Center for Security Cooperation – RACVIAC. This Center was, as an idea and the project, created as a part of the Stability Pact in 2000. It begins its work as a multinational regional center for assistance in the implementation of arms control agreements to all SEE countries that have signed the same and initially dealt with arms control and application of confidence building measures and security. The role of the Centre is to strengthen dialogue and cooperation through the partnership of the member states and the other international actors in order to contribute and support regional security and stability. The activities of the Centre are extended over time and focal areas of cooperation includes: cooperative security with a focus on arms control, security sector reform, international and regional cooperation aimed at European integration.The Center consists of permanent and associate members as well as the observers. Permanent member states (core) are: Albania, Bosnia and Herzegovina, Croatia, Greece, Macedonia, Montenegro, Romania, Serbia and Turkey. Affiliate members are: Austria, Czech Republic, Denmark, France, Germany, Hungary, Italy, Netherlands, Norway, Russia, Slovenia, Spain, Sweden and the United Kingdom. States with observer status aree: Canada, Moldova, Poland, Slovakia, Ukraine and the US. The Center is financed by annual contributions of permanent and associate member countries. The most important and managing body of the Centre is the Multinational Advisory Group – MAG, consisting of representatives of the Member States at the level of deputy ministers. Center cooperates with the UN, OSCE, NATO and other sub-regional, regional and global international organizations. RACVIAC is at the top of regional initiatives with over 30 activities on an annual basis in areas of importance to the region, who are faced with the same problems and obstacles and who are in the similar stages of the process of european integration.

Southeast European Cooperative Initiative (SECI), Initiative for Cooperation in SE Europe was launched in 1996 at the inaugural conference in Geneva based on the understanding of the common issues of the EU and the US, as an alternative to the Dayton Peace Agreement and the innovative strategy to help SE Europe out of the crisis after the collapse of Yugoslavia. The main task of the initiative is to bring together law enforcement forces of 13 countries with the aim of creating added value in combating organized crime. SECI is dedicated to the sustainability of the declared struggle SE Europe countries against organized crime and strengthen the ability of law enforcement to combat organized crime. The Centre provides a significant support to the national (state) customs and law enforcement agencies by offering a reliable environment for the exchange of information, improvement of knowledge, joint planning and joint action in the field of cross-border crime. SECI member states are: Albania, Bosnia and Herzegovina, Bulgaria, Croatia, Greece, Hungary, Macedonia, Moldova, Montenegro, Romania, Serbia, Slovenia and Turkey. Permanent observers SECI countries are: Austria, Azerbaijan, Belgium, Canada, Czech Republic, France, Georgia, Germany, Israel, Italy, Japan, Netherlands, Poland, Portugal, Slovakia, Spain, Ukraine, United Kingdom and the United States (19 countries).

Agreement on Sub-Regional Arms Control (ASAC). Following the signing of the General Framework Agreement for Peace in BiH in Dayton, arms control in SEE is intensifying. Annex 1B of the Agreement defines the elements of arms control between the warring parties. Based on the Article IV of Annex 1B and under the auspices and with the assistance of Personal Representative of the Chairman of the OSCE, the Agreement on Sub-Regional Arms Control (ASAC) was signed in 1996. Parties to the Agreement were: the Federation of BiH, the Republic of Srpska, the former FR of Yugoslavia and Croatia. The aim of the Agreement is to establish a balance between the armed forces of the Parties in the Agreement defining the limitations in five categories of conventional weapons: battle tanks, armored combat vehicles, artillery caliber of 75 mm or more, combat aircraft and attack helicopters. The area of the application of the Agreement encompass today: Bosnia and Herzegovina, Montenegro, Croatia and Serbia. Application of this agreement is a significant effort in the way of confidence and security measures building and creation of good neighborhood relations in the region.

South East Europe Clearinghouse (SEEC). Forum for cooperation of the Western Balkans countries in the field of defense - SEEC is a regional security initiative launched in 2004 at the suggestion of Slovenia and US Army in Europe. The aim of the SEEC was to achieve a better coordination of donors in providing assistance to countries in the SE Europe region. Meetings at the level of Deputy Ministers of Defense of the region were introduced in 2007. They were intended as a mechanism to SEEC partner countries (Albania, B&H, Macedonia, Serbia, Croatia, Montenegro and Slovenia) to identify and mutually agree proposals for the establishment of regional centers and more effectively focus donors' assistance. Forum members agreed in 2009 on the establishment of three regional centers, namely NBC Center in Serbia, Centre for Peacekeeping Operations BiH (PSOTC) in BiH and Media Centre in Macedonia. As the project developed under the auspices of the SEEC, in accordance with the conclusions of the 1st Conference of Military Medicine of the SE Europe countries, a group was formed to evaluate the capacity of military medical services of the SE Europe countries. Working Groups are related to the development of a Concept of Balkan Military Medical power and defining the need for training of medical personnel in the armed forces. On 2nd Region-

al Conference on Military Medicine, held in 2013, Serbia was nominated as a leading nation (framework nation) for Balkan Medical Task Force - BMTF. At the final meeting of the SEEC, which was held in 2014 in Bosnia and Herzegovina, it is concluded that the SEEC ceases to operate in the current format and that certain functionality SEEC to maintain to ensure the coordination of regional training centers, the future BMTF and possibly new projects. It was also agreed to continue with the meetings of the Political Directors of SEEC functionalities

Southeast European Cooperation Process (SEECP). The process of cooperation in SEE was launched on Bulgaria's proposal at a meeting of foreign ministers of SE Europe in 1996. The initiative was originally called "The process of good neighborly relations, stability, security and cooperation among the countries of SEE." It was launched with the purpose to transforms the SE Europe in region of stability, security and cooperation through the promotion of mutual dialogue and cooperation at all levels and in all areas of common interest. The aim of this initiative is to strengthen security and stability, development of democracy, judicially and combating illegal activities as a precondition for faster inclusion in Euro integration. The initiative encourages the ongoing reform of the armed forces of member states and their mutual military cooperation. This initiative encompass the eleven participating countries: Albania, Bosnia and Herzegovina, Bulgaria, Montenegro, Greece, Croatia, Macedonia, Moldova, Romania, Serbia and Turkey. BiH is after active participation as an observer at full capacity involved in the activities of the SEECP in 2008. SEECP is the only authentic initiative that came from the countries of South Eastern Europe, as a sort of "voice of the region." SEECP activities taking place at summits of heads of state or government, meetings of ministers of foreign affairs, as well as at the level of political directors of the foreign ministries of the participating states, whose main role is to provide policy guidelines for the promotion of regional cooperation. Also, the Meetings of the Troika as a permanent coordinating body consisting of current, former and future President of the Forum. Meetings at the level of line ministries are held as needed to discuss some issues that are of interest to the member states. In the future work SEECP it is expected a more active approach to issues such as education, the prospects for development of railway transport, the development of small and medium enterprises, women entrepreneurs, consular issues and engage in further shaping the relationship between the SEECP and Regional Cooperation Council. Bosnia and Herzegovina expects more efficient coordination and synchronization of regional cooperation in SEE.

Southeast Europe Security Cooperation Steering Group – SEEGROUP. SEEGROUP is a regional initiative, which in addition to a regional support to individual countries supports the whole region, in the process of achieving common standards for membership in the broader security integration process. SEEGROUP objective is to help regional practical cooperation in the field of defense and security, and to promote the harmonization and coordination between countries in the region. At the suggestion of NATO and as part of the Initiative of SE Europe (Round Table of the Stability Pact for Security Affairs) South East Europe Security Cooperation Steering Group - SEEGROUP is established in 2000. SEEGROUP objective is to help regional practical cooperation in the sphere of defense and security and to promote the harmonization and coordination between countries in the region, through the identification of gaps in existing security support as well as identification of potential areas and the need for additional assistance that could be used for regional cooperation. SEEGROUP brings together 32 member countries (20 NATO member countries and 12 partner countries).

Regional Cooperation Council (RCC). Regional Cooperation Council (RCC) is the successor to the Stability Pact for South Eastern Europe (SP) a regional initiative formed in 1999.[12] The entire process of defining new concepts of regional cooperation took place in the framework of the Stability Pact for SE Europe (SP) and the SE Europe Cooperation Process (SEECP), with the active participation of the European Commission and a number of interested donors. At the Summit of the SEECP in 2007 is adopted the Statute RCC and the two-year process of transformation of the Stability Pact in the RCC was finished in 2008. Through the establishment of the RCC is formed the "structure" of regional cooperation in South Eastern Europe, where the backbone of the new concept of cooperation makes the SEECP, as the main political forum, and the RCC functionally associated with the process. Regional Cooperation Council meets in full format once a year, in parallel with the Summit of the SEECP. Operational body, the RCC Board consisting of national coordinators of the participating institutions and funded by the RCC Secretariat meets quarterly. The RCC Secretariat has Liaison Office to the EU in Brussels. Regional Cooperation Council is comprised of eleven participating countries in South-East Europe: Albania, Bosnia and Herzegovina, Bulgaria, Greece, Croatia, Macedonia, Moldova, Romania, Serbia, Turkey and Montenegro, the UNMIK "on behalf of Kosovo in accordance with UNSCR 1244", the EU is represented by the Troika - chairman of the EU Council, the Commission and the Council Secretariat, the European Parliament, as well as a number of countries and institutions. Since 2013, representatives of the interim institutions in Pristina have been presented with a "Kosovo with a footnote" in accordance with the agreement reached in the dialogue between Belgrade and Pristina. RCC is focused on the following priority groups: economic and social development, energy and infrastructure, justice and home affairs, cooperation in the security sector, as the "umbrella" theme, which is

12 Regional Cooperation Council. http://www.rcc.int/pages/2/overview. Retrieved 25 Sep 2014.

included in all of these priorities - strengthening human capital and parliamentary cooperation. SE Europe region get the oportunity through this initiative, and guided by their own needs and priorities, to cooperate in the reform and EU integration. The aim is that RCC is not a replica of the previous mechanisms for autonomous, dynamically oriented cooperation model of immediate benefit to the region of SEE.

South-East European Military Intelligence Chiefs – SEEMIC. On the initiative of the RCC, on an annual basis, under the auspices of the Director of the Military Intelligence headquarters of the EU since 2009, held a conference of heads of the military and intelligence agencies/institutions of the countries of South East Europe (SEEMIC), a members of the RCC. The aim of these activities is the development and improvement of military cooperation and intelligence services/institutions, countries SE Europe, RCC members, and through dialogue, to build a common understanding of the ways and modalities of coordination of activities in the prevention and countering modern security threats, challenges and risks.

ACHIEVEMENTS OF THE REGIONAL SECURITY COOPERATION

Regional and sub-regional organizations have proliferated since 1945 and many of them have had the overt or existential mission of security and confidence building. There has, however, been little new generic analysis of the role of the „region" in relation to security, while the established analytical models - the alliance, the collective security system, the security regime and the security community - often fail to capture either the discourse actually used, or the work done, by today's real-life groupings. A new analysis in terms of security functionality points to at least four sets of achivements that a regional security group can perform (often concurrently).

The most basic is security dialogue and conflict management, aimed at establishing or maintaining peace within the region. Regional organizations have explicit conflict prevention and management instruments to this end and the EU is the most ambitious in seeking to extend its influence for the purpose worldwide. Second, regional initiatives can develop systems of military cooperation based on mutual restraint - to reduce dangers from military activity (like the confidence building measures)[13] or on shared capacity building for older-style defence and new-style peace missions, which is now a key ambition for the African Union as well as NATO and the EU. Third, regional organizations can expressly promote democratic standards in government, and respect for human rights, as ways of bolstering peaceful and secure conditions as well as being ends in themselves. This ambition has been a main feature of European organizations but has faced greater cultural and practical obstacles in other. Fourth, regional cooperation could promote security by advances in purely economic fields and by cooperative approaches to functional risks and challenges including those presented by the new threats.

Regional security cooperation can also be examined from the viewpoint of normative quality and effectiveness. Relevant criteria are whether the cooperation is free and democratically conducted, or coerced and hegemonic. Whether it takes a zero-sum approach or it is rigidly framed or shows ability to grow and adapt or it gives an appropriate return on the efforts invested. It is difficult to say what conditions make such cooperation possible or impossible: some groups have worked well even with one member much bigger than the others, in regions with a great diversity of states, among states of different material levels of development and even in face of severe cultural and historical differences.

Regional security cooperation has become well entrenched across much of the globe and continues to spread. Critics may dispute its usefulness in face of the toughest security challenges and it is true that even the strongest regional groups have imperfect records and could not pretend to master all such challenges on their own. Their strength lies rather in finding non-conflictual paths to difference resolution and peace-building and in exploring the added value of multi-state cooperation for new as well as old security tasks. In principle, their security achievements can be of more general value so long as they work within the framework of the UN and other global norms but much remains unclear about their impact on practical global politics. Further objective research into the regional security phenomenon would be useful from this viewpoint and also for discovering the best ways to help those regions most obviously bereft of its benefits.

CONCLUSION

Maintaining regional security cooperation is one of the most important interests of the Balkan countries. It is an important factor for creating political stability, security and economic prosperity. The regional security cooperation is instrumental in addressing key security challenges, such as organized crime, corruption, border management and illegal migration. Security cooperation among Balkan countries could be considered the most relevant indicator of the stabilization in the region since it requires cooperation among

13 Developed by the Conference on Security and Cooperation in Europe, CSCE.

precisely those parts of the Balkan societies which were most active in the recent wars. Regional security cooperation is not new for the Balkan countries; these are already members of various regional groupings. The external pressure for regional cooperation is an additional factor which fosters the security cooperation between the states.

Regional security cooperation is necessity in the Balkans in order to tackle issues of key security challenges, attracting foreign investments to the region, and strengthening disaster preparedness. Fostering cooperation is also one of the criteria of EU membership, as this organization takes in only those countries that show maturity in the relations with their neighbors. Nevertheless, regional cooperation should not be mistaken for a substitute for EU integration but rather as important preparation for EU membership.

The Balkan countries have made significant progress in improving regional security. Despite all positive developments in regional security cooperation, there are still security challenges which require attention from all. Advancements in the combating organized crime, political extremism and radical structures are crucial for Balkan countries in order to achieve long term security and stability. There has been a significant decline in ordinary crime in the Balkans but organized crime and corruption are still present. These activities are facilitated by poor law enforcement.

There are also several challenges which the Balkan countries must face in the near future. The organized crime networks contribute to the proliferation of extremism in the countries of the region and the exports of illicit products to the EU. In addition, the Balkan countries need to suppress arms trafficking and other forms of organized crime. The necessary measures to tackle these threats are in place but they are not always implemented. This is due to the weakened state institutions, political and criminal interests and the lack of human and financial resources.

In order to reduce the risk of escalating outbursts of violence, more attention should be given to education and training. Though already relatively well-functioning, control and oversight mechanisms should be strengthened. Accountability, currently the weakest element in the security sector governance in the Balkan countries, needs further support.

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DEFENSE OF THE PRIVACY AND DATA PROTECTION RIGHTS OF INDIVIDUALS IN THE EUROPEAN UNION AND BOSNIA AND HERZEGOVINA: A LOST BATTLE?

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Abstract: Current intensive legislation activities in the field of protection of intellectual property (IP) on the global and national level generate the same features: enhancing the enforcement rules and creation of mechanisms for Internet surveillance that seriously endanger privacy and data protection of individuals. In this paper authors examine the premise that the protection of privacy rights and data protection are perceived as inferior to the protection of intellectual property rights (IPRs) in the context of these new legislative initiatives. Through the analysis of relevant provisions of European Union legislation and case law, ACTA and relevant national laws authors intend to reveal legal consequences and problems related to the enforcement of IPRs, and particularly criminal enforcement.

Keywords: ACTA, data protection, enforcement of intellectual property rights, criminal enforcement, Bosnia and Herzegovina.

RELATIONSHIP BETWEEN THE ENFORCEMENT OF INTELLECTUAL PROPERTY RIGHTS AND PROTECTION OF DATA AND PRIVACY OF INDIVIDUALS: EUROPEAN CONTEXT

It is widely accepted that intellectual property rights (IPR) are vital for stimulating development,[4]innovation and creativity, achieving growth, employment and improving competitiveness.[5] The strengthening of the IPRs, according to Reidenberg, became a fundamental issue for the emerging information economy just they were an international priority for the Industrial Revolution.[6] In the framework of new international agreements and national legislation on protection of IPR, the producers and owners of intellectual property (IP) products are perceived as the only "rights" holders, and individuals and groups who consume those products were given the inferior status of users.[7] This perception is mostly shaped by the increasing value of IP to the economy, i.e. on the statistics according to which counterfeiting today is USD 600 billion industry worldwide, which accounts for almost 7 percent of global trade.[8] Due to counterfeiting and piracy, losses on the global level could reach as high as USD 1.7 trillion by 2015.[9]The emergence of the Internet not only has significantly increased the distribution channels for counterfeit and pirated goods, but it also created jurisdictional problems in combating such practices.[10]Struggle to effectively enforce IPR in a technical environment that constantly alters,[11] has been particularly evident in the last decade. Resulting reactions of the governments to these developments were materialized in the form of new legislation that introduced specific rules designed for online environment aimed at improving enforcement of IR and preventing infringement. However, the enforcement of these new IP rules in online environment has been closely intertwined with the rights to privacy and data protection in a way that the realization of optimal protection of IP right holders' interests often caused infringement of the data protection and privacy rights of individuals.

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4 The World Bank (2005).
5 See: COM(2014) 389 final.
6 Reidenberg, J. (2007), p. 1074
7 Helfer, L. R. (2003), p. 58
8 Bitton, M. (2011), p. 3
9 ICC (2011).
10 OECD (2008)
11 Geiger, C. (2014), p 2

The present legal framework for legal protection of IPR in online environment established in the European Union (EU) is based on several legal instruments that have so far managed to reconcile frequently opposing interests of protection IPRs and protection of privacy and data. First concrete measure adopted in the EU with the aim of protecting IP in online environment was the Directive 2001/29/EC,[12]which concerns the legal protection of copyright and related rights with a particular emphasis on the information society.[13]This Directive stipulates that Member States (MS) shall provide appropriate sanctions and remedies in respect of infringements of the rights and obligations contained in it, and take all the measures necessary to ensure that those sanctions and remedies are applied.[14] These sanctions must be effective, proportionate and dissuasive.[15]However, this Directive is without prejudice to, *inter alia*, provisions concerning data protection and privacy.[16]

At the EU level the basis for the enforcement of IPRs was established by the Directive 2004/48/EC[1718] that recommended individual approach in determining which measures and remedies should be applied, i.e. in accordance with particular characteristics of each case including the specific features of each IPR and, where appropriate, the intentional or unintentional character of the infringement.[19] The Directive 2004/48/EC stipulates general obligation for MS to provide fair, equitable measures, procedures and remedies that are not unnecessarily complicated or costly or entail unreasonable time – limits or unwarranted delays.[20]Nevertheless, nothing new regarding the sanctions for infringement of IPRs was presented by this Directive given that majority of enshrined rules and sanctions are mostly derived from or related to the traditional enforcement of the IPRs.[21] The Directive 2004/48/EC did not impose additional obligations for the Internet service providers and other intermediaries regarding the issues of subscribers'/customers' identity and verification by them of information provided by subscribers/customers that hinder the enforcement.[22] In this way, the coherence with rules contained in another important legal instrument-E-commerce Directive was ensured.[23] Namely, E-commerce directive establishes precisely defined limitations on the liability of internet intermediaries that apply to certain activities that they perform.[24] The limitations on liability are established in a horizontal manner i.e. they cover civil and criminal liability for all types of illegal activities initiated by third parties.[25] Additionally, Article 15 prevents MS from imposing on internet intermediaries, with respect to activities covered by limitations on liability, general obligation to monitor the information which they transmit or store or general obligation to actively seek out facts or circumstances indicating illegal activities. Therefore, the adoption of new obligations on internet service providers would adversely influence limited liability regime and the prohibition of general monitoring obligations.[26]Moreover, this change would directly affect two fundamental rights: the protection of data and privacy.[27]

The principal EU's legal instrument on data protection is the Directive 95/46/EC on the protection of individuals with regard to the processing of personal data and on the free movement of such data.[28]Additionally, a more detailed data protection is given by the Directive 2002/58/EC on the processing of personal data and the protection of privacy in the electronic communications sector[29] and the Directive 2006/24/EC on the retention of data generated or processed in connection with the provision of publicly available electronic communications services or of public communications networks and amending Directive 2002/58/EC.[30]

The processing of the personal data in the context of the enforcement of the IPRs in the EU is limited. Namely, personal data must be: lawfully processed; collected for specified, explicit and legitimate purposes; limited to a certain period of time that is previously determined; and not further processed in a way incompatible with those purposes.[31]Criteria for legitimate data processing are stipulated in the Article 7 of the

12 OJ L 167/10/01
13 *Ibidem*, Article 1(1).
14 *Ibidem*, Article 8(1).
15 *Ibidem*.
16 *Ibidem*, Preamble § 60 and Article 9
17 OJ L 195/16/04
18 The subject matter of the Directive 2004/48/EC includes measures, procedures and remedies necessary to ensure the enforcement of intellectual property rights – Article 1
19 Directive 2004/48/EC, Preamble, §17
20 Article 3(1)
21 Kiskis, M. (2013).Established legal regime has been criticized by the right holders as failure to stem the increase in online copyright infringements, and inapt to solve intellectual property rights of the digital age, see: COM/2010/779 final, p 4
22 The right holders pointed out this as one of the main problems concerning the Directive 2004/48/EC, see: COM/2010/779 final, p 5
23 OJ L 178/1/00
24 E-commerce Directive, Articles 12-14
25 COM/2003/0702 final, p.12
26 COM/2010/779 final, p. 8
27 Articles 7 and 8 of the Charter of Fundamental Rights of the EU; and Article 8 European Conventions for the Protection of Human Rights and Fundamental Freedoms. Right to privacy and right to protection of personal data are two different legal entities in civil law tradition. See: Silva, A. J. C. (2012), p. 3
28 OJ L 281/95/31
29 OJ L 201/37/02
30 OJ L 105/54/06
31 Directive 95/46/EC, Article 6

Directive 95/46/EC. In the cases of collection of data from the data subject, a controller or his representative must provide a data subject at least with the information on: the identity of controller/representative; the purposes of the processing for which data are intended; and any further information.[32] The Directive 95/46/EC establishes the data subject's right of access i.e. right to obtain from the controller: the confirmation as to whether or not data relating to him/her are being processed and information at least as to the purposes of the processing, the categories of data concerned, and the recipients or categories of recipients to whom the data are disclosed; the communication to him in an intelligible form of the data undergoing processing and of any available information as to their source; the knowledge of the logic involved in any automatic processing of data concerning him/her at least in the case of the automated decisions referred to in Article 15 (1). Furthermore, the data subject has the right to obtain from the controller rectification, erasure or blocking of data the processing of which does not comply with the provisions of this Directive, in particular because of the incomplete or inaccurate nature of the data, and the notification to the third parties to whom the data have been disclosed of any rectification, erasure or blocking carried out, unless this proves impossible or involves a disproportionate effort.[33] However, the Directive 95/46/EC stipulates certain exemptions and restrictions with regard to the limitation of processing of the personal data, disclosure of information to the data subject, the right of access of data subject and publicizing of processing operations, when such restrictions constitute necessary measure to safeguard: national security; defense; public security; the prevention investigation, detection and prosecution of criminal offences; or of the breaches of ethics for regulated professions; an important economic or financial interest of a MS or of the EU, including monetary, budgetary and taxation matters; a monitoring, inspection or regulatory function connected, even occasionally, with the exercise of official authority in the cases referred to in (c), (d) and (e); the protection of the data subject or of the rights and freedoms of others.

The Directive 2002/58/EC[34]harmonizes the provisions of the MS required to ensure an equivalent level of the protection of fundamental rights and freedoms, and in particular the right to privacy, with respect to the processing of personal data in the electronic communication sector and to ensure the free movement of such data and of electronic communication equipment and services in the Community.[35] Under the Article 15 of the Directive 2002/58/EC, MS may adopt legislative measures to restrict the scope of the rights and obligations regarding the confidentiality of the communication, traffic data, presentation and restriction of calling and connected line identification and location data other than traffic data, when such restriction constitutes a necessary, appropriate and proportionate measure within a democratic society to safeguard national security (i.e. state security), defense, public security, and the prevention, investigation, detection and prosecution of criminal offences or of unauthorized use of the electronic communication system, as referred to in Article 13(1) of the Directive 95/46/EC. To this end, MS may, *inter alia*, adopt legislative measures providing for the retention of data for a limited period justified on the grounds laid down in this paragraph.[36]In comparison to other previously discussed directives, the Directive 2002/58/EC created mechanism that successfully reconciled different rights and interests embodied in: the protection of IPRs and right to an effective remedy on one side, and rights to the privacy and data protection on the other.[37]This is achieved through the rules which determine in what circumstances and to what extent the processing of personal data is lawful and what safeguards must be provided for.[38]

Given the previously elaborated provisions of the EU law, it is clear that the processing of the individuals' data for the purposes of protection of public interests is admissible. An efficient response to the protection of IPRs in the case of infringement committed by an individual is inevitably connected with the processing of his/her data, but in the case of civil enforcement (civil proceedings), the data processing is limited by the privacy and data protection requirements,[39]and the Court of Justice of the EU (ECJ) has taken the stand that the protection of IPRs must be balanced against these requirements.[40]

However, beside previously elaborated legal framework, new instruments for enforcement of IPRs and prevention of their infringement on the Internet have been introduced in Europe. Two key forms of these instruments are: graduate response systems and general Internet surveillance through filtering and blocking systems.[41]The graduate response system is a mechanism created to deal with recurrent infringements through a series of warnings that culminate with the imposition of sanction or sanctions intended to deter future infringements.[42]The first form of graduate response system was "three strikes" system established as an alternative enforcement mechanism which was based on the cooperation between the right holders

32 *Ibidem*, Article 10
33 *Ibid.*, Article 12
34 OJ L 201/37/02
35 Directive 2002/58/EC, Article 1
36 *Ibidem*, Article 15(1).
37 Case – 275/06 *Promusicae v. Telefonica*, §65 and §66
38 *Ibidem*, § 66
39 Kiskis (2013), p. 2
40 *Promusicae v. Telefonica*, §68 and §70
41 See: Kiskis (2013), p. 2
42 Birdy, A. (2013), p. 7

and internet service providers.[43]In essence, this system enables right holders to monitor online networks to detect infringements and when infringements are detected, the alleged perpetrators are served with one or several warning notices. After a set number of notices, punishment ensues.[44] Therefore, the graduate response system provides possibility for right holders to obtain the identity of an alleged infringer and to bypass the justice system.[45]There are several serious drawbacks of the graduated response system but the most significant are the ones that affect the Internet users:[46] denying them a due process by subjecting them to the unverified suspicion of infringing activities and undermining the basic human rights and individual liberties *inter alia* privacy and data protection while the graduate response system requires certain monitoring users' activities on the Internet and data retention.[47]In the opinion of the European Data Protection Supervisor, practices incorporated in the graduated response systems are "highly invasive in the individuals' private sphere. They entail the generalized monitoring of the Internet and users' activities, including perfectly lawful ones and carried out by private parties, not by law enforcement authorities."[48] So far, the various forms of the graduate response systems have been established in France, Taiwan, South Korea, New Zealand, the United Kingdom and Ireland.[49]

General Internet surveillance through filtering and blocking system is a dual operations system within which primarily all electronic communication of the data passing through the network of the Internet service provider must be filtered in order to detect or isolate those indicating infringement, and secondly the system must block communications which actually involve infringement whether 'at the point at which they are requested' or 'at which they are sent'.[50]Therefore, filtering and blocking represent the two separate interdependent operations,[51] which have significant potential to infringe the fundamental right to the protection of data.[52]

Unlike civil and administrative enforcement, criminal enforcement in the EU has been a contentious matter that resulted in the failure of assumed initiatives to harmonize criminal laws regarding the enforcement of IR. Namely, the Commission prepared the proposal of the Directive on criminal measures aimed at ensuring the enforcement of IPRs,[53]which was conceived as a supplement to the Directive 2004/48/EC and based on the necessity remove disparities regarding the criminal penalties that constitute a means of enforcing the IPRs.[54]One of the most contentious provisions of the Proposal concerned the definition of a criminal offence which is perceived as to being broad and vague.[55] The proposal ultimately failed[56] due to the differences in the national legislations of MS.[57]This strong opposition toward the establishing a harmonized framework on criminal enforcement was the reflection of the general resistance to the harmonization of criminal law in Europe. According to the ECJ, the competence of the Union in the field of criminal law is very limited if the application of effective, proportionate and dissuasive criminal penalties is necessary to ensure the efficiency of important Community policies.[58]This concept of the limited competence of the EU regarding the criminal law has been upheld by Lisbon Treaty according to which the EU can establish minimum rules with regard to the definition of criminal offences and sanctions only if the approximation of criminal laws and regulations of MS proves essential to ensure the effective implementation of the Union policy.[59]Given this, there have been suggestions of a differentiated approach in the context of criminal enforcement in the EU, which implies decriminalization of certain activities and imposing much severe penalties on other infringements that carry safety or health risks or that were carried out in the form of organized crime.[60]

Alongside these legislative instruments introduced at the national and European level, the attempts to establish a new framework for the enforcement of IPR in online environment were made at the international level in the form of Anti – Counterfeiting Trade Agreement (ACTA),[61] in which a balance is clearly

43 Yu, P. K. (2010).
44 Thierry, R and Barbier, L. (2010).
45 *Ibidem*.
46 See: Yu, P. K. (2010).
47 Kiskis (2013), p. 4 See also: Rantou, M. I. (2012).
48 OJ C 147/3/10, §17
49 For more information see: Haber, E. (2011), p. 297
50 Opinion of Advocate General Cruz Villalon Case C- 70/10 *Scarlet Extended v. SABAM*, §46.
51 *Ibidem*, §46, - §52.
52 Case C-360/10 *SABAM v Netlog*, §48 and §49; and *Scarlet Extended v. SABAM*, §50 and §51.
53 COM(2005)276 final and COM (2006)168 final.
54 §28 Preamble, Directive 2004/48/EC
55 See: Geiger, C. (2012), p. 8
56 OJ C 259/9/10.
57 See: Geiger, C. (2012), p. 7-8
58 Case C – 176/03, *Commission of the European Communities v. Council of the European Union*.
59 Article 83 (2), Treaty on the Functioning of the European Union, OJ C 326/47/12
60 Hilty, R. M., Kur, A. and Peukert, A. (2006), p. 7
61 Council Of The European Union (2011), Anti-Counterfeiting Trade Agreement between the European Union and its MS, Australia, Canada, Japan, the Republic of Korea, the United Mexican States, the Kingdom of Morocco, New Zealand, the Republic of Singapore, the Swiss Confederation and the United States of America, Inter-institutional File: 2011/0166 (NLE).

altered in favor of IPRs and to the detriment of the right to the privacy and data protection.[62]The main focus of ACTA was the creation of an international framework that increases the enforcement of IP laws and introduces improved international standards in the combat against infringements of IPRs,[63] subsequently it only refers to privacy and data protection in several provisions: Article 4 in which is explicitly stated that the disclosure of information that is contrary to the laws protecting privacy right is not required by the Agreement; Article 22 regarding the disclosure of the information referring to border measures; and Article 27 that highlights the preservation of privacy as a fundamental principle in the context of: the implementation of enforcement procedures to the infringement of copyright or related rights in digital environment; the promotion of cooperative efforts within the business community; and the expeditious disclosure of information from online service provider.

Although ACTA includes references to the protection of right to privacy, severe implications for the protection of privacy of individuals are evident in two provisions in Article 27 that provide for the enforcement of IPRs in an online environment, which the contracting parties have the possibility but not the explicit obligation to introduce into their legal system:[64] (i) a mechanism by which an online service provider may be ordered by 'a competent authority' to disclose the identity of a suspected subscriber directly and expeditiously to a right holder,[65] and (ii) the promotion of 'cooperative efforts within the business community to effectively address trademark and copyright or related rights infringement'.[66]

The first measure stipulated in the abovementioned provision aims at ensuring the disclosure to right holders of identity of individuals whose behavior is suspected to infringe IPRs online. Under such a mechanism, online service providers would be placed under the obligation to disclose personal data of some of their subscribers to right holders if given criteria are fulfilled subject to the intervention and control of an authority.[67] Through the stipulation of possibility for ordering to an online service provider expeditious disclosure of information that is sufficient to identify a subscriber whose account was allegedly used for infringement, ACTA clearly creates imbalance to the detriment of right to privacy and right to personal data protection. Accordingly, the enforcement of IPRs entails the identification of supposed infringers and probable violation of privacy and personal data protection. This standpoint was upheld by the ECJ in the recent cases *Scarlet Extended v SABAM*[68]and *SABAM v Netlog NV*[69]*. Although ECJ confirmed the necessity for the protection of the right to IP, it also rejected the argument that is inviolable right that must be absolutely protected.*[70] *Therefore, IPRs must be balanced against the protection of other fundamental rights.*[71] *In the case Scarlet Extended v SABAM* the installation of the contested filtering system that involves monitoring and systematic analysis of all content and the collection and identification of users IP addresses protecting personal data, the requirement that a fair balance be struck with the right to the protection of personal data would not be respected.[72] The second, *Netlog* judgment consolidated the reasoning presented in *Scarlet Extended v SABAM* that the protection of personal data is not fairly balanced with copyright holders' rights when the systematic processing of personal data is imposed in the name of the protection of the IP.[73] The court's standpoint presented in the abovementioned cases is clearly contrary to the incentives represented in ACTA.

The provision which stipulates the promotion of cooperative efforts within a business community to effectively address the trademark and copyright or related rights infringement lacks a precision regarding the determination of measures that could be undertaken.[74]Therefore, one of the possible interpretations is that it includes various forms of voluntary enforcement cooperation mechanisms between service providers and right holders in order to address relevant infringements, such as three strikes mechanisms and blocking and filtering.[75]

62 See: Silva, A. J. C. (2011).
63 European Commission (2009)
64 Silva, A. J. C. (2011), p. 611
65 ACTA, Article 27(4).
66 *Ibidem*, Article 27(3).
67 Opinion of the European Data Protection Supervisor on the proposal for the Council Decision on the Conclusion of the Anti-Counterfeiting Trade Agreement (ACTA), p 15. Available at: http://www.europarl.europa.eu/meetdocs/2009_2014/documents/libe/dv/acta_edps_/acta_edps_en.pdf. For the opposite point of view see: Richardson, M. (2004).
68 *Scarlet Extended v SABAM*.
69 *SABAM v Netlog NV*.
70 *Scarlet Extended v SABAM,* § 43; *SABAM v Netlog NV,* § 41
71 *Scarlet Extended v SABAM*§ 44; *SABAM v Netlog NV,* § 42
72 *Scarlet Extended v SABAM* § 51;
73 Fuster, G. G. (2012), pp. 43-46
74 See: Silva, A. J. C. (2011), p. 630-636
75 Opinion of the European Data Protection Supervisor on the proposal for a Council Decision on the Conclusion of the Anti-Counterfeiting Trade Agreement (ACTA), *supra* note 64.

CRIMINAL ENFORCEMENT OF IPRS IN LIGHT OF ACTA AND CRIMINAL LAW OF B&H

Generally speaking, the debate on the criminalization of infringements of IPRs has been ongoing for a quite long time.[76] It is interesting not only for legal scholars but, due to certain relatively new legislative initiatives and developments, for a general public as well. While the existing theoretical discussion on this question is sparse, various legal documents such as ACTA, SOPA, PIPA, etc. promote the criminalization of IPR's infringements. There are various arguments pros and cons the criminalization. The usual argumentation line against the criminalization contains arguments such as: IP crimes usually do not involve violence;[77] the victims of the crimes are not easily identifiable;[78] the harm they cause is often difficult to assess,[79] and the question of who should be held culpable for the offence is also not easily answered.[80] Namely, criminal law and civil law differ in many important aspects and criminal law demands much higher standards because of the profound impact on people.[81]Therefore, the legal system has put in place severe and serious obstacles that have to be overcome before anyone can be declared guilty of a crime.[82] Despite all of above mentioned, probably no area of criminal law has experienced more growth on international scene in recent years than IP, at least in terms of legislative enactments.[83]

Stop Online Piracy Act's (SOPA)[84] creates many new criminal laws for causes of action such as tortuous interference and copyright infringement that have traditionally been left to civil law. One of the provisions in Section 201 states that '*any person who willfully infringes a copyright shall be punished as provided under the Section 2319 of Title 18'*. Section 2319 of Title 18 allows for individuals to be imprisoned for up to five years for the first offence and up to ten years for the second offence and could include fines up to two million dollars.

The Protect Intellectual Property Act (PIPA)[85] is law parallel to SOPA. The proposed legislation is designed to tackle online piracy, with a particular emphasis on illegal copies of films and other forms of media hosted on foreign servers. It states that anyone found guilty of streaming copyrighted content without permission ten or more times within six months should face up to five years in jail.

In the Section 4 – Criminal enforcement of ACTA[86] Criminal Offences (Article 23), Penalties (Article 24), Seizure, Forfeiture, and Destruction (Article 25) and Ex Officio Criminal Enforcement (Article 26) are established.[87] Namely, as it is stated in the Anti-counterfeiting Trade Agreement (ACTA): An Assessment the ACTA provisions on criminal enforcement are the most ambitious.[88] ACTA suggested that the section on criminal measures is a clear statement of intent of the contracting parties that, in addition to the previous and usual civil and private enforcement by IPR holders, the state has to play a role in combating economic crime through criminal enforcement. Article 23.1 of ACTA provides for criminal enforcement in case of *'willful trademark counterfeiting or copyright or related rights piracy on a commercial scale*'. The term 'commercial scale' is further defined as being 'commercial activities for direct or indirect economic or commercial advantage'.[89]All those provisions are overbroad and vague.

For the purpose of this paper, it was necessary to analyze criminal laws of B&H and determine the state of the criminalization of infringements of IPR in the legal system of B&H. Criminal provisions in the B&H legal system are established through criminal codes at two levels: state and entity level. At the state level there is the Criminal Code of B&H[90] while at lower levels (entity level and Brčko District B&H) there are three criminal codes where certain matters are treated and regulated differently.[91]Thus, the criminal enforcement of IPR in B&H's legal system is introduced in the chapter XXI of the Criminal Code of B&H (CC B&H): Criminal Offences of Copyrights Violation while criminal codes of the Federation of B&H, Republika Srpska and District Brčko do not deal with this matter. This chapter of CC B&H contains a crim-

76 See: Lefranc, D (2012).
77 See more in Manta, I. D. (2011), p. 10-11
78 IPRs such as patents and copyrights are not really property. They do not have the characteristics of classic property. There is no natural scarcity, there is no positive right to use in an IPR, and there is no 'loss' in the case of concurrent use.
79 See more in Green, S. P. (2004).
80 *Ibidem*
81 Wachter, J. (2012).
82 *Ibidem*.
83 Green, S. P. (2002).
84 Stop Online Piracy Act, H.R. 3261 (112th), 112th Congress, 2011–2013. Text as of Oct 26, 2011 (Introduced)
85 Protect Intellectual Property Act (PIPA), Available at: http://www.leahy.senate.gov/imo/media/doc/BillText-PROTECTIPAct.pdf.
86 The Anti-counterfeiting Trade Agreement (ACTA) (2011). Council of The European Union. Inter institutional File: 2011/0166 (NLE). Available at: http://register.consilium.europa.eu/pdf/en/11/st12/st12196.en11.pdf.
87 ACTA can be observed as elaboration of the Article 61 of TRIPS. See more in: Taubman, A. (2011) "A Practical Guide to Working with TRIPS", New York: Oxford University Press.
88 Available at: http://www.europarl.europa.eu/RegData/etudes/etudes/join/2011/433859/EXPO-INTA_ET(2011)433859_EN.pdf.
89 ACTA, Article 23.
90 Official Gazette of B&H, no. 3/03, 32/03, 37/03, 54/04, 61/04, 30/05, 53/06, 55/06, 32/07, 8/10.
91 Criminal Code of Federation of Bosnia and Herzegovina, Official Gazette of FB&H no. 36/03; Criminal Code of Republika Srpska, Official Gazette of RS no. 49/03; Criminal Code of District Brčko B&H, Official Gazette of DB B&H no. 10/03.

inal offence of the violation of copyrights and copyright related rights. Those provisions protect moral and property rights of authors and performers, the rights of producers of audio recordings and rights in relation to the broadcasting of programs, or the rights of authorized distributors of encrypted satellite signals. The incriminations are consistent with the provisions of domestic legislation, especially the Law on Copyright and Related Rights in B&H.[92] There are five criminal offences where only two partially complies with the provision of the article 23 of ACTA.[93] Only Articles 243 - Impermissible Use of Copyrights and 244 - Illegal Use of the Sound Recording Producers' Rights can be viewed in the light of the provisions of the Article 23 of ACTA.

While the object of the protection in the Article 242 - Breaches of Copyrights is a moral copyright, Article 243 - Impermissible Use of Copyrights protects property copyrights of authors and artists and ensures the protection of unauthorized use of copyright works or performances of artists. Therefore, this criminal offence will commit "*Whoever, without the authorization of the author or other holder of copyright, or the person entitled to give authorization, where such authorization is required under the provisions of the law of Bosnia and Herzegovina, or contrary to their prohibition, fixes on a material surface, reproduces, multiplies, distributes, rents, imports, brings across the state border, presents, performs, broadcasts, transmits, makes available to the public, translates, adapts, arranges, alters or uses in any other form the work of an author*".[94] The condition for the existence of a criminal offence is that these acts have been committed without approval. Furthermore, this article sanctioned behaviors that violate the property rights of performers in the same way as the rights of the authors. Enabling an unauthorized use, a copyright work or an artistic performance is also sanctioned as well as the dissimulation of the act. A qualified, severe form of the offence will exist if the perpetration of the criminal offence referred to in paragraph 1 through 3 of this Article has resulted in a substantial financial gain or has caused a substantial damage, and the perpetrator has acted with the aim of acquiring such financial gain or causing such damage.[95]

Article 244 - Illegal Use of the Sound Recording Producers' Rights protects producers of audio recordings and rights related to the radio broadcast. While copyright law applies to intellectual creations, these neighboring rights apply to the performance of the work, the right to fixture of sound, performance of other sounds and it includes a recording of performance and the right of organization in broadcasting, which is related to the emission of performance.[96] This criminal offence is aimed at protecting producers of sound recordings from unauthorized copying, distribution and various forms of making available to the public. The crime is committed if a person without the authorization of the producer of a sound recording, where such authorization is required under the provisions of the law of B&H, or contrary to their prohibition, broadcasts, reproduces directly or indirectly their sound recording, distributes, rents, imports, brings across the state border or makes available to the public the sound recording without authorization. Furthermore, this offence will commit "*…whoever, without the authorization of the holder of the right with regard to the radio broadcast shows, where such an authorization is required under the provisions of the law of Bosnia and Herzegovina, or contrary to their prohibition, re-broadcasts or records the show, reproduces or distributes the recording of its show*".[97] If the perpetration of the criminal offence referred to in paragraph 1 and 2 of this Article has resulted in substantial financial gain or has caused substantial damage, and the perpetrator has acted with an aim of acquiring such financial gain or causing such damage, the qualified form of the offence will exist.

The analysis of those provisions showed that our legal system adopted a 'soft' approach to the criminalization of infringements of IPRs leaving most of the matter to the civil law. This legislative solution is in line with stance presented by Joren the Wachter that "criminal law is just too formidable for dealing with IPRs infringement during the battlefield of a society that just started to discover the benefits of file-sharing, and user generated content".[98]

PRIVACY AND DATA PROTECTION: B&H CONTEXT

The privacy and data protection framework in B&H related to the enforcement of IPRs in online environment is established by the Law on Protection of Personal Data.[99]This Law applies to the processing of the personal data by public authorities and natural and legal persons.[100]Following the solutions of the EU

92 Law on Copyright and Related Rights in B&H, Official Gazette of B&H no. 63/10
93 Those criminal offences are: Breaches of Copyrights (Article 242), Impermissible Use of Copyrights (Article 243), and Illegal Use of the Sound Recording Producers' Rights (Article 244), Illegal Use of Radio Broadcasting Rights (Article 245) and Illegal Distribution of Satellite Signals (Article 246) of CC B&H (Official Gazette of B&H no. 03/03).
94 Article 243, CC B&H
95 *Ibidem*.
96 Bačić, F. and Pavlović, Š. (2001)
97 CC B&H, Article 244.
98 Available at: http://jorendewachter.com/2012/10/why-criminalizing-ip-infringement-does-not-work/. Accessed: 10.12.2014
99 "Official Gazette of Bosnia and Herzegovina"49/06, 76/11
100 Law on Protection of Personal Data, Article 2(1)

law, lawful processing of the personal data in the B&H legal system in the context of the enforcement of IPRs is restricted by several requirements[101] such as: the processing must be done fairly and lawfully; the personal data collected for special, explicit and lawful purposes can only be processed in accordance with that purpose and in extent and scope necessary for fulfillment of that specified purpose; and personal data can be processed only within the period of time necessary for fulfillment of the purpose. A general rule in the B&H legal system is that a controller may process personal data only with the consent of a data subject, which must be: in writing and signed by the data subject.[102] Furthermore, the consent must specify: the data, purpose and period of time for which the consent has been given.[103]This consent can be withdrawn at any time, unless otherwise explicitly agreed upon by the data subject and controller.[104]However, there is exception to this general rule stipulated in the Article 6 according to which the controller may process the data without the consent of a data subject if, *inter alia:* the processing of the personal data is required in order to complete the task carried out in the public interest.[105] The data subject has information rights in relation to the collection of data regarding the: purpose of processing, controller, receiving authority or the third party whom the data will be accessible; legal obligation to submit the data for processing; exception of this legal obligations; consequences in the case that the data subject refuses to submit the data; if the data collecting is done on a voluntary basis; right to access and the right to correct the data referring to him/her.[106] Besides, the data subject has the right to access personal data.[107]However, Law provides exceptions regarding the previously elaborated rights, i.e. exemptions from the obligations to: provide information on the processing of personal data; and enable access to personal data if that could cause significant damage to legitimate interests of the following categories: defence; public security; prevention, investigation, detection of crimes and prosecution of perpetrators as well as violations of ethical regulations of the profession; economic and financial interests, including monetary, budgetary and tax issues; inspection and duties related to the control; the protection of data subjects or rights and freedoms of other people.[108] From the previously elaborated provisions of the Law on Protection of Personal Data it is evident that this Law incorporates solutions of the EU data protection law.[109]

The same approach of the legislator is evident when it comes to the regulation of obligations of the information society service providers. Namely, the Law on the electronic legal and business traffic[110] provides limitations of the liability of the service providers[111] in accordance with E-commerce Directive. In the context of the enforcement of the IPRs especially important are the provisions which exclude their liability in terms of links[112] and provisions that regulate scope of the obligations of service providers.[113] According to the Article 27, a service provider who, by means of electronic connectivity, allows access to the information of the third party will not be responsible for such information if: a) there is no reliable knowledge on illegal activities or information; or b) as soon as a service provider received knowledge or information, he approached to the removing of the electronic connections. Additionally, service providers have no general obligation to monitor information which they store, transmit or make available, or general obligation to actively seek circumstances that indicate illegal activities.[114]Nevertheless, they have an obligation to deliver, based on the suitable act of the competent court, all information on their users that can be used for investigation with the aim of preventing, investigating or prosecuting punishable acts. The same obligation is stipulated in the favor of administrative authorities if this is necessary for performance of their obligations.[115]

However, there are certain discrepancies from the EU solutions that may affect the data protection and privacy of individuals. This controversial provision that relates to the enforcement of the IPRs is contained in the Article 28(4) according to which service providers are obliged to provide, on request of the third parties, the name and address of any user of their services, if those persons have prevailing legal interest in determining the identity of the user and certain illegal facts, and if they make probable that the knowledge of this information makes an important assumption for legal proceedings. This provision clearly deviates from the relevant provision of the E-commerce Directive[116] according to which MS may establish obligations for information service providers to inform the competent public authorities of alleged illegal activities undertaken or information provided by recipients of their service or obligations to communicate to the

101 *Ibidem*, Article 4
102 *Ibid*., Article 5(1) and (2)
103 *Ibid*., Article 5(2)
104 *Ibid*., Article 5(3)
105 *Ibid*., Article 6(1)(d)
106 *Ibid*., Article 22
107 *Ibid*., Article 24
108 *Ibid*., Article 28
109 Namely, Directive 95/46/EC
110 Official Gazette of B&H, no. 88/07
111 *Ibidem*, Article 23-27
112 *Ibid*., Article 27
113 *Ibid*., Article 28
114 *Ibid*.,Article 28 (2)
115 *Ibid*., Article 28(3)
116 Article 15(2)

competent authorities at their request the information enabling the identification of recipients of their service. It is compatible with the EU law to exclude the communication of personal traffic data for the purpose of bringing civil proceedings against copyright infringements.[117]Furthermore, this provision is in disparity with the provisions of the Law on protection of personal data contained in the Article 6 given that the execution of the tasks in public interest is generally entrusted to the state authorities and that Article 28(4) permits traffic data to the private right holders without the evolvement of such authorities. This is not the best solution given the fact that state authorities, unlike private individuals, are directly bound by fundamental rights and must respect procedural safeguards,[118]and they are interested in investigating the circumstances which exonerate the data subject accused for the infringement of IPR. Therefore, civil enforcement of IPRs could only be based on the Article 5 according to which a controller can process the personal data with the consent of a data subject but due to the principle of purpose, time and scope limitation[119] of personal data processing, a data subject must be clearly informed that the storage and communication of personal data by the service providers will take place for the civil enforcement of IPRs.[120]Given this, the B&H legislator adopted the rules on the civil enforcement of IPRs that are different from the provisions of the EU law and case law[121] and that can lead to the severe infringements of privacy and data protection.

Regarding the criminal enforcement of the IPRs in the context of the B&H law, it is important to point out that under the current Criminal Procedure Code of B&H[122] the search of the movables includes the search of the computers and other similar devices for automated data processing connected with it,[123] but the search (and eventual subduction of objects) cannot be conducted without a search warrant issued by a judge on a prosecutor's request or police officers request if they informed the prosecutor.[124]

Recording of the transactions and communication under the B&H Law is categorized as a special investigative measure[125]and is regulated with much stricter rules than in the United States.[126] Special investigative measures can be undertaken under the following general rules: necessity, the court's decision, the existence of certain probabilities relating to the offence, legal action catalog, legal catalog of crimes, the clarity of the person and type of measures and time constraints.[127]

The Law of Criminal Procedure predicts the use of these measures under the following conditions: the existence of a reasonable doubt; one of the following criminal offences: criminal offences against the integrity of B&H, criminal offences against humanity and values protected by international law, criminal offences of terrorism, and criminal offences for which, pursuant to the law, a prison sentence of minimum of three (3) years or more may be pronounced; only by court order after the prosecutor's written request; and, up to one month duration (with the extension to maximum three or six month depending on the type of measure).[128]

If we bear in mind the restrictiveness of the legislator in determining the special investigative measures and only for the most serious crimes, in accordance with all of the above, it is clear that B&H will unlikely that extend them to the acts related to the infringement of IP.

CONCLUDING REMARKS

Last two decades in B&H have been marked by intensive legislative changes especially in the context of the European integration process. These changes resulted in a new legal framework regulating, *inter alia*, the enforcement of IPR, on one hand, and the data protection and privacy in the context of online environment, on the other. The analysis of the provisions of national law reveals that a significant potential for efficient protection and enforcement of IPRs is present in the B&H legal system apparently even at the expense of the protection of data and privacy. Furthermore, it seems that criminal enforcement rules give a better protection of the fundamental rights to privacy and protection of personal data than it is the case with the civil enforcement of IPRs.

117 Opinion of Advocate General in *Promusicae v. Telefonica*, § 114, and ECJ Judgment in *Promusicae v. Telefonica*, § 70
118 *Ibidem*.
119 Article 4
120 Opinion of Advocate General in *Promusicae v. Telefonica*, § 109
121 See: Case – 275/06 *Promusicae v. Telefonica.*
122 "Official Gazette of B&H", no3/03, 32/03, 36/03, 26/04, 63/04, 13/05, 48/05, 46/06, 76/06, 29/07, 32/07, 53/07, 76/07, 15/08, 58/08, 12/09, 16/09, 93/09
123 Article 52(2)
124 Article 53. See: Sijerčić-Čolić, H. (2008).
125 Articles 116 – 122
126 Allowed special investigative measures are: surveillance and technical recording of telecommunications; surveillance and technical recording of premises; access to computer systems and computerized data; secret surveillance and technical recording of persons, vehicles and objects that are associated with them; the use of undercover agents and the use of informants; simulated and controlled purchase of objects and simulated bribery; and supervised transport and delivery of objects of criminal offences.
127 Halilović, H. (2005).
128 See: Sijerčić-Čolić, H. (2008).

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COMPARATIVE OVERVIEW OF BORDER SECURITY SYSTEMS OF THE UNITED STATES, THE RUSSIAN FEDERATION AND THE REPUBLIC OF TURKEY

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Abstract: The state border represents a significant barrier between states with the purpose of preventing "spillover" of various criminal and other illicit activities. In order to successfully protect themselves against security challenges, risks and threats - such as various forms of cross-border crime or smuggling (of people, drugs, weapons, radioactive materials, excise and other goods), as well as against the threat of external aggression, terrorism and other, the states design an appropriate system of border security. The subjects of this system are specialized border services for specific work segments, within the activities of state border protection - such as border police, gendarmerie, military, customs, coast guard and inspections (veterinary, phytosanitary, etc.). Depending on the proclaimed purpose of the system, on the mentioned subjects, as well as on the work performance of border security, the border security systems are divided into military, police and combined.

Recognizing the great importance of border security systems in international relations, and bearing in mind the security challenges at the borders today (the growing terrorist threat, tense situations around the Arctic, Ukraine, Iraq, Syria, etc), this study offers a comparative overview of the border security systems of the United States, the Russian Federation and the Republic of Turkey. The given overview of border security systems in these three countries, indicates certain peculiarities, similarities and differences in their functioning.

Keywords: state border, border security system, border services, the United States, the Russian Federation and the Republic of Turkey.

INTRODUCTION

According to its physiognomy, the importance, and the position, the state border represents the first "pillar" of the national security[2]. Therefore it is the greatest security challenge for the country, regardless of the type of security threats. That is the reason why the state border, regardless of the contemporary trends of its "extinction", must be adequately protected, which then subsequently provides security to the state - resulting in the security of the region or the continent as a whole. The importance of its security is particularly evident during the boom of the organized cross-border crime, global terrorism and other criminal activities. Consequently, each country aims to develop a modern and efficient security system of its borders[3].

The border security system, apart from the legal framework, also includes a set of preventive and repressive measures for the control of state border (control at border crossings) and the security of the state borders (securing the land or the so-called "green border", and the water or so-called "blue border"), which are carried out by different entities (police, military, customs, inspection, etc.), in order to prevent illegal activities. Depending on the objectives, methods of performing the border security, as well as subjects, the border security systems can be military or militant (linear), police (linear-depth) and combined.

Military (militant) border security system is based on the linear concept of border security (security along the border line), which is focused on the implementation of preventive and repressive measures by the military subjects (border units of the Army), aiming to protect the state border from the potential aggressor. Police border security system is based on linear-depth concept of border security (security along the border line, and within the country). It focuses on the implementation of preventive and re-

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2 According to the theory of organic synthesis of the ground and the state, the state border symbolizes "the skin of the state" - a peripheral organ in charge of receiving every assault to the body and alerting other defense organs. Quoted: Nolte, HH: German Eastern border, the Russian Southern border, and American Western border. For details, see: Beker, J., Komlozi, A.: Granice u savremenom svetu, Filip Višnjić, Beograd, 2005., p. 9

3 Živković, D.: Granica - izazov za bezbednost, Vojnoizdavački zavod, Beograd, 2008., p. 95-96.

pressive measures by the police (border police, gendarmerie, etc.) and other subjects related to the state border aiming to combat cross-border crime (the customs, border inspection services, etc.) This system is characterized by the fact that the linear control of crossing the border, and depth security of the state border is performed by police formations[4], usually in cooperation with the customs and border inspection services. The concept of such a system is defined through a national strategy for integrated border management, which includes the joint operation of these subjects at both the national and international level. The combined system of border security (military and police) is based on both concepts and focuses on the implementation of preventive and repressive measures by the military and police entities, in order to protect the state border from the potential aggressor and cross-border crime. This system is characterized by the fact that the control of crossing the border at border crossings is performed by the police, while the activities of state border security are performed by military subjects[5].

Recognizing the great importance of border security systems in international relations, and the security challenges countries face with at their borders, this study offers a comparative overview of the border security systems of the United States, the Russian Federation and the Republic of Turkey.

BORDER SECURITY SYSTEM OF THE UNITED STATES OF AMERICA

The total length of the state border of the United States of America (hereinafter the USA) is 31,598 km, of which 12,034 km is the land border (8,893 km towards Kanada, and 3,141 km towards Mexico), while the length of the water border is 19.924 km (8,975 km at the Atlantic Ocean, 5,875 km in the area of the Gulf of Mexico, and 4,393 km at the Pacific Coast). The USA is the third country in the world according to the surface of its territory and the population (about 296 million)[6].

The border security system of the USA has a long tradition. Since the end of the eighteenth century, there have been different organizational structures at the borders of the USA as the subjects of protection, such as: directorates, offices, districts, departments and bureaus of the customs, the military and the police.

After the terrorist attacks of 11 September 2001, there was a reorganization of federal agencies within the security sector and as of 1 March 2003 they were positioned within the framework of US Department of Homeland Security - DHS. After this reorganization, the area of the USA state border protection towards the neighboring countries became part of the federal agency called US Customs and Border Protection US – CBP. CBP was the result of integration of customs services (US Customs) and border service (US Border Patrol), which it already had a lot in common with concerning the power and authority. US Customs and Border Protection was given broad powers when it comes to the fight against terrorism, illegal migration, human trafficking, as well the control of border crossings (which is performed at a total of 328 border crossings for different purposes), border security, cross-border transportation and customs clearance of goods, safety control of food intake of herbal and animal origin, and other activities.

US Customs and Border Protection, has a total of 60,000 members at all levels. At the central level, besides the cabinet headed by the Commissioner with 14 Assistant Commissioners in charge of different lines of work, there are also the following organizational units: Office of Human Resources Management, Office of Field Operations, Chief Office of Border Control (border control operations at border crossings and security of land borders), Office of Training and Development, Office of Information and Technology, Office of Technology Innovation and Acquisition, Office of Air and Marine, Office of International Affairs, Office of Internal Affairs, Office of International Trade, Office of Public Affairs, Office of Intelligence and Investigative Liaison, Office of Administration, Office of Internal Affairs, Office of Congressional Affairs. At the regional level, there are the following departments: Department of Operations, Department of Border Security, the Department of customs duties on land, sea and airports, and Department for Food Safety (border sanitary, veterinary, phytosanitary and other inspections). At the local level there are stations within the mentioned departments.[7]

Activities of securing the land border of the USA towards Canada and Mexico, and the securing of the blue border at the state level, are performed differently. The mainland portion of the border towards Canada and Mexico is secured by organizational units of US Customs and Border Protection (Office for border

4 Although previously in Europe border guards were the dominant organization (eg. Polish Border Guard), border services (eg. BiH State Border Service), gendarmerie units, Carabinieri police or border police, generally the only accepted organization was in the form of border police, ie. Department of border police, sector and the like. Quoted by - Dostić, S .: Organizacija i nadležnost graničnih policija u regionu zapadnog Balkana, Bezbednost br. 3/2008, MUP R Srbije, Beograd, 2008., p. 83.

5 Dostić, S.: Bezbednost granica kao deo savremenog sistema suprotstavljanja organizovanom kriminalu, doktorska disertacija, Fakultet bezbednosti Univerziteta u Beogradu, 2012., p. 282-283

6 The United States of America, http://sr.wikipedia.org/rs . Retrieved on December 28, 2014.

7 About the detailed organization of US Customs and Border Protection at central, regional and local levels, see: http://www.cbp.gov/about/leadership-organization, retrieved on December 28, 2014.

security-US Border Patrol), which are located in this part of the national territory. The total region towards Mexico is, according to the geographical characteristics, a desolate area, with a low density of population, and as such represents an ideal area for uncontrolled entry of illegal immigrants and drug smugglers into the territory of the USA. The mass illegal entries by the citizens of Mexico[8], resulted in installment of modern electronic devices at the American-Mexican border (underground sensors, thermal imaging cameras, etc.) as a method of prevention. Having in mind that this is a vast space, members of the US Customs and Border Protection use specialized cavalry regiments and working dog regiments, as well as helicopters, unmanned aerial vehicles, ATVs, and other appropriate means for the purposes of border security.

The maritime part of the US border is secured by the US Coast Guard which, from the historical point of view, mainly belonged to the military, then to the police, transport and other formations with different responsibilities and tasks (the control of state revenues generated during transports by ships, the securing of the section at the sea, rescue at the sea, etc.). US Coast Guard, as well as US Customs and Border Protection, have been parts of DHS since 2003. It has a population of 42,000 active members, 8,800 civilian personnel, 8,000 reservists and, if necessary, 30,000 volunteers[9]. Today, it is a mixture of military and police forces, and is under the jurisdiction of the states which are part of the territory of the US coast[10]. It is equipped by airplanes, boats, fast-speed boats and ships. Synergy is usually performed with helicopter units. In compliance with its legal regulations it performs the following tasks: securing parts of the sea border, security of waterways, ports and coastal areas, protection and escort of ships, conducting search and rescue tasks at sea, participation in international operations (eg. protection of critical infrastructure of Iraq and the training of Iraqi naval forces), the protection of the environment, providing navigational assistance, combating drug trafficking (drugs are often transported by ships), as well as the smuggling of immigrants and other forms of cross-border crime.

BORDER SECURITY SYSTEM OF THE RUSSIAN FEDERATION

The total length of the state border of the Russian Federation (hereinafter referred to as Russia) is 60,933 km, out of which 14,509 km is the length of green border, while the length of blue border is 46,424 km (38,808 km at sea and oceans, of which: 126.1 km at the Baltic Sea, 389.5 km at the Black Sea, 580 km at the Caspian Sea, 16,998 miles at the Pacific Ocean, 19,724 km at the Arctic Ocean and 7,616 km at the rivers and lakes). With an area of 17,075,400 square kilometers, Russia is the largest country in the world, and extends to almost twice the territory of Canada, China or the USA. Russia shares borders with 18 countries, namely: in the west it borders with Norway, Finland, Estonia, Latvia, Lithuania, Poland, Belarus and Ukraine. In the south, Russia shares borders with Georgia, Azerbaijan, Kazakhstan, China, North Korea, Japan (sea border), Abkhazia and South Ossetia (whose sovereignty is debatable, but is acknowledged by Russia), and in the east it borders with the USA (sea border)[11].

The border security system in Russia, similarly to the US system, has a long and rich tradition. The first available written sources testify of its existence as early as in the fifteenth century. According to the Federal laws of 1991 and 1995 № 40-FL (with amendments dating from December 30, 1999; November 7, 2000; December 30, 2001; 7 May and 25 July 2002; 10 January, 2003), the system of border security of Russia, in the period from 1991 to 2003, was under the jurisdiction of the Federal Border Service of Russia. This Service had the status of a separate ministry, primarily tasked with the protection of the longest state border in the world from external enemies, and from various criminal activities[12]. In March 2003, by the decree of the Russian President Vladimir Putin the Federal Border Service of Russia lost the status of the ministry, and was merged with the Federal Security Service (former *KGB*), and renamed the Federal Border Service of the Federal Security Service of the Russian Federation. By amendments of the Federal Law (dating from June 30, 2003; August 22, 2004; March 7, 2005; April 15 and July 27, 2006; July 24 and 4 December, 2007; 25 December, 2008), it was given the following competencies: the protection of the state border on land, sea, rivers, lakes; protection of the economic interests of the Russian Federation and its natural resources at border areas off coast, including the prevention of poaching and illegal fishing; control of the border crossing at

8 In 2014, a total of 486,651 people were detected during illegal border crossing by members of the US Customs and Border Protection, mainly along the southwestern part of the US border. 468, 407 of them were: citizens of Mexico (229,178), Honduras (91,475), Guatemala (81,116) and El Salvador (66,638). In the same period, at border crossings 8,013 wanted people were arrested, and 223,712 cases of attempted illegal entry into the USA were prevented. More details at: http://www.cbp.gov/sites/default/files/documents/FINAL Draft FY14 CBP Report_20141218.pdf, retrieved on December 28, 2014

9 For more details about the organization of the US Coast Guard see: http://www.uscg.mil/top/missions, retrieved on December 12,2014

10 Živković, D.: op.cit., p.150.

11 The Russian Federation, http://sr.wikipedia.org/rs, retreived on December 30, 2014

12 About the history and organization of the Federal Border Service of the Federal Security Service of the Russian Federation for more details see the http://ps.fsb.ru /general/about.html, retreived on December 30, 2014

border crossings; control of the border regime rules; fight against all threats to national security at the border area, including terrorism and other illegal activities; detection and seizure of contraband, and combating other forms of transnational organized crime - mainly the smuggling of people (from the former Soviet states and China)[13] as well as drugs. When comparing the jurisdiction of the Federal Border Service of the Federal Security Service of the Russian Federation, with the US border guards and border services of other countries, what is interesting is emphasizing the protection of economic interests of Russia and its natural resources at the border areas at the sea, including the prevention of poaching and illegal fishing which is further regulated by a large number of secondary legislation (regulations, directives, decisions, orders, etc.).

When it comes to the organizational structure of the Federal Border Service of the Federal Security Service of the Russian Federation, it is important to emphasize that it is organized at the central, regional and local level. At the central level, this service consists of: departments for supervision of crossing the border and state border security, operational departments for combating transnational organized crime and terrorism, departments for the implementation of federal laws, and the center for basic and specialized training of border guards[14]. At the regional level, instead of previous 10 Regional Directorates of the Federal Border Service of Russia – in 2004 41 Border Directorates of the Federal Border Service of the Federal Security Service of Russia were established according to the defined border areas. At the local level, activities and tasks related to the state border are performed by border stations or units.

A total of 402 international border crossings are established at Russian borders with the neighboring countries, out of which 164 border crossings for international road transport, 60 border crossings for international rail traffic, 80 border crossings for international air transportation (airports), 75 border crossings for international traffic at sea, 9 border crossings for international river transport, two border crossings for international lake traffic, and 12 combined border crossing for several types of international traffic[15].

When it comes to the control of the border crossing at border crossings, according to the Federal law, international border crossings on land, seas, rivers, lakes and airports were established; but also at other, specially designed areas near the state border, where, if necessary and in accordance with the legislation border control can be carried out. In accordance with the decision of the Government of the Russian Federation No 482 on the establishment, opening, functioning, reconstruction and closure of border crossings, there is a following classification of border crossings:

– depending on the nature of the international transport, border crossings are divided into: passenger, freight and cargo;
– depending on the operating regime, border crossings are divided into: permanent, temporary and seasonal;
– depending on the type of international traffic, border crossings are divided into: border crossings for international traffic and border crossings for coterminous traffic; and
– depending on the type of goods being transported, border crossings are divided into: specially equipped crossings intended for importing goods into Russia, for the specific purposes such as chemical, biological and radioactive materials, waste and other goods that may pose a risk people, animals and food; and specially equipped crossings intended for importing food of herbal and animal origin into Russia.

Border Service of the Federal Security Service of the Russian Federation) are the following: the Federal Customs Service, under the Government of the Russian Federation, Federal Agency for the development of infrastructure at the borders of the Russian Federation ("*Rosgranica*"), and border inspection authorities for the control of food, animals, plants and quarantine diseases.

The Federal Customs Service is an authorized service for the control and supervision of all customs activities in compliance with the laws of the Russian Federation, tasked with: the fight against smuggling of goods, control and clearance of goods, control of transboundary movement of vehicles, cargo and goods, temporary storage of seized goods, control of established customs zones, control the implementation of information systems and technologies intended for customs activities, etc.

Federal Agency for the development of the state border of the Russian Federation carries out its activities in order to design, construct, reconstruct and maintain the infrastructure (buildings, premises and facilities) necessary for the functioning of the border, customs and other types of controls at border crossings.

13 Russia is one of the world's largest destinations for illegal migrants, mostly from the former Soviet states, but increasingly from other countries in Asia, especially China. Estimates of the number of illegal immigrants who come to Russia differ, but it is believed that the number has increased significantly for the last ten years. From 1996 to 2001, it is estimated that this number generally varied between 700 thousand and 1.5 million people; and in 2002, the number of illegal migrants is estimated at about 2 million. In May 2005, the Director of the Federal Security Service (FSB) Nikolai Patrushev estimated the number of illegal migrants in Russia at about 2.5 million, while at the end of 2006, government officials often mentioned the figure of 10 million illegal migrants, who often crossed the border in the Caucasus, at the part of the border with Norway, Finland, Estonia and Latvia, as well as with Kazakhstan. Quoted by - Golunov, S .: Ethnic Migration - a challenge to the Russian border security, State University of Volgograd, 2007, p. 11.
14 Ibid, p. 17.
15 Golunov, S .: EU and Russian border security, State University of Volgograd, 2008, p. 19.

Taking into account the current developments on the part of the state border between Russia and Ukraine, in Donetsk and Lugansk region, where there is practically a war going on (according to newspaper and television reports), and where often the worst armed border incidents occur at border crossings and along the border line - in order to protect the state border, instead of the police, there are more and more Russina military forces on the spot. As a result of the above events, there have been recent initiatives on entry of Ukraine into NATO pact, which would allow NATO to get near the borders of Russia. This would, according to the newly adopted Russian military doctrine, signed by Russian President on December 26, 2014, represent a direct threat to Russia's national interests, and which can not remain without adequate military response[16]. When it comes to the state borders of Russia, this doctrine deals with the area of the Arctic zone as well, where out of 38,000 km length of the border of the Arctic coast, up to 22,000 km belong to Russia. In order to protect this border, Russia introduced a military component in its composition, with all the important corps of the Army (sea fleet, aviation, Airforce units, etc.)[17].

What speaks best about the significance of this region are the estimates of experts who claim that in the Arctic there are huge reserves of oil, gas, gold, precious stones, lead and zinc. These claims are supported by the results of a scientific research conducted by an agency of the US government - US Geological Survey (2008), which announced that there are 90 billion barrels of oil and 25% of the world's gas reserves in the Arctic, whose value is estimated at 1 trillion US dollars[18]. Such wealth attracts not only Russia but also other countries in the Arctic region (the USA, Canada, Denmark and Norway), which further complicates the security situation at their borders and at Russian borders.

BORDER SECURITY SYSTEM OF THE REPUBLIC OF TURKEY

The total length of the state border of the Republic of Turkey (hereinafter referred to as: Turkey) is 9,479 km, out of which the land border is 2,949 km, while the water border has a length of 6,530 km. The length of the state borders of Turkey with its neighboring countries are: towards Bulgaria - 269 km, towards Greece - 203 km, towards Armenia - 328 km, towards Azerbaijan - 18 km, towards Iran - 560 km, towards Iraq - 384 km, towards Syria - 911 km, and 276 km towards Georgia[19].

The border security system is Turkey is under the jurisdiction of several ministries or entities, of which the most important are: the Ministry of Interior (General Directorate for Security, the Supreme Command of the Gendarmerie and the Coast Guard Command), the Ministry of Trade and Customs (General Directorate of Customs), Ministry of Defence (Main Land Forces Command) and border inspection authorities - Ministry of Agriculture and Farming (phytosanitary and veterinary inspection) and the Ministry of Health (sanitary inspection).

The Ministry of Interior of The Republic of Turkey is for the most part in charge of border management in Turkey, based on the following laws: the Law on Police No 3201, the Law on powers and duties No 2559, the Law on Travel Documents No 5682, the Law on Residence of Aliens in Turkey No 5683, the Law on Provincial Administration No 5442, and the Law on Combating Human Trafficking No 4926. General Directorate for Security of the Ministry of Interior of Turkey performs control of the border crossing at border crossings, such as control of entry and exit of Turkish and foreign nationals, checking visas and travel documents, detection of forged travel documents, deportations, receiving asylum applications, the fight against human trafficking and the implementation of other legal provisions. Turkey has a total of 133 international

16 The new Russian doctrine approaching of NATO infrastructure nearer to Russia's borders is a direct military threat to Moscow, which can not remain without adequate military response. Russian President Vladimir Putin signed a new Russian military doctrine in which there are several novelties: there is a mentioning of the term "non-nuclear containment"; the Arctic is mentioned as a region of vital importance for Russia; all versions of the hazards that threaten Russia today are listed - from cyber warfare to the question of violation of the internal political order in the country. However, the main novelty of the new, improved version of Russia's military doctrine is certainly the determination of NATO as an adversary and a threat to Russia for the first time, stating that the expansion of NATO with new members and thrusting NATO infrastructure to the borders of Russia is a direct military threat to Moscow, which cannot remain without adequate military response. In fact, in Moscow it was finally and clearly told who the main enemy of Russia is - NATO. Quoted by - "NATO konačno protivnik" http://www.politika.rs/pogledi/Miroslav-Lazanski/NATO-konacno-protivnik.sr.html, of 30/12/2014.

17 In order to protect Russian interests in the Arctic, the Ministry of Defence of the Russian Federation has established a new military formation of OSK "Sever", which has a general command, and it includes North Russian fleet, cosmic and airforce, and other units, (which have until now been in the Murmansk and Arkhangelsk region). Therefore, after about thirty years, former Soviet bases have been brought to life again, which ceased to operate when the Soviet Union fell apart. Program to protect the north is carried out by the program "Arctic-2020". Out of 38,000 kilometers of border at the Arctic coast, up to 22,000 kilometers belongs to Russia. Controlling such a long border is almost impossible. Quoted by - "Moskva vraća baze na Arktik, rat na santama leda" http://www.novosti.rs/vesti/planeta.299.html:510100 og 14/9/2014, retrieved on 30/12/2014.

18 Filijović, M.: Teritorijalno razgraničenje na Artiku, Vojno delo, leto 2010, Beograd, p. 93.

19 The Republic of Turkey, http://sr.wikipedia.org/rs, retrieved on January 2, 2015

border crossings, out of which 53 border crossings for maritime traffic, 25 border crossings for road traffic, 7 border crossings for rail traffic and 48 border crossings for air transport[20].

Under the jurisdiction of the Coast Guard Command are jobs of securing maritime borders, such as the protection of coastal and inland waters, prevention and detection of all types of smuggling, control of the navigation monitoring system, rescue missions within certain areas of the sea, as well as assistance in detecting various crimes, and extradition of persons to other state authorities (public prosecutors and courts). The Supreme Command of the Gendarmerie represents a typical military structure for anti-terrorist operations and protection of the state border, trained by the military, but under the authority of the Minister of Interior. Its organization and jurisdiction is quite similar to the French Gendarmerie or the Italian Carabinieri. It performs security activities where other entities of border security are not able to, mostly in the southeast of Turkey due to its geographical location, as is the case of the part of the border with Iran - 125 km long; and also due to the security conditions as in the case in the entire border towards Iraq - 384 km long; and a part of the state border with Syria (which has recently practically been in a state of civil war[21]).

The main command of main land forces of the Ministry of Defence performs the tasks of securing the rest of the boundaries of the land border, when it comes to combating human trafficking and other forms of transnational organized crime, while the work of the General Directorate of Customs is based on controlling the import and export of goods at border crossings. Border inspection services control transboundary traffic of plants (phytosanitary inspection), animal (veterinary inspection) and transmission of infectious and other diseases in humans (sanitary inspection)[22].

It is important to emphasize that the regional level of Border Management in Turkey is under the jurisdiction of heads of civil administration in the provinces, or the governor, who organize and coordinate the cooperation between the abovemenitoned border security subjects and other subjects of the security system, through regular meetings where information is exchanged.

When it comes to protecting the state borders, it is important to note that Turkey, in the long process of negotiations on accession to the European Union (hereinafter: EU), in 2006 opted for the concept of integrated border management[23] in accordance with the "Regional Guidelines for Integrated Management borders" which was developed by the European Commission in 2004 for the purposes of the Western Balkans countries. These guidelines were innovated in early 2007 by the European Commission Directorate for administering assistance to countries of the Western Balkans, within the framework of the "Guidelines for Integrated Border Management in the Western Balkans". These guidelines imply intensive cooperation of border security subjects (border police, customs, border veterinary, phytosanitary and other inspections) at national and international level[24]. Also, in May 2012, the Turkish Ministry of Interior and the Agency for operational cooperation at the external borders of the European Union (Frontex) signed a working arrangement of cooperation which strengthens operational cooperation between Frontex and Turkey, including the participation in joint activities in trainings and operations, engaging Frontex experts in intense and rapid exchange of information and the creation of a common risk analysis[25], combating cross-border crime (human trafficking, counterfeiting of travel documents, etc.) usually at the border with EU countries Greece and Bulgaria.

Today, Turkey faces with growing security challenges at its borders, primarily with the terrorist threats that come from the self-proclaimed Islamic State (ISIS)[26]. It is estimated that thousands of EU citizens went to Syria or Iraq to join the radical groups of the Islamic state. Many of them have traveled there via Turkey,

20 International Organization for Migration: Assessment and Monitoring Mission report - Strengthening Integrated Border Management in the Western Balkans and Turkey, Budapest, 2010, p. 97

21 About the organization of border security subjects of Turkey for more details see http://www.kdgm.gov.tr/?ax=kdgmalangsmainpage&l=en, retrieved on January 2, 2015

22 Ibid

23 The EU has developed an effective system of control and border management, which allows the free flow of people and goods, as well as preventing cross-border organized crime, while at the same time respecting high standards of human rights and freedoms protection. Such a system among the EU Member States requires the introduction of high standards of organization, authority and cooperation models of border security subjects, both at internal and at its external borders. Quoted by Milošević, M., Dostić, S.: Saradnja graničnih policija zemalja Evropske unije-primer SR Nemačke i Poljske, Strani pravni život br.2/2009, Institut za uporedno pravo, Beograd, 2009., p.253.

24 For example on the basis of these regional guidelines and instructions, in 2006 in the Republic of Serbia the first Integrated Border Management Strategy was adopted (innovated in 2012). The adoption of the Integrated Border Management in the Republic of Serbia created conditions for the legal regulation of cooperation within each border service, cooperation between border services and international cooperation in accordance with the standards of the European Union, as well as to initiate the procedure for adoption of new bilateral agreements, or, where possible – implementing the existing. Quoted by - Banović, N., Purić, N., Dostić, S.: Opšti osvrt na istorijat, sadašnjost i persektive razvoja granične policije u Republici Srbiji, Bezbednost br. 1-2/2009, MUP R Srbije, Beograd, 2009., p. 97-98.

25 Sert, D .: Turkey's integrated border management strategy, Turkish Policy Quarterly, Spring 2013, Vol 12 No 1, p.176-178., Retrieved from http://www.turkishpolicy.com/dosyalar/files/vol_12 -no_1-sert.pdf , on January 2, 2015

26 The Islamic State has taken up a large part of the territory of Syria and Iraq - Turkey's neighbors, and declared caliphate which means that the sharia laws are brutally implemented. It was created as a branch of Al Qaeda in Iraq, after the US invasion in 2003, and has participated in the Syrian war from the beginning. However, it started the Jihad, and due to its brutality it has managed to even alienate Al Qaeda.

which is why Turkey was largely criticized (for not sufficiently controlling its 1,200 km long border with Syria and Iraq). Turkish officials responded to these criticisms by accusing the European countries that they do little to stop the potential jihadists "at the source", and blame Turkey. However, according to one of the Turkish officials, this country stopped about 1,150 potential jihadists and sent them back to the countries which they came from[27].

Also, from the geographical point of view, Turkey is located at the crossroads of three continents - Asia, Europe and Africa. Therefore it became a transit country for illegal migrations between the EU Member States and other western neighbors in the east, which were burdened by the unstable political and economic conditions. Turkey is also a transit country for citizens of various other countries, such as Afghanistan, Bangladesh, Iran, Iraq and Pakistan. Besides being a transit country, with the high level of economic development in its region, Turkey is becoming a destination country for citizens of former eastern bloc countries, such as Belarus, Georgia, Moldova, Romania and Turkmenistan, who usually enter Turkey with a valid tourist visa but work there illegally without work permits issued by the competent authorities[28].

Taking into consideration all of the abovementioned, it appears that the border management and control in Turkey is a difficult task, for many reasons. Firstly, its mountainous geography and harsh climatic conditions (especially in winter), at the eastern and south-eastern border, are the barriers to tthe more efficient control. Secondly, the security forces along these borders are responsible for several tasks simultaneously, which include the fight against drug trafficking and illegal migration, but also the fight against terrorism and the prevention of the flow of terrorist groups in the country, which greatly reduces their immediate operational activity at the border[29]. Thirdly, the neighboring countries are not in a position to strengthen their own systems of border security due to their internal instabilities, poor economic situations, and the inaccessibility of parts of the border, which further increases the pressure on Turkey to strengthen its own state border protection. In order to adequately respond to security challenges and problems in the functioning of the present system, Turkey is preparing for the formation of new entities within the border security system[30].

CONCLUSION

The border security system depends on a number of circumstances, primarily on the security challenges, risks and threats (terrorism, cross-border crime, etc.), on the risk assessment from external factors, economic and political relations with neighboring and other countries, the geographical characteristics of the border, tradition, the migratory movements of its nationals and foreigners, etc.

Today, for the security of the borders, all countries opt for the specialized professional (border) services responsible for specific work segments. Most frequently these services are in charge of: the control of passengers and vehicles (Border Police), control of movement, the import and export of goods across state borders, and protection of the customs territory of the State (Customs), control of movement across the state border of different plant and animal species and their products (inspection bodies), traffic control and border security in international waterways (Coast Guard), a combined military and police tasks (gendarmerie, border guards, etc.), control over transfering infectious and other diseases by people (sanitary inspection) etc.

The security system of the USA has a long and rich tradition representing a combined system consisting of Customs and Border Protection and the US Coast Guard (a mixture of military and police forces). Customs and Border Protection of the United States were given broad powers when it comes to, above all, the fight against terrorism, and the illegal migration, drug trafficking, security and control of crossing the state border, control of cross-border transportation and customs clearance of goods, safety control of food intake and plant animal products and other activities. In accordance with its statutory powers, the competencies of US Coast Guard relate to various state border protections at sea (security of waterways, ports and coasts, protection and escort of ships, conducting search and rescue tasks at sea, participation in international operations, combating cross-border crime and al.).

27 More to see: http://www.tanjug.rs/novosti/156817/mogerini--nuzna-usaglasenija-spoljna-politike-eu-i-turske.htm of 12/08/2014. Retrieved on January 2, 2015.
28 Sert, D.: op.cit., p.175.
29 Ibid
30 Foreign Minister Ahmet Davutoglu announced that Turkey is making preparations to form a new professional organization for activities within the border security system that will have different tasks. "Our Ministry of Internal Affairs conducted a study on the formation of a new professional organization for border affairs. On the one hand, in order to increase cooperation and coordination among institutions responsible for border control and surveillance, and on the other, to be responsible for the protection of our borders and effective control of passengers, vehicles, goods and others." Davutoglu said, adding that the Ministry of Interior is currently working on a draft law for the establishment of a new system of border security. Quoted by - http://www.hurriyetdailynews.com/turkey-prepares-for-new-border-security organization.aspx? PageID = 238 & nid = 67139 & NewsCatID = 510 of 05.29.2014. Retrieved on January 2, 2015.

Russia has the longest border in the world, practically twice as long as of the United States, with a combined system of border security led by the Federal Border Service of the Federal Security Service of the Russian Federation. Its task is to protect the state border on land, sea, rivers, lakes; protection of the economic interests of Russia and its natural resources in the border areas of the sea, including the prevention of poaching and illegal fishing; control of the border crossing at border crossings; control of the border regime rules; fight against all threats to the national security in the border area, including terrorism and other illegal activities; detection and seizure of contraband and combating other forms of transnational organized crime, mainly the smuggling of people and drugs.

At the borders of Russia, except the Federal Border Service of the Federal Security Service of the Russian Federation, the subjects of border security are: the Federal Customs Service, the federal agency for the development of infrastructure at the borders and border inspection authorities for the control of food, animals, plants and quarantine diseases. In order to protect the Russian border in the Arctic, with a length of 22,000 km, which was according to the newly adopted Russian military doctrine declared a region of strategic interest for Russia, Ministry of Defence has established a new military formation named "*Sever*" (meaning: „North") as a border military component, consisting of all the important corps of the Army (fleet, cosmic and Airforce units, aviation and other units) aiming to protect the natural resources (oil, gas, gold, precious stones, lead and zinc). However, these natural resources attract other countries in the Arctic region, particularly the USA and Canada, which further complicates the security situation not only at Russian borders but also at theirs. Taking into account the fact that the border represents a vertical plane that divides the territory of the country in the air, on land and underground, and that the mentioned natural resources are in the Arctic, located at kilometer depths of the oceans and seas, their exploitation will depend on the technological capabilities and achievements of the states to reach that vast expanses and efficiently protect it as part of the state border.

In addition, Russia has largely militarized a part of its border towards Ukraine because of the current war in the Ukrainian border regions of Donetsk and Lugansk. Because of the situation in the Arctic and Ukraine as well as defining NATO as an adversary and a threat to Russia today, it is expected that the process of militarization of these parts of the border between Russia will continue. Also, additional investment in military resources are expected, which can cause new military conflicts which can significantly affect the present and future border security systems.

The border security system in Turkey as well as in the United States and Russia, is combined and is the responsibility of several ministries, of which the most important are: the Ministry of Interior (General Directorate of Security, the Supreme Command of the Gendarmerie and the Coast Guard Command), the Ministry of Trade and Customs (General Directorate of Customs), Ministry of Defence (the General Command of Land Forces), border inspection authorities of the Ministry of Agriculture and Farming (phytosanitary and veterinary inspection) and the Ministry of Health (sanitary inspection). Turkey has also opted for the concept of integrated border management in its long process of negotiations for the accession to the EU. This concept aims to foster the faster and free flow of people and goods, while combating cross-border crime at the same time.

When it comes to cross-border crime, Turkey has become a transit country for illegal migration between the EU Member States in the west and other neighbors in the east burdened by unstable political and economic conditions. Turkey, except for the nationals of neighboring countries, represents a transit country for citizens of various other countries, such as Afghanistan, Bangladesh, Iran, Iraq and Pakistan. Besides being a transit country for human trafficking, with its high level of economic development in its region, Turkey is becoming a destination country for citizens of former eastern bloc countries, such as Belarus, Georgia, Moldova, Romania and Turkmenistan.

However, today, Turkey is facing the growing security challenges, primarily the terrorist threat that comes from the self-proclaimed Islamic State (ISIS), created on the territories of neighboring Iraq and Syria, which further complicates security situation in the region, or to its more than 1,200 km-long border.

To effectively respond to these and other challenges at the borders with neighboring countries (inaccessibility and harsh climatic conditions in parts of the border, the preoccupation of security subjects with other obligations, etc.), Turkey has opted for the formation of new entities within its border security system, in the following period.

Thus, simultaneously analyzing the border security systems of the USA, Russia and Turkey, it is evident that their common determinants are that they are combined systems whose subjects are various military and police formations. What they have in common, besides the fight against cross-border crime, is the emphasis of fighting terrorism - or what they in their own political orientations in international relations, consider as terrorism.

In contrast to the European model of border security system or integrated border management concept based on relativism of border controls, and the principles of trust and improving joint cooperation of border services both nationally and internationally, border security systems of the USA, Russia and part of

Turkey (except the section of the border towards EU countries Greece and Bulgaria) are fairly autonomous. The autonomy of the system is reflected in the disrespect of the first principle of cross-border cooperation – trust, which is, for the reasons stated in this article, deficient at their borders.

Border security systems borders of Russia and Turkey are in the process of adapting to new situations on their borders, with a prominent strengthening of the military component, while the border security system of the USA in the last decade is quite stable, without major fluctuations, which does not mean that it will remain so in the future due to the process of NATO enlargement, the situation in the Arctic, and the increasing threats of terrorism.

Given the complexity of the tasks that are performed on the state borders of the USA, Russia and Turkey, it is clear that solving the problems regarding the functioning of their border security systems will depend heavily on the state and development of their political and economic relations, primarily between the United States and Russia, due to the situation around the Arctic, Ukraine and approaching NATO borders to Russia; and when it comes to Turkey, it will depend on the war in the neighboring Iraq and Syria, where there are different views of resolving the crisis.

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STRATEGIC AND LEGAL BASIS FOR STRENGTHENING INSTITUTIONS OF PRIVATE SECURITY

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Abstract: The Republic of Serbia has until recently been the only country in Southeast Europe that is not legally regulated by the private security sector. Finally, the last few years we started the right way. The Republic of Serbia adopted the National Security Strategy in which the private security sector ranked in the national security system. Since the end of 2013. legal basis were created for the organization and provision of effective, efficient and lawful operation of the institutions of private security. It is precisely on these strategic and legal basis, their importance and meaning that this paper is about.[1]

Keywords: private security, Law on Private Security, Law on Detective Work, training of private security.

INTRODUCTION

The Republic of Serbia has until recently been the only country in Southeast Europe that is not legally regulated by the private security sector. The lack of legal regulations has left many negative effects on the formation and functioning of the institutions of private security. Even in some considerations of the current situation the question is raised whether and to what extent these institutions contribute to achieving the security standards or even reduced. Although these estimates are questionable, it is undeniable that the instant studies indicate that the contribution of private security institutions in achieving security of citizens (and their creation) is not on the level, not only the desired and necessary, but not at the level of standards in the countries where this sector is developed and operate successfully, including countries in our region.

However, the last few years we started the right way. The Republic of Serbia has started to fulfill the obligations assumed by the signing of the Stabilization and Association Agreement, which in Article 77 obliges our country for the security sector reform in the process of "gradual achievement of compliance with technical regulations and European standardization and conformity assessment procedures with the requirements of standards and regulations"[2], as well as the fulfillment of the obligations deriving from the membership in international organizations CoESS (Confederation of European Security Services).[3]

The Republic of Serbia adopted the National Security Strategy[4] in which the private security sector ranked in the national security system. Since the end of 2013. legal basis were created for the organization and provision of effective, efficient and lawful operation of the institutions of private security. It is precisely on these strategic and legal basis, their importance that this paper is about. The main goal is to contribute to the security service and that users gain confidence in these institutions. In particular, it seeks to owners and managers of these institutions demonstrates that they are now in a position to adequately establish private security position in the national security system and, finally, go straight roads to build and strengthen their institutional and human capacity.

Concretely, this work contains, in addition to the introduction, conclusion, references, and: / 1 / distinctness of institutions of private security in strategic documents and / 2 / distinctness of institutions of private security in the relevant legislation.

Within these chapters we will discuss the first steps in the realization of this strategy through the creation of a single normative framework for the design and operation of institutions of private security. In particular, we will present, with appropriate comments and creative generalizations, legal regulations governing

1 This paper is the result of carrying out the research project funded by the Ministry of Education, Science and Technological Development of the Republic of Serbia (no. 179045) and implemented by the Academy of Criminalistic and Police Studies in Belgrade (2011-2015), titled Development of institutional capacity, standards and procedures for countering organized crime and terrorism in terms of international integration, and the result of the research on project: "Management of police organization in preventing and mitigating threats to security in the Republic of Serbia", which is financed and carried out by the Academy of Criminalistic and Police Studies, Belgrade - the cycle ofscientific projects 2015-2019.

2 Zakon o potvrđivanju Sporazuma o stabilizaciji i pridruživanju između evropskih zajednica i njihovih država članica, sa jedne strane, i Republike Srbije, sa druge strane („Službeni glasnik RS - Međunarodni ugovori", no. 83/08).

3 More on this organization to: http://www.coess.org, 22.12.2014.

4 http://www.mod.gov.rs/cir/dokumenta/strategije/usvojene/Strategija nacionalne bezbednosti Republike Srbije.pdf , 25.12.2014.

the private security sector, including: Law on Private Security,[5] Law on Detective Work,[6] Rules on detailed conditions that must be met by legal and natural persons for the implementation of vocational training to perform the duties of private security,[7] Rules on how to implement programs and training to perform the duties of private security[8] and Rules on color and component parts of uniforms of security officers.[9]

DISTINCTNESS OF INSTITUTIONS OF PRIVATE SECURITY IN STRATEGIC DOCUMENTS

The National Security Strategy of the Republic of Serbia is the most important strategic document that sets out the basic security policy to protect the national interests of the Republic of Serbia. This strategy gives an analysis of the environment of the Republic of Serbia, identifies the challenges, risks and threats, establishes national interests, determines the objectives, basic principles and elements of national security policy and defines the structure, principles of operation and accountability within the security system.

For the implementation of the established policy of internal security normative upgrade activities of the competent state bodies and other entities engaged in the business of security are of special importance. Adoption of appropriate strategies, timely collection and exchange of data and information, coordinating the work of the security services and strengthening their organizational, human and material resources are a necessary prerequisite to achieving the objectives of internal security policy.

The novelty compared to previous determinations in similar documents is that the current National Security Strategy emphasizes that increasing responsibility in the implementation of internal security policy, together with government and other bodies and institutions, have entities in the field of private security companies whose business covers protection the safety of individuals, facilities and other assets not covered by the protection of the competent state authorities.

The functioning of government and other bodies and institutions of the Republic of Serbia in the field of internal security, this strategy focuses on the protection of the constitutional order, the lives and property of citizens, preventing and combating all forms of terrorism, organized crime, financial, economic and cyber crime, corruption, money laundering, human trafficking, drug abuse, the proliferation of conventional weapons and weapons of mass destruction, intelligence and subversive activities, as well as other challenges, risks and threats.

An important assumption of achieving and improving the protection of life and property of citizens, human and minority rights, strategy emphasizes cooperation of state bodies with subjects in the field of private security and other institutions, agencies, local governments, professional associations, churches and religious communities, the media, minority communities, organizations of civil society and citizens, to develop relationships of trust, building and strengthening security and solving security problems.

Strategy is still determined to work in the field of national security and carry out public administration bodies, institutions responsible for justice, education and scientific activities and environmental protection, Ombudsman, bodies of local self-government entities in the field of private security, civil society organizations, the media, legal entities and citizens who contribute to achieving the objectives of national security.

Exposed starting point indicates that, in addition to government authorities, and private security actors at the top of entities to which the state or society responds to this strategy recognized the challenges, risks and threats, and that their mutual cooperation as well as cooperation with other entities of security, a condition i.e. important prerequisite for achieving and improving the protection of life and property of citizens, human and minority rights.

Exposed strategic position, especially at the time of the National Security Strategy when there are no specific legal basis to regulate and ensure the exercise of private security, they also have other significance.

First, for the first time in a single act of importance to the national security of the Republic of Serbia, its state security sector is not seen as solely responsible for the implementation of internal policies. Together with them (and other agencies and institutions), this obligation rests with the subjects in the field of private security.

Second, in addition to sightings the place and role of private security, clearly sees its scope by stating that the activity of its subjects relating to: / 1 / protect the safety of individuals and / 2 / protection facilities and other resources.

5 „Službeni glasnik RS“, no. 104/13.
6 „Službeni glasnik RS“, no. 104/13.
7 „Službeni glasnik RS“, no. 117/14.
8 „Službeni glasnik RS“, no. 117/14.
9 „Službeni glasnik RS“, no. 4/15.

Thirdly, as the mentioned content of the work is also in the work of the institutions of the state security sector, this strategy private security institutions „gives" only what is not covered by the protection of the competent state authorities. This, thus, sees distinction between the activities of the security institutions of the state and the private (business) sector.

Fourth, as seen in this "division and symbiosis" simultaneously projected (and naturally expected) that first-mentioned institutions are integrators of joint work and conduct, which the mutual cooperation (should) give contributions to.

The implementation of the work attitudes contained in the Strategy requires clearly focused, effective coordinated engagement not only of government bodies but also institutions of private security and other social actors. This fact, as well as the value of those objects of protection by preventing and suppression of the recognized forms and activities of their degradation, indicating a particular social importance of institutions of private security, and the necessity that their activity is entirely normative and doctrinally arrange.

Recognition of private security in this document has great significance, because it makes for the first time and to document of the first order when it comes to the basic operation of security institutions and strengthen their institutional capacity. It is expected not only from the authorities, but primarily from business systems, particularly corporations, in their strategic documents see and institutions of business security. This will create the basis for a fully integrated and functioning of the national security of the Republic of Serbia.

On the way to complement of the strategic basis, except for the adoption of the National Strategy for the protection and rescuing in emergency situations,[10] which recognizes the importance and tasks of the institution of private security, unfortunately are not impressive.

DISTINCTNESS OF INSTITUTIONS OF PRIVATE SECURITY IN THE RELEVANT LEGISLATION

The institutions of private security, in addition to strategic, must have a legal basis. "In normative terms, the right of private security can be defined as a set of principles and legal rules governing the activities, services, measures, actions and funds intended for the protection of private property, information and people, which are offered and provided in the private market."[11]

As sources the right of private security in the formal sense should be considered as different legal forms in which the right to exist, the most common general legal acts. This collection makes the Constitution as the highest legal act of any country. Then, laws, as sources the right of private security can be classified into two categories: /1/ those laws which are of importance to the work of the institutions of private security (for example, laws that directly regulate the issue of protection of persons and property, detective activities, etc.), and /2/ those who have a broader scope, refer to the operation and other entities, as well as the work of the institutions of private security (for example, the Law on Public Administration, the Administrative Procedure Act, the Criminal Code, Criminal Procedure Code, the Law on Public Law and Order, Law of Obligations, Law on Foreigners, Law the Police, the Law on Personal Data Protection, the Law on Misdemeanors, etc.).

International conventions and agreements represent external sources of law. "These are the legal instruments that do not deal exclusively with matters of private security, but its breadth and universality protect the entire corpus of human rights and freedoms: the right to life, prohibition of slavery, inhuman or degrading treatment or punishment and other forms of coercion, of the right to liberty and personal security, the right to privacy, family life, home and correspondence, the right to freedom of movement, freedom of peaceful assembly and to freedom of association, as well as some additional rights of categories and groups, and whose status is, among other authorities, and under the jurisdiction of private security."[12]

Bylaws passed by the government and public administration bodies (decrees, decisions, regulations, instructions, internal instructions) as well as secondary legislation adopted by business organizations (statute, ordinance on the organization and systematization of jobs and tasks, rules on security of persons, property and Regulations, on the work of physical security, work procedures of physical security, orders, work orders, etc.).

The source of law may be case law, too, that arises when the court for a longer period of time deciding on similar matters in essentially the same way.

Traditions as a form of unwritten social norms are indirect sources of law.

10 „Službeni glasnik RS", no. 86/11.
11 Stajić, Lj., Lukić, T., (2011), *Pravo privatne bezbednosti,* Novi Sad, Pravni fakultet, p. 43.
12 Dapčević-Marković, Lj., (2010), *Pravo privatne bezbednosti*, Fakultet za poslovni menadžment, Bar, p. 78.

Extrajudicial "technical" rules of the science of certain professions and skills as "very important for the operation of the private security sector, although their application is not based on a compulsory or their non-application monitors the sanctions."[13]

As sources of law of private security the following can also be considered: usages, then, good business practices, ethics, the role of legal science, the determination of the applicable rules, the interpretation and application of legal norms and the like.[14]

The Republic of Serbia is the only country of the former Yugoslavia, and one of the few in Europe, which until 27 November 2013 did not have laws of exclusive importance for work of institutions of private security, which would directly and substantially precisely regulate the issue of protection of persons, property and business and detective activity. The lack of these laws has created a legal void that is, to some extent, compensated by applying many laws and regulations that are directly or indirectly related to this activity (the Law on Companies, Labour Law, Criminal Procedure Code, the Criminal Code RS, police Law, the Law on Weapons and Ammunition, etc.).[15] In such a legal environment in many cases in practice there are analogies in order to create the conditions for the application of the prescribed actions and measures in direct activities of institutions of private security.[16] As an illustration, based on the definition of acquisition and carrying of weapons in the Law on Weapons and Ammunition, shall be concluded when can not perform activities of private security by using weapons.

Adoption of the Law on Private Security, Law on Detective Work, Rules on detailed conditions that must be met by legal and natural persons for the implementation of vocational training to perform the duties of private security, Rules on how to implement programs and training to perform the duties of private security and Regulations on color and component parts of uniforms of security officers (as well as other regulations that in the near future must be brought into compliance with these laws), conditions are created that are systematically and comprehensively legally regulated by the private security sector in our country.

Law on Private Security

Law on Private Security regulates the mandatory security and protection of certain objects, activities and operation of legal entities and individuals in the field of private security, the conditions for obtaining a license, a way of performing tasks and exercising control over their work.

This law stipulates that contents the private security of includes providing services, or the exercise of /1/ tasks of protection of persons, property and business of the physical and technical protection, unless they are within the exclusive jurisdiction of the state authorities, and /2/ transportation affairs of money, value and other shipments, /3/ maintaining order at public gatherings, sporting events and other places of assembly of citizens (stewarding), carried out by legal entities and entrepreneurs registered for that activity, as well as legal entities and entrepreneurs who have formed an Internal organizational form of security for their own needs.

The law emphasizes that services of private security do not fall into the police or other security tasks performed by organs of state administration. Consequently, legal entities and entrepreneurs who are licensed to perform the duties of private security cannot perform the duties of protecting persons and property within the exclusive jurisdiction of the state authorities and apply operational methods and means, i.e. operational and technical means and methods that these bodies are applied on the basis of special regulations.

Law on private security contains provisions (art. 8-18) relating to the license for private security, citing the types of licenses and the conditions for their issue, both for legal entities and entrepreneurs, as well as for individuals, prescribing the procedure and at the same time the manner of their issuance.

On the issue of licenses Act international standards were adopted in the sense that systems of licensing should be established so as to clearly define the type of security services that institutions of private security may or may not provide, and that the licenses should be limited in time (five years), in order to ensure regular renewal and a high level of professionalism. In order to achieve that in practice it is necessary to conduct regular monitoring of the activities institutions of private security, with penalties including fines and revocation of licenses in the event of a violation of law.

The law establishes general requirements to be met by an individual for a license to perform the duties of private security. Those conditions are that: /1/ is a citizen of the Republic of Serbia; /2/ is of legal age; /3/ has at least secondary education; /4/ has passed the appropriate security check; /5/ is psychologically and

13 *Ibid*., pp. 84–85.
14 About mentioned sources of law of private security see more in: Stajić, Lj., Lukić, T., (2011), op. cit., pp. 46-54.
15 Should mention and Law on social self-protection („Službeni glasnik SRS", no. 14/86), which though anachronistic, in the technical sense is valuable, rules of conduct from this Law are conditionally speaking downloaded in practice, so they somehow become customary. – Stajić, Lj., Lukić, T., (2011), *op. cit*., p. 47.
16 Compare: Bošković, M., (1995), *Fizičko obezbeđenje i zaštita objekata, Priručnik za radnike fizičkog obezbeđenja,* Beograd, Bodeks pp. 33–34.

physically fit to carry out these tasks, as evidenced by a medical certificate from a competent health institution; /6/ trained in handling firearms, or if his military service with weapons, if work is done with a weapon; /7/ has completed the appropriate training to perform the duties of private security in accordance with this Act; /8/ professional examination in the Ministry (art. 12, paragraph 1).

The question is whether it is a necessary condition that applies to secondary education. This is because "from a legal point of view the question is whether it may condition (state the decision through the law), the right to work a minimum of secondary school for a natural person who wishes to obtain a license to perform the duties of private security, especially bearing in mind that necessary knowledge and training an individual can get through planned training programs, regardless of their level of education."[17] This is particularly important in relation to a physical protection of persons and property, jobs stewarding at public gatherings, sporting events, places and objects where citizens gather on the occasion of entertainment, music and other programs, then, security jobs transport and transfer of money or other valuable shipments, etc.

As a good legal solution in terms of fulfilling the general requirements for a license is emphasized that laying exam in the Ministry compulsory for all who want to deal with the affairs of private security, even for a person who "has the appropriate degree and type of vocational education and at least three years of work experience as an authorized police officer, security-jobs, professional members of the Army of Serbia and jobs execution of criminal sanctions", although they are exempted from training for perform the duties of private security. This legal definition indicates that the private security jobs (according to its content and methods of performing) are similar, but not same to the operations of public safety and other jobs of the mentioned institutions. Also, this solution is discovered 'ability to check and verify the inclinations and abilities of security officers who come from the mentioned structures, because in the meantime they could lose their health, or motor ability, so-called. security eligibility and the like. It is understood that the mere act of taking professional exams is necessary for candidates from these structures to refresh their knowledge and apply it to the private security sector. All this leads to the quality of the sector, and not its degradation, as is the case in actual practice when most members of this sector consist of (unlicensed) former members of the military and the police, and even those who for reasons of unsuitability or conflict with the law were left without work.

In addition to prescribing training to perform the jobs of private security as one of the general conditions to be met by an individual for a license to perform the jobs of private security, Law on Private Security regulates the procedure and the manner of issuing licenses, specifying, in article 13, training to private individuals to perform the duties of private security may perform the Ministry, legal and natural persons who meet the financial, technical, professional and personnel requirements for conducting training who obtain the authorization of the Ministry. On the basis of paragraph 2 of this article, the Minister of the Interior issued the Rules on detailed conditions that must be met by legal and natural persons for the implementation of vocational training to perform the duties of private security and the Rules on how to implement programs and training to perform the duties of private security. "A particular challenge for the quality of training could be endeavor of legal persons which deal with the affairs of private security outcomes authorization that simultaneously conduct training for these jobs – primarily for themselves (internal) conducted training for its employees for such jobs and issued them a certificate of training."[18] This seems mainly due to the financial interests of the owners of these companies, as well as practice and just hints.

Rules on detailed conditions that must be met by legal and natural persons for the implementation of vocational training for performing the duties of private security guards are prescribing detailed conditions that legal and natural persons need to fulfill in terms of premises, material and technical resources and equipment, and professional qualifications of the person (trainers, etc.) in order to obtain authorization of the Ministry to conduct training, as well as the content and method of keeping records of persons who have participated in the training.

Rules on how to implement programs and training to perform the duties of private security prescribes programs and methods of discharging of vocational training of security officers - to perform the jobs of private security. Four basic training programs are planned, in accordance with the types of activities of private security as are prescribed by the Law on Private Security, which consist of several topics divided by units.

The adoption of these regulations created a legal basis to interested legal and natural persons may submit to the Ministry of Internal Affairs request for authorization to conduct training persons to perform the jobs of private security. Their application should enable the student to gain knowledge and skills necessary for the exercise of the appropriate the types of jobs in the private security. Successfully completed training and passed professional examination at the Ministry, one of the most important conditions stipulated by

17 *U korak sa privatnim sektorom bezbednosti*, Centar za evroatlanske studije-CEAS, Beograd, 2013, pp. 30.

18 Miletić, S., Komentar Pravilnika o bližim uslovima koje moraju da ispune pravna i fizička lica za sprovođenje stručne obuke za vršenje poslova privatnog obezbeđenja i Pravilnika o programima i načinu sprovođenja obuke za vršenje poslova privatnog obezbeđenja („Sl. glasnik RS", no. 117/2014), Paragraf, 2014.

the Law on Private Security for licenses to individuals and specific requirement (which is related to human resources) to issue licenses to legal entities and entrepreneurs to deal with private security jobs.

The biggest challenge in implementing rulebook will be the quality of the upcoming training, because of the expertise of employees largely depends on whether it will reach the necessary improvements now unsatisfactory situation in the field of private security.

The law on private security regulates the manner of performing jobs of private security with the obligation to be in a way that does not interfere with the work of state organs and does not violate the tranquility of citizens. These are: physical protection, makes security business with weapons, technical protection, operations planning, design, technical supervision, installation and maintenance of security systems, makes security business transporting money, and other valuable shipments, stewarding. The law governing obligations of legal entities and entrepreneurs private security jobs may be carried out only on the basis and within the executed agreement with natural or legal person delivering services. The law specifies the elements which this agreement must contain. As one of the positive solution of the Law on Private Security stands out precisely related to this contract, the duty of the legal entity or entrepreneur who performs jobs of private security to shall submit a notification the concluded contract, annex to the contract or on termination of the contract, to the relevant local police administration within eight days from the date of the change. In this way efficient and effective supervision is achieved by the police over the work of the institutions of private security, particularly bearing in mind which of the information must have given the notification, which are specified in this Law (among other things, it is clearly defined subject of the contract, the manner of contracted private security jobs, the number of security officers on contract and location of work schedules, types and quantities of weapons and engaged means of protection, the starting date or interruption of the agreed performance of services, etc.).

While performing the duties of physical protection, security officer is authorized to: /1/ verify the identity of the person who enters or leaves the building or space that is provided, and in the protected area; /2/ views person or vehicle at the entrance or exit of the building or premises and in the protected area; /3/ prohibit unauthorized persons access and entrance to the building or space that is provided; /4/ order the person to move out of the building or space that is provided, if the person that is unauthorized; /5/ warn a person whose conduct or omission of required actions can jeopardize your safety, the safety of others or cause damage to and destruction of property; /6/ temporarily detain a person which is found in the house or in the area of committing a crime and serious offenses, disturbing the peace, until the arrival of the police; /7/ using following means of coercion: /7.1./ Binding agents /7.2./ Physical strength, /7.3./ specially trained dogs, /7.4./ firearms, under the conditions stipulated by this law and the law governing the use of weapons by authorized police officers.

In Article 57 of the Law on Private Security provides that detailed manner the use of force (binding agents, physical strength, specially trained dogs, firearms) prescribed by the Minister. This solution legislator, that the Minister further regulates only one of the authorizations that have officers of private security, and the remaining six are not, can lead to inconsistencies in their application or to abuses and overdrafts.

With that in mind, as well as article 46, paragraph 4 of the said Law the application of measures should be proportionate to the legitimate aim of their use and execution in a way that does not offend the dignity, reputation, honor, or other guaranteed human right, and that in applying measures no one shall be subjected to torture or to inhuman or degrading treatment, one should consider the introduction of basic training in the field of human rights as part of the professional training of security officers for perform the duties of private security.

As important provisions of the Law on private security stand out those that regulates issues supervision over the implementation of this law, which was placed under the jurisdiction of the Ministry of Internal Affairs (Art. 70-75). Authorized police officers of the Ministry shall have the right to control the manner of storage and carrying of firearms, psychophysical ability and qualifications of security officers to handle weapons and undertaking other activities immediate and unannounced controllers performing of the duties of private security. This law provides that the Minister for the purpose of establishing cooperation with associations of legal entities and entrepreneurs for jobs of private security and officers of security and monitoring field of private security and the submission of initiatives to improve the performance of tasks in this area in accordance with the new standards, established the Expert Council for the improvement of private security and public-private partnerships in the security sector. We can conclude that "the existing framework of the Commission for Public Private Partnerships in the security sector of the Republic of Serbia continues and improve, and its vital role in the security sector, as an integral part of national security, receives legal guarantee by the Law on private security."[19]

Although the issue of surveillance assessed as a good solution, we must not ignore any questions of the potential conflict of interest.

19 *U korak sa privatnim sektorom bezbednosti*, Centar za evroatlanske studije-CEAS, Beograd, 2013, p. 39.

Earlier this year was passed the Rules on color and component parts of uniforms of security officers prescribing the color and integral parts of uniforms which worn by officers of security in the exercise of private security.

In order for the Law on private security to be applied to the full extent necessary to bring a number of regulations which will, among other things, prescribe detailed criteria for determining the mandatory secured of objects and ways of performing the duties of their protection, then, the cost of organizing and implement trainings to perform the duties of private security, and detailed manner the use of force, and the content, appearance and manner of using legitimation officers of private security. In addition to the above, it is necessary to adopt other rules that are not within the jurisdiction (or are only partially) the Minister of the Interior, such as determining the list of reference health institutions which issue certificates of mental and physical ability to perform activities of private security, way of checking the level of training of natural persons or the manner of taking professional examination and the cost of organizing and conducting professional examinations, as well as the content and method of keeping records, etc.

Although all by-laws, in accordance with Article 85 of the Law on private security, should be adopted within six months from the date of its entry into force, such a large number of regulations that have not been adopted, and the fact that in making of three regulations delayed for about six or seven months, pointing to the fact that they will not be able to meet the deadline of 18 months (expires 05/06/2015.) provided for in Article 86 according to which legal entities and entrepreneurs who perform certain tasks in the field of private security guards are required to reconcile their work with provisions of the law.

The Law on Detective Work

The Law on Detective activity regulates the operation of legal entities, entrepreneurs and individuals who perform tasks in the field of the provision of detective services, conditions for their licensing, manner of performing duties and exercising control over their work. Conceptually detective activity is classified in the area of administrative and support service activities in the branch and group exploration activities, which includes investigation and detective services and activities of all private investigators, regardless of who and what you are investigating (detective work). Investigation and detective services are the jobs of collecting, data processing and transmission of information in accordance with this Law and other regulations by legal entities and entrepreneurs for detective work as operators and employees detective as the drafter.

A legal entity for detective work and the entrepreneur for the detective activity or detective can process data on: /1/ missing persons or persons who are hiding to avoid prosecution; /2/ persons who have caused damage to the client, if they meet the conditions laid down by the law about liability for damage; /3/ persons who anonymously and unlawfully act according to the user, with the threat of harmful consequences; /4/ objects that are lost or stolen; /5/ of business success of of legal entities and entrepreneurs; /6/ protection of intellectual and industrial property.

This law for the first time in our country prescribes that the performance of detective activities necessary for acquiring a license. Detective activities can be conducted by a legal entity for detective activity and the entrepreneur for the detective activity, detective work may be performed by a detective, if they have a license to perform the detective activity, or detective works issued by the Ministry of Internal Affairs (Article 4).

The Law prescribes that the license for the detective activity may issue a legal entity for the detective activity and entrepreneur for detective activity: /1/ which has the act on job classification, the jobs description and powers of employees for each position; /2/ which has at least two employees detective, if activity is performed as a legal entity for the detective activity, or at least one person with a license for the performance of detective work, if the activity is performed as an entrepreneur for the detective activity; /3/ If the responsible person in the legal entity passed the appropriate security check.

License for performing detective activities may be issued to a person: / 1 / who is a citizen of the Republic of Serbia; /2/ which has gained the least higher education in the first degree (bachelor studies and basic vocational studies) or on studies lasting up to three years; /3/ which has passed the appropriate security check; /4/ which is psychophysically capable of performing the detective activities, as evidenced by a medical certificate from a competent health institution; /5/ who has completed the training program and training for performing detective activities; /6/ has passed the professional exam for detectives before the commission of the Ministry.

The fulfillment of the conditions referred to in Section 5 is not necessary for person who has five years of work experience as an authorized police officer, defense affairs, security and intelligence affairs, the judicial and prosecutorial functions, as well as the professional jobs of the court or in the public prosecutor's office.

Conditions for issuing licenses are too liberal, so that is the impression that more take account of the current situation in practice, and less about the fact that the legalization of this condition licensing and delegation of the powers as certain police powers of, may, with the positive, have negative implications for the security of people and property. In addition, the relationship of these activities with other activities (compatibility / incompatibility) is not the subject of editing, but in practice there are cases, as concurrent holding detective activities together with the purchase of gold, real estate, etc.[20]

It is necessary to urgently adopt bylaws that would put into life the Law on detective activities and create a legal framework in which detectives can legally and effectively operate. The law establishes the obligation of the Minister of Interior to prescribe: the manner of implementation of training and training of persons to perform detective activities, and training program and method of examination for detectives; then, the requirements of the business area and the physical and technical measures for saving data bases and other records; contents of the request for issuance, as well as the appearance and content of the solemn form of the license; content and look for detective legitimacy.

Although in Article 37 Law of the detective activities stipulated that all regulations for the implementation of this law enacted within six months from the date of its entry into force (i.e. until 06/05/2014), was not adopted any. Given that (the same as in the Law on Private Security) could not be met neither second deadline as defined in Article 38, relating to the obligation of legal persons and entrepreneurs for detective activity which perform detective activities on the date of entry into force of this Law to harmonize their work with the provisions of this Law within one year from the date of entry into force of this Law.

Lest the Law on private security and Law on detective activities become just part of a well-known practice of our legislation, adopted laws do not apply, it is necessary to urgently adopt the necessary regulations that will enable their application. At the same time, the prescribed time limit for harmonization work of legal persons and entrepreneurs with the legal provisions should be postponed.

CONCLUSION

The Republic of Serbia is, finally, as part of the reform process acceded to the transformation and regulation of the private security sector. In particular, appropriate strategic document, and then the adoption of laws and bylaws, are designed and placed strategic and legal basis for the development of the private security sector in Serbia. In this way the conditions for a fully integrated and functioning of the national security of the Republic of Serbia are created.

Although already at this stage some imprecision and understatements in the adopted legal acts are identified, as well as delays in the adoption of new which should enable the implementation of the already adopted, leaving space for possible abuses by different interpretations, for now it is most important to finally jobs of institutions of private security legalized and put under state control.

From a legal regulation and application of standards in this activity will benefit the institution of private security, but even more users of their services, because the legal regulation is vital for the functioning of each service, as well as the private security sector. Legal regulation of this field will contribute to higher professional and moral integrity of institutions dealing with private security, and higher quality of services provided. In this sense, it is necessary to improve the functioning of the institutions of private security, among other things, continuous improvement of legislative solutions and continuous education and training of their members.

Strategic documents and legal regulation about the institutions of private security, give the possibility and an obligation perceiving in the same context of the current security problems and legal solutions, experiences and practices of other countries in the region and Europe. If this option is used, at the time of adoption and initial of the implementation legal basis, it will show time and the realization of the adopted law.

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ORGANIZATION, DUTIES AND TASKS OF THE INTELLIGENCE AND SECURITY AGENCY OF BOSNIA AND HERZEGOVINA IN COMBATING TERRORISM AND ORGANIZED CRIME

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Abstract: The Intelligence and Security Agency of Bosnia and Herzegovina (the Agency) in combating terrorism and organized crime, in the sense of organization, comprises two components, intelligence and security, but it can also be viewed as only one component – a unit with twofold characteristics, intelligence and security. In the organizational-functional sense, the primary task of the Agency is to deal with gathering, analyzing, processing and distribution of information on terrorism and organized crime, both in the country and abroad, and in that regard secret or covert activities and absence of authority on the use of repressive measures and participating in formal legal procedures in the country. The duties and tasks of the Agency imply a covert, active and research methodological approach directed at comprehensive understanding of terrorism and organized crime by understating and deepening of knowledge about the causes, nature, scope, forms and carriers of terrorism and organized crime in Bosnia and Herzegovina, and outside the country. Such approach entails a relation towards a wider social or political context where a committed offense is just a segment or the outcome of the entire security phenomenon or process. Given the fact that the duties and tasks of the Agency, i.e. similar modern intelligence and security agencies, primarily imply prevention and detection, and afterwards reconstruction or looking into offenses already committed, it is clear that they have to allow gathering data before a terrorism or organized crime offense is committed, thus trying to pinpoint actions that lead to the offense and that can, as such, serve as a legal objective or subject of interest of the aforementioned agencies. This kind of specific protective authority, on the other hand, leads to dangers of exceeding and misuse of authority for illegal purposes, but this too has to be taken into consideration and these dangers can be controlled by establishing adequate mechanisms of control over the operations of the above mentioned agencies, and not by reducing authorities.

Keywords: Intelligence and Security Agency, organization, tasks, terrorism, organized crime.

ORGANIZATION OF THE AGENCY IN COMBATING TERRORISM AND ORGANIZED CRIME

The reform of the intelligence services[2] in Bosnia and Herzegovina is one of the key terms for the beginning of negotiations between Bosnia and Herzegovina and the European Union on the agreement on stabilization and membership. The international community demanded from the Parliament of Bosnia and Herzegovina to adopt a law on unique intelligence and security service as soon as possible, and the first initiatives towards that goal followed in 2002, after the conference in November in London (Great Britain), which was adopted as the "London Declaration on Organized Crime in the Balkans". The Intelligence and Security Agency of Bosnia and Herzegovina (ISA) was established by the Law on Intelligence and Security Agency of Bosnia and Herzegovina[3], which the Parliamentary Assembly of Bosnia and Herzegovina adopted at the session of the House of Representatives held on 22 March 2004 and at the session of the House of Peoples held on 22 March 2004. The Agency was formed by joining civilian intelligence and security institutions which were active earlier in the

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2 The term service is both a noun (service as an organization, institution) and a verb (service as in performance of action and activity, service). When it comes to the term agency there are several status modalities it manifests itself in, e.g. agency as a body, i.e. an organization from the (narrow) system of state administration (established by the regulation which determines the structure of state administration), agency as a specific public authority under the control of state parliament for conducting specific state functions in the area of state security and alike. On the term and legal definition of agency and specific questions regarding their functioning, see more in Dujić, S: Javne službe i nezavisna regulatorna tijela, *Časopis za upravno-pravnu teoriju i praksu,* Agencija za državnu upravu Republike Srpske, Banja Luka, 2010, pp. 20–21.
3 Law on the Intelligence and Security Agency of Bosnia and Herzegovina, Official Gazette of Bosnia and Herzegovina, no. 22/04, 20/04, 56/06.

Federation of Bosnia and Herzegovina (Federal Intelligence and Security Service – FISS) and in Republika Srpska (Intelligence and Security Service – ISS). The Agency became functional on 1 May 2004. It operates in accordance with the regulations of the Constitution and Laws of Bosnia and Herzegovina, including the regulations of the European Convention on Protection of Human Rights and Basics Freedoms and its protocols, and international contracts and agreements which Bosnia and Herzegovina either signed or adopted. The Agency is a civilian intelligence and security institution, construed as an independent administrative organization of Bosnia and Herzegovina. Also, it is a legal entity, and on the territory of Bosnia and Herzegovina there cannot be any other civilian intelligence and security structures. The internal organization of the Agency is regulated by the rule book on internal organization which determines organizational units in accordance with the constitutional structure of Bosnia and Herzegovina. The organizational structure implies internal organization, i.e. the system of established organizational units, delegation of assignments based on the established scope of work and the system of connections between specific parts of the organization. In the organizational sense, the Intelligence and Security Agency of Bosnia and Herzegovina comprises two components, intelligence and security, but it can also be viewed as only one component – a unit with twofold characteristics, intelligence and security. In the organizational-functional sense, the primary task of the Agency is to deal with gathering, analyzing, processing and distribution of information on terrorism and organized crime, both in the country and abroad, and in that regard secret or covert activities and absence of authority on the use of repressive measures and participating in formal legal procedures in the country. The internal organization of the Agency is regulated by the Rule Book on Internal Organization which determines organizational units in accordance with the constitutional structure of Bosnia and Herzegovina. The Rule Book on Internal Organization is introduced by the Director-General of the Agency in consultation with the Deputy of the Director-General and approval of the Council of Ministers of Bosnia and Herzegovina. Considering that the legal text does not specifically define the organizational structure, and detailed information cannot be found on the official website of the Agency,[4] we assume that the organization of the Agency, given the aforementioned principles of work, has the organizational structure like all the other modern intelligence and security agencies. The organizational units are organized at two levels: 1/ horizontal and 2/ vertical level. The horizontal organization governs the principle of work technology, and the vertical one provides coordination, division of authority, i.e. subordination. The horizontal level of organization implies establishing and functioning of problem-liner organizational units of intelligence and security agencies, based on the division of work and tasks by the law defined scope of work (intelligence, counterintelligence and other security jobs, and within them organizational units in charge of the matter of terrorism and organized crime). Based on the analysis of a specific number of agencies and current resources which deal with the organization of these specialized executive authority institutions, it can be said that the vertical organization of the Intelligence and Security Agency consists of: central intelligence service, intelligence service, intelligence service and intelligence point subcenter. It is must be noted here that most of domestic scientific papers in the field of organization of modern intelligence and security agencies point to, aside from the intelligence point, as a special and the lowest level of organizational part, the informer or posted informer. This approach to the vertical organization of intelligence service is acceptable given that the main resource of intelligence service are its professional members, i.e. informers, in charge of the realization of operational jobs and tasks, i.e. the implementation of the majority of gathering methods, techniques and procedures for the purpose of timely securing necessary intelligence.

DUTIES AND TASKS OF THE AGENCY IN COMBATING TERRORISM AND ORGANIZED CRIME

According to the legal provisions, the Intelligence and Security Agency of Bosnia and Herzegovina is responsible for gathering intelligence regarding threats to the security of Bosnia and Herzegovina, both within and outside the borders of Bosnia and Herzegovina, their analysis and forwarding to authorized institutions, as well as gathering, analyzing, processing and forwarding intelligence with the purpose of assisting law enforcement officers, as defined by the Laws on Criminal Proceedings of Bosnia and Herzegovina, and other authorized institutions in Bosnia and Herzegovina when necessary in order to suppress any threats to the security of Bosnia and Herzegovina.

"Security threats to Bosnia and Herzegovina" imply threats to sovereignty, territorial integrity, constitutional order, foundations of economic stability of Bosnia and Herzegovina, as well as threats to global security which are detrimental to Bosnia and Herzegovina, in particular: terrorism, as well as international

4 Available at: www.osa-oba.gov.ba/ustavnost i zakonitost, informacije i saopštenja, kontakt. Accessed: 20 September 2014.

terrorism; organized crime directed at Bosnia and Herzegovina or which is detrimental to the security of Bosnia and Herzegovina in any way; trafficking in drugs, arms and persons directed against Bosnia and Herzegovina or which is detrimental to the security of Bosnia and Herzegovina in any other way; illegal international manufacturing of weapons of mass destruction or their components, as well as materials and devices used for their manufacturing; illegal trafficking in products and technologies which are controlled internationally, etc.[5]

The notion that terrorism and organized crime represent the Agency's priority can be seen in the Annual Platform[6] with guidelines for functioning, which represents a planned and guiding document that governs the Agency's functioning and determines its basic tasks, goals and the priority of the Agency's work in the field of its authority. Thus, the Annual Platform shows that possible threats to the security of Bosnia and Herzegovina are security threats which are regarded as nontraditional, and which are realized in the form of: radical and potential terrorist activities, groups and individuals; organized violence or intimidation of national and religious groups in both immediate surrounding and in Bosnia and Herzegovina itself; activities of organized crime groups and operations usually tied with them, such as illegal trafficking in drugs, arms, explosive materials, persons, products and technologies which are controlled internationally, as well as weapons of mass destruction, their components, materials and devices necessary for their manufacturing; attempts to control businesses, money laundering and other forms of endangering basic economic stability of Bosnia and Herzegovina, and local and subregional tensions and possible conflicts that pose potential sources of instability.

In that context, the Agency is required to intensively continue researching the activities of individuals, groups, organizations and institutions that finance, support, plan, prepare, organize and implement terrorism activities, whether they be global terrorism threats, threats to Bosnia and Herzegovina, and/or forms of terrorism activity that manifests itself in Bosnia and Herzegovina, since such acts and occurrences were known to happen in earlier periods. In that regard, the Agency should continue gathering data on every logistical support of such activity. Aside from this, the Agency has to gather data and research the activities of individuals or groups[7] whose action can lead to violence or intimidation of national and religious groups in Bosnia and Herzegovina; to radical actions motivated by religious, national, social, vindictive or other incentives; and/or disturbance of public peace and order. Also, the Agency has to gather data on the activities of individuals and groups which are trained and have the possibility to execute terrorism activities in Bosnia and Herzegovina motivated by material, national, social, vindictive and other incentives. The Agency should continue the activities of finding secret warehouses of arms and munitions which can be used for terrorism purposes, and thus pose a threat to the security of citizens and their property. The Agency's priorities in terms of organized crime should be as follows: all forms of corruption; illegal migrations; trafficking in persons and human organs; illegal manufacturing and trafficking in drugs, illegal manufacturing and trafficking in dangerous and other materials which are controlled internationally; endangering of the monetary system and money laundering; illegal privatization. Furthermore, the Agency should pay special attention to recording occurrences and locating the sources of influence that can be, or are, dangerous and thus affect economy, defense capability, technological processes, financing, trade and information system, including possible threats that manifest themselves in the form of economic barriers, energy crises, destruction of environment or as a complex of health-epidemiologic threats. When it comes to environmental threats the main focus should be put on possible occurrences of chemical and radiological pollution of the environment, which causes illnesses of people, animals and growth. The Agency should also permanently gather data on all forms of corruption which pose threat to basic economic stability, especially when the elements of international and regional connectivity are concerned and question the sustainability of specific economic branches relevant to the economic stability of Bosnia and Herzegovina, and the legal system and functioning of the legal state.[8]

5 See Article 5 of the Law on ISA.

6 See more in: The Annual Security-Intelligence Policy Platform with guidelines for functioning of the Intelligence and Security Agency of Bosnia and Herzegovina – Joint Commission for supervising the work of the ISA BiH – documents. Available at: www.parlament.ba. Accessed: 20 April 2014.

7 In early September 2014, in the wider area of Bosnia and Herzegovina, members of the State Investigation and Protection Agency (SIPA) in collaboration with members of the Intelligence and Security Agency and other law enforcement agencies in BiH arrested several persons associated with financing terrorist activities, public incitement to terrorist activities, recruitment for terrorist activities, organizing terrorist groups, etc. Available at: http://www.mojevijesti.ba/novost/198104/SIPA-Uhapseno-16-osoba-pronadena-vojna-oprema. Accessed: 10 October 2014.

8 The priorities in the work of the Agency are terrorism and organized crime, and this can be seen in the warnings of the highest representatives of the Intelligence and Security Agency of Bosnia and Herzegovina given at the meeting of Common Commission for Defense and Security which point to the presence of more than three thousand persons – mostly the Selefies and the Vehabias – who are capable of carrying out terrorist attacks. At the same time it is pointed out that these persons are well-equipped and they include those persons who have been in the police records for many years, but the police are powerless to do anything until they carry out a terrorist attack just like in Bugojno or some other similar act. The warning that the management of the Agency gave at the conference "Current Status of Security in Bosnia and Herzegovina" held on 20 December 2011 at the Parliament of Bosnia and Herzegovina, which was extensively covered by the media, is also alarming and it points to the fact that the problem of organized crime in Bosnia and Herzegovina is so deeply rooted that, if something is not done quickly about it, in two or three years' time criminals will come to the citizens' door and take them out of their homes. The thing that worries the members of the Agency, based on gathered intelligence

DIRECTIONS FOR IMPROVING THE AGENCY'S WORK IN COMBATING TERRORISM AND ORGANIZED CRIME

Directions for improving the Agency's work in combating terrorism and organized crime can be viewed from the organizational and functional (duties and tasks) aspect. The organization of the Agency in combating terrorism and organized crime is constructed in such way that it enables gathering, analytic processing and evaluation of data which are important for the security of the country, i.e. global security. According to the content, such activities can be referred to as intelligence-informative and preventive-security[9]. When it comes to repressive authorities, the Agency is, in the organizational sense, separated from classic security or police agencies, i.e. the ministries of security and it cannot be defined as a participant of criminal proceedings, i.e. carriers of police (executive) authorities, in terms of law on criminal proceedings.

Considering that terrorism and organized crime are primarily characterized by maximum conspiracy, mobility, planned division of work, hierarchically established organization and alike, the Agency itself should be flexible and adjusted to modern forms of socially dangerous crimes such as terrorism and organized crime. Simultaneously, this means that the Agency's organizational units should be mobile and capable of understanding these characteristics, i.e. the entirety of security phenomenon of terrorism and organized crime. It is necessary here to add secrecy as the determining factor of threat to national security, which further complicates the perception of security manifestation and makes it dependant on inductive logical-analytic deduction based on known fragments or the outlines of the entire phenomenon, as well as the legal framework which will enable the freedom or autonomy of expertise evaluation within the legal framework.[10]

Given the fact that the Agency is responsible for gathering intelligence related to security threats to Bosnia and Herzegovina, both in and outside Bosnia and Herzegovina, especially terrorism and organized crime, as well as gathering, analyzing, processing and forwarding of intelligence with the purpose of assisting law enforcement officers, as is defined by the Laws on Criminal Proceedings of Bosnia and Herzegovina, and other authorized institutions in Bosnia and Herzegovina when necessary for prevention of threats to the security of Bosnia and Herzegovina, the Agency in the organizational-functional sense should make a step forward in order to continually give the information to authorized officials and bodies, respecting the principle of timeliness and efficiency. This way of informing should be coordinated with the principle "necessary to know"[11], unless determined otherwise by the law.

In this way the gathering and processing of raw intelligence and making the final intelligence documents based on their own methods of research, and final results too, would be identical with scientific research, and would enable the end users – political decision makers – to draw some conclusions on the existence of specific relations between the occurrences and processes that are being researched. This would enable a comprehensive understanding and deepening of knowledge about the causes, nature, scope, forms and carriers of terrorism and organized crime in Bosnia and Herzegovina, and outside the country, and such final intelligence documents (studies, evaluations and forecasts) would serve as information support for making more quality internal and foreign policy decisions, which is essentially the priority task of the Intelligence and Security Agency.[12]

In modern intelligence and security agencies this activity is primarily conducted by the analytical departments, and in principle, the acceptability of the final intelligence products, by the users, significantly increases when the content, form and language used in the document support and complement each other.

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and information, is the increase in organized crime, which permeates all social spheres and is present at all levels, including government and society. Available at: www.parlament.ba- Zajednička komisija za odbranu i bezbjednost Bosne i Hercegovine, aktivnosti, sjednice-Izvještaji. Accessed: 14 September 2014.

9 See more in: Bajagić, M.: *Špijunaža u XXI veku – Savremeni obaveštajno-bezbednosni sistemi*, Marso, Beograd, 2010, p. 7.

10 On the function of security and intelligence service, see more in: Badžim, J.: Sigurnosno-obavještajne službe u demokratskom društvu – u povodu reforme sigurnosno-obavještajnog sustava u Republici Hrvatskoj, *Hrvatska javna uprava*, 2008, no. 4, p. 1023.

11 After the terrorist attacks on the USA on 11 September 2001, there is the principle called "need to share", i.e. "dare to share" in intelligence work, which affirms the need for sharing intelligence, i.e. active interagency cooperation.

12 The management of the Intelligence and Security Agency at the meeting of the Commission for Defense and Security of Bosnia and Herzegovina held on 26 March 2012 in Sarajevo regarding the Information on terrorist acts on the building of the American Embassy, warned about the danger of terrorism and possible new terrorist acts in Bosnia and Herzegovina. In that regard, it was stated that terrorism is an occurrence which is combated against by the entire country, and not just the Agency. In that context, it was also emphasized that the phenomenon of terrorism in Bosnia and Herzegovina implies the indoctrination of young people who are mostly part of a crime milieu, and many of them are now members of specific – radical religious movements. The question, as stated by the Director of the Agency, is when the next person is going to do the same thing or something even worse than Mevlid Jašarević, who committed the attack on the American Embassy. On this occasion the need for adjustment of the judicial practice was also pointed out, since for example the Court of Bosnia and Herzegovina for the terrorist attack in the "case of Rustempašić" sentenced him to only four years in prison, while this sentence would be higher in other countries. The Chairman of the Commission and some members of the Commission emphasized that Bosnia and Herzegovina is often referred to as the place where terrorist stay, and there was also mention of lack of as well as the need for additional cooperation and coordination between the security and police agencies in Bosnia and Herzegovina.

Since terrorism and organized crime, among other, are characterized by an intricate activity in the domestic and foreign domain, gathering, i.e. processing of data from intelligence, i.e. security component, should be interconnected and conditioned, and their use more practical and efficient through a unique intelligence cycle. In that context, the final intelligence products – external documents – should be grouped thematically and satisfy the needs of the end users.[13] Thus, in our opinion, external informing would primarily depend on the end user of the external document, and the language style in the analytical product should be adjusted to that, considering that the subject information (studies, evaluations or forecasts) given to the highest state bodies would be most frequently, as already said, of strategic significance, while the information given to security and police bodies, i.e. prosecutors, should be operational and tactical in nature and contain more concrete data on potential perpetrators, i.e. criminal offense perpetrators or the offense itself, and by doing this try to answer as many golden criminological questions as possible[14].

In that context, there is a need for improving cooperation, i.e. assisting law enforcement officers, as is defined by the Laws on Criminal Proceedings of Bosnia and Herzegovina, where the Agency in the organizational-functional sense should make a step forward in cases where, at an early stage, it recognizes threats before they are realized in the form of serious crimes of terrorism and organized crime, and immediately initiates, i.e. intensifies and speeds up exchange of data with security and police bodies in Bosnia and Herzegovina or the Prosecutor's Office and thus eliminate any criticism on insufficient cooperation with these institutions. This is especially important in case of possible opportunities of timely thwarting international terrorist and crime chains.

Such data, in particular cases, can serve as operational data to security and police agencies which can help in obtaining evidences by using other methods or initiate timely actions, i.e. use of special research activities in order for these agencies to gather information on criminal offenses and their perpetrators with the purpose of their detection and proving, without alarming the perpetrators. It is important to mention that the Agency's task is to prevent and timely and early detect threats before they are realized in the form of serious crimes or threats to the security of the country.

Given the fact that a lot of illegal activities in the field of terrorism and organized crime cover the territory of many countries, and that the perpetrators of these acts are the subject of investigation of domestic and international police agencies, whose dangerous activity cannot be stopped without a multilateral cooperation, the cooperation between the Agency and the domestic and international intelligence and security institutions in charge of the matter has to become more active in the future[15].

Likewise, the Agency needs to prepare and make available to the public the reports with the goals, programs and general focus of its activities, which are not supposed to be based on secret information, but should inform the public in the same way as the state decision makers for the protection of democratic principles and the principles of a legal state, and for the fact that the public and the community in one country are entitled to know about threats to security or global security[16]. In that regard, the official site of the Agency[17] needs to be updated and adjusted to the present moment, based on other modern intelligence and security agencies.

Since gathering data that the Agency is responsible for is not construed as a criminal proceeding, but rather as protection of state security, data gathering is seen more as informative rather than evidentiary according to current legal definitions. Let us recall that after the unsuccessful attack on the American Embassy in Sarajevo, the matter of changing the Law on Criminal Proceedings is again being reviewed in order for police and intelligence agencies in Bosnia and Herzegovina to combat terrorism and the most serious forms of organized crime more efficiently[18].

13 The Annual Security-Intelligence Policy Platform, which the BiH Presidency sent to the BiH Parliament, states that the Agency should continue transforming into an institution which will timely provide the authorities with quality intelligence and improve cooperation, data exchange and contacts with the institutions and bodies of Bosnia and Herzegovina.

14 The answer to more golden criminological questions can greatly help police authorities in processing and documenting criminal offenses with more quality, i.e. the perpetrators of criminal offenses, but also quality criminological-strategic analyses of specific state authorities that deal with different forms of combating crime can help, among other, the Intelligence and Security Agency to identify the manifestation forms and criminogenic factors that favor terrorism and organized crime, more on this in: Simonović, B; Matijević, M.: *Kriminalistika taktika*, Internacionalna asocijacija kriminalista, Banja Luka, 2007, Strategijsko planiranje kriminalističke djelatnosti, pp. 61–65.

15 In the fight against terrorism, the USA have an excellent and long partnership with the Intelligence and Security Agency of Bosnia and Herzegovina, as stated by the Office of the USA Embassy in BiH, and in that context there have been statements regarding satisfaction with close cooperation of the ISA and the State Investigation and Protection Agency (SIPA) BiH, for both institutions have the key role in preventing and disabling potential terrorist acts in BiH. Available at: www.avaz.ba/članak/152586/14. Accessed: 15 December 2014.

16 See more in: Concluding marks of the conference on the topic: "Academic Community of Bosnia and Herzegovina on Democratic Oversight of the Intelligence and Security Services in Bosnia and Herzegovina" – Report no. 03/02-50-3-699/10, dated 29 July 2010. - Joint Commission for supervising the work of the ISA BiH – documents, the Internet 12 June 2014 www.parlament.ba.

17 The official site of the Agency was last updated in 2005 - www.osa-oba.gov.ba/ustavnost i zakonitost, informacije i saopštenja, kontakt. Accessed: 11 November 2014.

18 The initiative for the change of the Law on Criminal Proceedings of Bosnia and Herzegovina, initiated with the aim of using specific measures of secret data gathering, i.e. other evidence obtained through intelligence, under specific conditions can be (when unattainable in another way) used in criminal proceedings against the accused of the most serious crimes of organized crime and

The rule that the intelligence and security services cannot use repressive authority is affirmed as sort of democratic standard, and if they had this authority than the efficiency interests would require intelligence-security, i.e. preventive-security and repressive affairs to be organizationally divided in such manner that the institution on the whole would not bear the consequences of interfering or of mutually conflicting functions. Some European intelligence and security services have at their disposal both of the mentioned functions and are as a rule organized into ministries of the interior and are in charge of the so called political crime, whereby the long-lasting preventive-informative processing and monitoring of suspicious object with covert means dominates, while repression as the final act, which can depend on the evaluation of its usefulness from the standpoint of public interests, is less present. In some countries, evidence gathered by security services is admissible in legal proceedings, but this usually implies more or less classic security services and not integrated intelligence and security services, as is the case with the Intelligence and Security Agency of Bosnia and Herzegovina. It is important to mention that the members of some security and informative agencies that do not normally have police authorities are part of special organizational units and are in charge of "detection, monitoring, documenting, prevention, suppression and stopping of the activities of organizations and persons involved in organized crime and criminal offenses with the elements of foreign, domestic and international terrorism and use authorities prescribed by the law and other regulations that the law enforcement officers and employees with specific duties at the ministry of the interior use in accordance with the regulations on internal affairs."[19] Given that the duties and tasks of the Agency, i.e. similar modern intelligence and security agencies, are related to prevention and detection, and only subsequently to reconstruction or investigation of committed offenses, it is clear that they have to able to gather data before the offense is committed and that, as such, can serve as a legal goal or subject of interest to the aforementioned agencies.

Unlike surveillance measures in places that are not public in their nature, communication surveillance via telecommunication and other forms of electronic devices, as well as the search of property without the consent of the owner or the person temporarily residing there, which is approved by the President of the Court of Bosnia and Herzegovina or the Judge of the Court of Bosnia and Herzegovina appointed by the President of the Court of Bosnia and Herzegovina, making secret connections with private individuals, i.e. use of secret sources or collaborators, is under autonomous power of the Agency and subsequently possibly supervising bodies. A different approach to this issue can have a foothold in a number of reasons. First, a secret source/collaborator monitors the target person for security reasons in a way that the person willingly participates knowingly and willingly thus allowing the insight into his activities by the Agency's secret collaborator, mistaking him for a loyal person. Second, finding, forming and guiding secret collaborators can be a lengthy, multi-layered and uncertain job, and thus unpractical for prior court approval. The third reason concerns security and it implies the protection of the identity of secret collaborators who are due to their delicate position towards the objects of covert surveillance in constant functionally and existentially endangered position.[20] When it comes to secret collaborators the legal issue about the responsibilities related to their infiltrating into terrorist or crime groups is of concern, which can also mean entering the crime zone. The Law on Intelligence and Security Agency of Bosnia and Herzegovina and other regulations in Bosnia and Herzegovina have not sufficiently dealt with it. To a degree the regulations of the Law on Criminal Proceedings deal with this issue and regulate the role of undercover agents and informants (Article 116), who are used for special investigations as means for obtaining evidence in a criminal proceeding. These regulations could - in the absence of other and using the legal analogy - to a certain degree serve for defining the legal status of secret sources of the Intelligence and Security Agency. They could, among other, determine that the participation of the mentioned persons in crime must not represent a form of incitement to commit criminal offences.

CONCLUSION

Timely combating organized crime, especially terrorism, in a way implies a certain "presence" of intelligence and security agencies when it comes to these serious crimes, and it is difficult to realize that without quality intelligence network, which is the basic and the most important means in timely detection and iden-

terrorism. The proposal was sent to the Team for monitoring and evaluation of implementation of criminal laws in Bosnia and Herzegovina. However, according to some judges of the Court of Bosnia and Herzegovina, the difficulties of gathering evidence by the intelligence service cannot be admissible under any circumstances for this would compromise the basic principles of criminal proceedings and would go deep into the standard of human rights. In that sense, the question is which evidence can be obtained by the agents of the Intelligence and Security Agency that are not possible to obtain in a regular proceeding, as well as which are the reasons for including the Agency in gathering evidence. The BiH Parliament still has not discussed the changes and amendments of the Law on Criminal Proceedings, i.e. the Law on Intelligence and Security Agency of Bosnia and Herzegovina.

19 Compare: Articles 12-14 of the Law on Security and Information Agency of Republika Srbija.

20 On the work of security and intelligence services and the use of secret procedures, see more in: Badžim, J.: Sigurnosno-obavještajne službe u demokratskom društvu – u povodu reforme sigurnosno-obavještajnog sustava u Republici Hrvatskoj, *Hrvatska javna uprava*, 2008, br. 4, pp. 1027–1035.

tification of the hardest forms of crime. In that context, intelligence and security agencies create a network of secret source data, i.e. establishment of secret connections with individual persons in order to timely gather intelligence, i.e. data and information which can point to the intentions and plans of adversaries, their potentials and vital interests. The sole infiltration procedure, i.e. gathering relevant data, can, in certain cases, mean entering the crime zone, as already mentioned. The Law on Intelligence and Security Agencies of Bosnia and Herzegovina and other regulations in Bosnia and Herzegovina do not deal sufficiently with this issue, although the Agency's work entails internal-security issues.

There is an explicit legal regulation on the matter, for example the Hungarian legislation, which stipulates that, along with the prior consent of the State Prosecutor, national security services can come to terms with external collaborators and informants in a way that they can either reject or terminate investigation of the criminal offense if the cooperation is in the interest of national security and if it is more important than proving and sanctioning of the criminal offense[21]. From the above regulation it can be concluded that its purpose is to enable exemption from criminal liability for acts committed during the infiltration into terrorist and crime structures for the purpose of their observation, as well as subsequent exemption from criminal prosecution of the persons responsible for the criminal offense in order to motivate the cooperation with the intelligence and security service. Similar law regulations should be introduced to the Law on Intelligence and Security Agencies of Bosnia and Herzegovina and thus legally standardize this important field of covert information gathering by the individual persons-sources of knowledge of the Agency, and simultaneously avoid their possible criminal-legal liability.

Also, we are of opinion that the intelligence and security system as such in Bosnia and Herzegovina, where aside from the Intelligence and Security Agency there is also a security agency with police authorities, and that is the Agency for Investigation and Protection[22], should not duplicate jurisdiction and authorities, for there is a danger of misuse of authority in routine situations which do not pose a direct threat to the security of the country.

If the current legal regulation should change, primarily the Law on Criminal Proceedings of Bosnia and Herzegovina, i.e. the Law on Intelligence and Security Agencies, which would enable the use of evidence collected by the Agency in court proceedings, there should be awareness that the presence of intelligence and repressive function within one institution would favor the risk of possible misuse, i.e. possible manipulation of data misuse in criminal proceedings, i.e. their retention and non-application, and the sole principle of secrecy would be compromised to a degree. Such changes would surely lead to specific organizational but also functional changes within the Agency itself. We believe that focus should be put on a greater degree of cooperation and coordination with security and police agencies in the region and the world, and that the Agency, as before, should not use repressive or police authorities in the sphere of combating terrorism or organized crime, which is in accordance with the Council of Europe (1402/1999). This cooperation should be in accordance with the laws and regulations on protection of sources, methods and other secret data.

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21 Act CXXV of 1995 on National Security of Hungary.

22 The State Investigation and Protection Agency (SIPA) is a governing organization within the Ministry of Security of Bosnia and Herzegovina which functions independently, founded for conducting police affairs. Aside from that, the Agency assists the Court and the Prosecutor's Office of Bosnia and Herzegovina, provides physical and technical protection of persons, objects and property, as well as witness protection. Article 2 of the Law on the State Agency for Investigation and Protection, *Official Gazette of Bosnia and Herzegovina*, no. 27/2004.

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Abstract: The subject of quantitative research is the analysis of the factors influencing the knowledge and perceptions of first-year students of the Academy of Criminalistic and Police Studies about natural disasters. The authors used a survey method to identify and describe the factors that influence the knowledge and perceptions of students about natural disaster. Out of the total number of first-year students of the Academy of Criminalistic and Police Studies, 360 of them were examined. The results show that respondents have a high level of knowledge on natural disasters and the best knowledge on safety procedures when handling droughts. Limitation of research relates to the fact that the research is based only on the first-year students of the Academy of Criminalistic and Police Studies. Considering the evident lack of education on natural disasters in Serbia, the survey results can be used when creating the strategy of educational programs, which would contribute to improving the safety of youth culture. The research results can be used for the improvement of existing knowledge and preparedness for responding to natural disasters.

Keywords: security, emergency situations, natural disasters, statistics, students, knowledge, perception, fear.

INTRODUCTION

Natural disasters, as adverse events to people, their material goods and environment, occur on/in different spheres of the earth (lithosphere, hydrosphere, atmosphere and biosphere), such as, for example, earthquakes, floods, epidemics, hurricanes, etc. Depending on the nature of onset process, natural disasters can be divided into: geophysical (earthquakes, volcanoes, tsunamis, landslides, mudslides); meteorological (tropical cyclones/hurricanes, thunderstorms, tornadoes, lightning, hailstorms, snowstorms, ice storms, blizzards, cold and hot waves, snow landslides, fog and frost); hydrological (floods, streams); biological (epidemics and insect pests); and cosmic (meteors)[4]. In the period from 1900 to 2013 there were 25,552 natural disasters. Most of them were hidrospheric disasters, followed by atmospheric, lithospheric and biospheric oness.[5]

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4 Mlađan, D., Cvetković, V.: *Classification of Emergency Situations*. Belgrade: Thematic Proceedings of International Scientific Conference "Archibald Reiss Days", Academy of criminalistic and police studies, 2013, pp. 275-291; Cvetković, V.: Geoprostorna i vremenska distribucija vulkanskih erupcija. NBP – Žurnal za kriminalistiku i pravo, 2/2014, 153-171; Cvetković, V.: Spatial and temporal distribution of floods like natural emergency situations. *International scientific conference Archibald Reiss days* (pp. 371-389). Belgrade: The academy of criminalistic and police studies, 2014.
5 Cvetković, V., Mijalković, S.: *Spatial and Temporal distribution of geophysical disasters*. Serbian Academy of Sciences and Arts and Geographical Institute Jovan Cvijic, Journal of the Geographical Institute "Jovan Cvijić" 63/3, 345-360; Cvetković, V., Milojković, B., & Stojković, D.: Analiza geoprostorne i vremenske distribucije zemljotresa kao prirodnih katastrofa. *Vojno delo*, 2014, letnje izdanje; Cvetković, V.: Geoprostorna i vremenska distribucija vulkanskih erupcija. *NBP – Žurnal za kriminalistiku i pravo*, 2/2014, 153-171; 46; Cvetković, V., Dragićević, S.: Prostorna i vremenska distribucija prirodnih nepogoda. Zbornik radova Geografskog instituta „Jovan Cvijić" SANU, 293-309, 2014.

Historically, the role of education has, in some way, ignored the importance of the need for education in the field of disasters. There are several reasons:[6] Disasters have always been considered as the events that rarely occur, appear in many different forms, bring a variety of different causes and consequences. These considerations lead to the conclusion that it is almost impossible to standardize forms of action. However, practice has shown that children familiar with the phenomenon and the response in natural disasters are able to react quickly and appropriately in order to protect themselves and to warn others of potential dangers. One of the classic examples of the power of knowledge and education is the story of 10-year-old girl from Britain, Tilly Smith, who warned tourists to flee before the tsunami in the Indian Ocean came to the coast.[7] In this way, she saved more than 100 tourists in 2004. She recognized the signs of an approaching tsunami, having learned at school about this phenomenon within geography, only a week before she visited Thailand.[8] Also, it is necessary to bear in mind that the UK is not a state in which such phenomena occur, and that she had no previous experience, but acquired knowledge at school and thus contributed to saving the lives of a large number of people.

The role of education in reducing the risk of natural disasters is often directly or indirectly regulated by legislation and policy documents. For instance, the law on emergency situations of the Republic of Serbia in point 6 titled training and education, Article 119 states that in order to acquire the necessary knowledge in the field of personal and collective protection, citizens receive education and training in preventive care and rescue. Furthermore, it is stated that the training is done within primary and secondary education in order to acquire knowledge about the dangers of natural and other disasters and how to protect against them, in accordance with the specific law and the appropriate program.[9] Educational activities which are carried out through educational programs in schools are effective measures to emphasize the importance of reducing the risk of natural disasters, because working with children, this knowledge extends to their families.[10]

Bearing in mind the enormous importance of education about natural disasters, the authors - within a quantitative study - analyze the factors that influence the knowledge and perceptions of first-year students of the Academy of Criminalistic and Police Studies about natural disasters. In this paper, the authors used the survey method to describe and identify the factors that have an impact on the students' knowledge and perception on natural disasters. The first part of the paper is a discussion on the previous studies that have dealt with this issue. The second part is devoted to the issues of the methodological framework. The third part of the paper presents the results of descriptive statistics and use of chi - square test.

LITERATURE REVIEW

The role of education in reducing the risk of natural disasters is a very topical issue studied by many disaster researchers.[11] In addition, a large number of papers relate to the link between education and preparedness to respond in the event of a natural disaster.[12] Tanaka examines how education on disasters increases the preparedness of people for disasters.[13] Specifically, in the paper *Impact of education about disasters on preparedness of population and mitigation of effects of earthquakes: the comparison between a city in Japan and city in California*, the author deals with the following research questions: What kind of education is the most appropriate to encourage the preparedness of population for future earthquakes?; How does ed-

6 Lidstone, J.: *Disaster education: Where we are and where we should be.* In: Lidstone, J. (Ed.), International perspectives on teaching about hazards and disasters (p. 3). Philadelphia, USA: Channel View Publications, 1996:34.

7 Rajib, S., Koichi, S., Yukiko, T.: *Disaster education*. United Kingdom, Emerald Group Publishing, 2011.

8 UN/ISDR.: *World disaster reduction campaign. Disaster risk reduction begins at school.* Available at http://www.unisdr.org/eng/public_aware/world_camp/2006-2007/pdf/WDRC-2006-2007-English-fullversion.pdf,2006 (Accessed on January 10.04. 2013).

9 Zakon o vanrednim situacijama Republike Srbije, *Službeni glasnik Republike Srbije*, broj 111/2009.

10 Ivanov, A., Cvetković, V.: The role of education in natural disaster risk reduction. *Horizons, international scientific journal, year X Volume 16, 2014.*

11 Radu, C.: Necessity of training and education in earthquake-prone country, Training and Education for Improving Earthquake Disaster Management in Developing Countries, UNCRD Meeting Report Series, 1993, No. 57, pp. 15-33; Kuroiwa, J.A.: Peru's national education program for disaster prevention and mitigation (PNEPDPM)", Training and Education for Improving Earthquake Disaster Management in Developing Counties, UNCRD Meeting Report Series, No. 57, 1993, pp. 95-102; Arya, A. S.: Training and drills for the general public in emergency response to a major earthquake, Training and Education for Improving Earthquake Disaster Management in Developing Countries, 1993, pp. 103-14, UNCRD Meeting Report Series No. 57; Ronan, K. R., & Johnston, D. M.: Correlates of hazard education programs for youth. *Risk Analysis*, 2001, *21*(6), 1055-1064; Frew, S.L.: Public awareness and social marketing", Regional Workshop on Best Practices in Disaster Management, Bangkok, 2002, pp. 381-393; Shaw, R., Shiwaku, K., Kobayashi, H., Kobayashi, M.: Linking experience, education, perception and earthquake preparedness. Disaster Prevention and Management, 2004, 13(1), 39–49; Panic, M., Kovacevic-Majkic, J., Miljanovic, D., & Miletic, R.: Importance of natural disaster education - case study of the earthquake near the city of Kraljevo: First results. *Journal of the Geographical Institute Jovan Cvijic, SASA, 63*(1), 2013, 75-88.

12 Faupel, C. E., Kelley, S. P., & Petee, T.: The impact of disaster education on household preparedness for Hurricane Hugo. *International Journal of Mass Emergencies and Disasters*, *10*(1), 1992, 5-24; Edwards, M. L.: Social location and self-protective behavior: Implications for earthquake preparedness. *International Journal of Mass Emergencies and Disasters*, 11(3), 1993, 293-303; Liu, S., Quenemoen, L. E., Malilay, J., Noji, E., Sinks, T., & Mendlein, J.: Assessment of a severe-weather warning system and disaster preparedness, Calhoun County, Alabama, *American journal of public health, 86*(1), 1996, 87-89.

13 Tanaka, K.: The impact of disaster education on public preparation and mitigation for earthquakes: a cross-country comparison between Fukui, Japan and the San Francisco Bay Area, California, USA. *Applied Geography, 2005,* 25(3), 201-225.

ucation on disasters increase the preparedness of disasters?; Can education about disasters really encourage that is motivate residents to take appropriate actions? Awareness about disasters and knowledge about neighborhood, and prior experience have a significant contribution to improving citizens' preparedness for an earthquake.[14]

Tomio et al. suggest that the older, female members and better educated individuals are positively associated with a higher level of preparedness for disasters at the household level, while at the community level such a connection exists with length of residence, marital status, presence of an older family member.[15] By examination of association between participation in educational programs about the dangers and awareness about danger, risk perception, knowledge and preparedness of households, Finnis et al. indicated that there is a positive correlation between participation in educational programs and a higher level of preparedness of the household.[16]. Kohn et al. suggest that there are significant variations in the results of research related to the impact of education on the level of preparedness of citizens [17]. Some research indicates that individuals with high levels of specific knowledge are likely to be prepared for such events.[18] Edwards indicates that households with higher levels of education, higher income and children will be to a greater extent adapted to the implementation of necessary measures of preparedness.[19] Faupel et al. suggest by their results that participation in educational programs about disasters is closely linked with the level of preparedness.[20] Becker et al. suggest that traditional education programs about disasters that are focused on passive information provide a very low level of awareness and motivation in relation to disaster preparedness.[21] Shaw et al., as a result of their work, state the fact that previous experience with an earthquake does not contribute significantly to awareness about this disaster, but it helps students to know what an earthquake is.[22]. In addition, they stress that school education is crucial in improving the knowledge and perceptions about an earthquake as a disaster. Johnson et al. indicate that there is a positive correlation between the preparedness of households with participation of children in educational programs on disasters.[23] Mishra and Suar suggest that education about disasters and resources are partial mediators between anxiety and preparedness for floods and major mediators between anxiety and preparedness for heat waves.[24]. Shiwaku et al. present the results that current school education - which is based on the lessons - can raise awareness about the risks, but cannot allow students to know the importance of preventive measures aimed at reducing the risk.[25]. At the same time, they indicate that self-education about disasters is effective to implement the measures and that the local community plays a decisive role in promoting the undertaking of current actions by students. Future school education must be based on active learning. Adem shows that there is a clear correlation between knowledge and attitudes about an earthquake[26] Hurni and McClure point out that prior knowledge about earthquakes is correlated with preparedness to earthquakes.[27] Ronan and Johnston confirm the significant role of educational programs about dangers in raising the level of preparedness of households for disasters.[28] Kurita et al. indicate that more than 90% of the population does not have adequate knowledge about tsunami and that the main sources of information during disasters were family members and neighbors.[29] In addition, they point out that school education is very important in raising the awareness on disasters.

14 *Ibid.*.
15 Tomio, J., Sato, H., Matsuda, Y., Koga, T., & Mizumura, H.: Household and Community Disaster Preparedness in Japanese Provincial City: A Population-Based Household Survey. *Advances in Anthropology*, *2014*.
16 Finnis, K. K., Johnston, D. M., Ronan, K. R., & White, J. D.: Hazard perceptions and preparedness of Taranaki youth. *Disaster Prevention and Management*, *19*(2), 2010, 175-184.
17 Kohn, S., Eaton, J. L., Feroz, S., Bainbridge, A. A., Hoolachan, J., & Barnett, D. J.: Personal disaster preparedness: an integrative review of the literature. *Disaster medicine and public health preparedness, 6*(03), 2012, 217-231.
18 Mishra, S., & Suar, D.: Do lessons people learn determine disaster cognition and preparedness? *Psychology & Developing Societies*, *19*(2), 2007, 143-159.
19 Edwards, M. L.: *Opus citatum.*
20 Faupel, C. E., Kelley, S. P., & Petee, T.: *Opus citatum.*
21 Becker, J., Johnston, D., Paton, D., & Ronan, K.: *Community resilience to earthquakes: Understanding how individuals make meaning of hazard information, and how this relates to preparing for hazards.* Paper presented at the New Zealand Society for Earthquake Engineering Conference, 2009.
22 Shaw, et al.: *Opus citatum.*
23 Johnson, V. A., Ronan, K. R., Johnston, D. M., & Peace, R.: Evaluations of disaster education programs for children: A methodological review. International Journal of Disaster Risk Reduction, 9, 2014, 107-123.
24 Mishra, et al.: *Opus citatum.*
25 Shiwaku, K.: Essentials of school disaster education: Example from Kobe, Japan. In: R. Shaw & R. Krishnamurthy, R. (Eds), Disaster management: Global challenges and local solutions (pp. 321–387). India: Universities Press, 2009.
26 Adem, Ö.: The Relationship between Earthquake Knowledge and Earthquake Attitudes of Disaster Relief Staff. *Disaster Advances, 4*(1), 2011, 19-24.
27 Hurnen, F., & McClure, J.: The effect of increased earthquake knowledge on perceived preventability of earthquake damage. *Australas. J. Disaster trauma study* (3), 1997.
28 Ronan, K. R., Johnston, D. M., Daly, M., & Fairley, R.: School children's risk perceptions and preparedness: A hazards education survey. *Australasian Journal of Disaster and Trauma Studies, 1*, 2001
29 Kurita, T., Nakamura, A., Kodama, M., & Colombage, S. R.: Tsunami public awareness and the disaster management system of Sri Lanka. *Disaster Prevention and Management, 15*(1), 2006, 92-110.

METHODOLOGICAL RESEARCH FRAMEWORK

The subject of quantitative research is to examine the level of knowledge, factors that influence the knowledge and perceptions of students of the Academy of Criminalistic and Police Studies about natural disasters. In addition, perceptions and actual knowledge of students about natural disasters are measured. In order to reach valid conclusions about what influences the knowledge of respondents about natural disasters, we examined the impact of several groups of factors. First, we examined the influence of demographic characteristics and the impact of factors of the close environment of the respondents such as gender, education, people with whom she/he lives, employment and education of parents on the knowledge of natural disasters. We then examined the effect of place or media where the respondent has obtained information about natural disasters. The results of the impact of these factors will allow the selection of instruments that will be the most effective way to influence the knowledge of high school students about an earthquake. In addition, this paper will examine the impact of personal experience or experience of closest family members related to natural disasters. These results will determine whether it is necessary the same degree of influence on the education of students of the Academy in the areas where they occurred in areas where major consequences occurred and in areas where major consequences of natural disasters were not reported. Finally we examine the association between feelings of fear and knowledge about the earthquake and the linkage of knowledge and desire for further learning about the earthquake. The results of these tests will allow the selection of the best ways of learning. The following will show concrete results in the order provided in this paragraph.

Sample

Bearing in mind that the students of the Academy of Criminalistic and Police Studies are in formed groups of years of studying we chose a cluster sample. Therefore, we decided not to perform the election of members of the population for the sample directly but to select an entire group (first-year students). We have chosen the first year because it is the largest and did not have the subjects related to this area. More specifically, members of the population consisting of all students of the Academy of Criminalistic and Police Studies (from the first to the fourth year of study) were not pulled out individually for the sample but from the population one group (first year students) was pulled out. Since we have decided to include all members of the selected year in the sample, we conducted single-stage cluster sampling. The advantages of this kind of sampling are related to lower costs of implementation, while the negative side is that there is no question about the independence of the election, as members of the same cluster are more likely to be found in the sample than members of different clusters (years of studies).

In order to gain insight into the representativeness of the sample it is necessary to analyze the structure of respondents according to key characteristics for the field of natural disasters. Below we will present the structure of the sample by gender, family members with whom respondents live, education of these family members and their employment. The survey covered a total of 360 respondents. The men in the sample represented 60.3%, while women made up 39.7%. Based on the structure of students by the members of the household with whom they live, it is observed that 90.3% of respondents live with their father and 97.5% with the mother. It is observed that a smaller number of respondents live with their father, which could be related with the divorce proceedings or other factors. In addition to parents, 10.6% of respondents live with a grandfather as well, while 21.4% also live with a grandmother. Also, it is expected that a small number of high school students live with grandparents. In order to gain a better insight into the representativeness of the sample we analyzed the structure by education of parents. The results showed that the structure of education of parents both in the sample and in the population does not differ substantially and that the structure of education is expected. There is a very small percentage of respondents with parents who have only primary education. Also, it is expected that most parents have completed secondary school (63.3% of fathers, 65% of mothers), then higher education (19.2% of fathers, 13.6% of mothers), high education (9.6% fathers, 13.6% mothers) and finally with academic titles (4% of fathers, 1.4% of mothers). If we observe the structure by the parents' employment, it can be seen that in 46.1% of cases, both parents are employed, in 37.5% of cases only one parent, and in 16.4% of cases, both parents are unemployed (Table 1).

Table 1 *Review of descriptive statistical indicators of categorical variables*

Variables	Categories	Frequency	Percent (%)
Gender	**Male**	217	60.3%
	Female	143	39.7%
Living with father	Yes	325	90.3%
	No	35	9.7%

Living with mother	Yes	351	97.5%
	No	9	2.5%
Living with grandfather	Yes	38	10.6%
	No	322	89.4%
Living with grandmother	Yes	77	21.4%
	No	283	78.6%
Education of father	Primary education	19	5.3%
	Secondary education	227	63.3%
	Higher education	69	19.2%
	High education	35	9.7%
	Academic title	10	1.4%
Education of mother	Primary education	23	6.4%
	Secondary education	234	65.0%
	Higher education	49	13.6%
	High education	49	13.6%
	Academic title	5	1.4%
Employment of parents	One parent is employed	135	37.5%
	Both parents are employed	166	46.1%
	Unemployed	59	16.4%

Bearing in mind the importance of calculating the "aggregated" statistical indicators for continuous variables, we chose to perceive the mean, median and standard deviation for variables such as age and average score of respondents in the previous year relating to the final year in high school. For the age variable, we have data on 360 respondents, their age ranges from 18 to 22 years, a mean is 19.1 years and a standard deviation from this mean is 0.698 years. Average score ranges from 2.92 to 5.00, mean is 4.46 and standard deviation from this mean is 0.48550. It is very important to say something about the distribution of values of continuous variables (skewness and kurtosis of their distribution). The positive value of the skewness of 1.223 for age of respondents shows that most of the results is on the left from the middle value among smaller results, while positive value of kurtosis of 3.723 indicates that the distribution is more peaked than normal distribution, i.e. more results are concentrated around the center of the distribution. The positive value of the skewness of 1.223 for ages of respondents shows that most of the results are on the left from the mean among smaller results, while positive value of kurtosis of 3.723 indicates that the distribution is more peaked than normal distribution, i.e. more results are concentrated around the center of the distribution. On the other hand, negative skewness and kurtosis values for average score of respondents indicate that most of the results is on the right from the mean among higher values, while the value of the kurtosis which is below 0 indicates that the distribution is more peaked than normal distribution (Table 1 and Table 2).

Table 2 *Review of descriptive statistical indicators of continuous variables*

Variables	N	Minimum	Maximum	Mean	Std. Deviation	Skewness		Kurtosis	
	Statistic	Statistic	Statistic	Statistic	Statistic	Statistic	Std. Error	Statistic	Std. Error
Age of respondents	360	18	22	19.01	.698	1.223	.129	3.723	.256
The average score	360	2.92	5.00	4.4641	.48550	-.756	.129	-.014	.256

Instrument

The main instrument used in the study was a questionnaire which was created for the purposes of research. All questions are closed-ended. The first set of questions relates to the knowledge and perceptions of students about natural disasters, while the second set refers to a way of gaining information about natural disasters. Other questions were related to feelings (fear, anxiety) and the desire to learn more about natural disasters.

Method of questioning

All first-year students of the Academy of Criminalistic and Police Studies received questionnaires which they filled out under the supervision in one of the amphitheaters. All confusions and questions that the students had regarding the questionnaire, were responded by the present interviewer.

Data analysis

Analysis of data collected from the survey was based on the application of the methods of descriptive statistics, namely the determination of frequencies, calculating percentages and mean values. Used statistical tests are the chi-square test for testing the independence between the knowledge of the respondents in terms of natural disasters and the factors that are assumed to influence this knowledge.

RESULTS AND DISCUSSION

In the first step, the respondents answered the question of whether they know what represents one of the following natural disasters. During the survey, respondents were noted that this does not refer to the knowledge of definition, but rather a clear idea of what such natural disaster presents. Based on the results, it is evident that there is a high level of knowledge on natural disasters. However, in the first place by the level of knowledge on natural disaster are floods 99.4%, followed by drought 99.2%, fire, 98.6%, earthquake98.3%, tsunami 98.1%, epidemics 97.8%, hurricanes 96.9%, volcanic eruptions 96.1%, extreme temperature 95.3% and landslides 93.3%. Thus, the natural disasters that are best known are common in our region. Landslides are in the last place. However, the answers that were given represent a subjective judgment about the knowledge on natural disasters (Table 3). That is why we decided to also examine realistic knowledge of natural disasters.

Table 3 *Review of responses to the question related to knowledge on certain natural disaster*

		Frequency	Percent
Earthquake	Yes	354	98.3
	I'm not sure	5	1.4
	No	1	.3
Flood	Yes	358	99.4
	I'm not sure	2	.6
	Total	360	100.0
The extreme temperature	Yes	343	95.3
	I'm not sure	15	4.2
	No	2	.6
Landslide	Yes	336	93.3
	I'm not sure	18	5.0
	No	6	1.7
Drought	Yes	357	99.2
	I'm not sure	2	.6
	No	1	.3
Volcanic eruptions	Yes	346	96.1
	I'm not sure	10	2.8
	No	4	1.1
Tsunami	Yes	353	98.1
	I'm not sure	5	1.4
	No	2	.6
Hurricane	Yes	349	96.9
	I'm not sure	11	3.1
	Total	360	100.0
Forest fire	Yes	355	98.6
	I'm not sure	3	.8
	No	1	.3
Epidemic	Yes	352	97.8
	I'm not sure	2	.6
	No	6	1.7

The results of testing of real knowledge on certain natural disasters differ from their subjective perceptions on knowledge. Specifically, of 98.3% of respondents who answered that they know what an earthquake is, 92.2% of respondents was right. Thus, 6.1% of respondents only think they know what an earthquake is. When talking about other natural disasters, the results are as follows: flood (99.4% replied positively, 93.1% really know, 6.3.% only think they know); drought (99.2% answered positively, 97.8% really

know, 1.4.% only think they know); fire (98.6% responded positively, 71.9% really know, 26.7% only think they know); tsunami (98.1% responded positively, 88.9% really know, 9.2% only think they know); epidemics (97.8% answered positively, 98.1% really know, therefore, more respondents know than the number of respondents who think they know); hurricane (96.9% answered positively, 95.6% really know, 1.3% only think they know); volcanic eruptions (96.1% replied positively, 95.6% really know, 1.5% only think they know); extreme temperatures (95.3% replied positively, 77.8% really know, 17.5% only think they know); landslides (95.3% replied positively, 59.4% really know, 35.9% only think they know). Based on the results we can conclude that most respondents wrongly believed that they know about landslides 35.9%, fire 26.7% and extreme temperatures 17%) (Table 4).

Table 4 *Review of responses to the question of what best describes a particular natural disaster*

		Frequency	Percent
Earthquake	Massive landslides	20	5.6
	Sudden shakes	332	92.2
	Raising in water level	5	1.4
Flood	Heavy rains	23	6.4
	Large ponds on the street	1	.3
	Raising in water level and overflow of the river bed	335	93.1
The extreme temperature	A large number of fires	70	19.4
	High and low temperatures	280	77.8
	Snowfalls	2	.6
Landslide	Sudden movement of soil	214	59.4
	Cracking of soil	58	16.1
	Slow movement of soil	71	19.7
Drought	Bad weather conditions	4	1.1
	Lack of rainfalls	352	97.8
	Increased humidity	2	.6
Volcanic eruptions	Lava and ash	344	95.6
	Underwater earthquakes	6	1.7
Tsunami	Surge	320	88.9
	Snow slips	1	.3
	Strong gusts of wind	34	9.4
Hurricane	Hot air	8	2.2
	Strong winds	344	95.6
	High temperatures	1	.3
Forest fire	A lot of smoke	28	7.8
	Process of uncontrolled burning of combustible materials	259	71.9
	Process of spreading fire without smoke	70	19.4
Epidemic	Massive number of diseased people	353	98.1
	A large number of insects	1	.3
	Massive number of infected plants	7	1,6

Given the importance of knowledge on safety procedures in the event of a natural disaster, we wanted to research the level of their knowledge about it. The best knowledge on safety procedures refers to drought, because 98.6% of respondents indicate appropriate action. The lowest level of knowledge on safety procedures is registered in extreme temperatures and it amounts to 52.5%. Specifically, the respondents were in a serious dilemma when deciding whether it is necessary in extreme temperatures to drink plenty of fluids or not to leave the house. The problem can be found in the fact that many people associate extreme temper-

atures only with high temperatures. Yet even in these situations, the use of liquid cannot help in protecting the health and life of humans. In addition to extreme temperatures, concern refers to one of the most common natural disasters such as forest fires. Although 60.3% gave the correct answer, it is worrying that even 26.4% of respondents opted for pouring as one of the ways of protection. Thus, one third of respondents are in a serious delusion that they will be protected against the effects of fire and smoke by pouring. Results related to knowledge on safety procedures in the event of natural disasters are: floods, 85.3% of respondents gave the correct answer; landslides 91.9%; volcanic eruptions 95%; tsunamis 97.2%; hurricanes 92.2.%; epidemics 77.8% (Table 5).

Table 5 *Review of responses to the question of how to stay safe in the event of a natural disaster*

		Frequency	Percent
Earthquake	I leave the house in an open space.	265	73.6
	I go to the basement.	67	18.6
	I hide myself next to the wall.	25	6.9
Flood	Seeking the help of rescuers	32	8.9
	Climbing to higher ground	307	85.3
	Closing all the openings in the apartment/house	20	5.6
Extreme temperature	Going out into the open	18	5.0
	Staying in the house	189	52.5
	Drinking plenty of fluids	145	40.3
Landslide	Going outside to watch	5	1.4
	Getting out of the path	331	91.9
	Getting in the house	6	1.7
Drought	I don't leave the house	3	.8
	Ensuring adequate supplies of water	355	98.6
Volcanic eruptions	Going to lower ground	7	1.9
	I stay in the house	1	.3
	Evacuation or finding shelter	342	95.0
Tsunami	Immediate evacuation	350	97.2
	Lying down on the ground	6	1.7
Hurricane	Entering the boat and going as far away from the coast	14	3.9
	Staying at safe home until the end of the hurricane	332	92.2
	Getting out into the open space	8	2.2
Forest fire	Water pouring	95	26.4
	Lying down on the ground and crawl to a safe place	217	60.3
	Closing the openings in the room	46	12.8
Epidemic	Going to an open place	1	.3
	Going to the infirmary	73	20.3
	Avoidance of contact with other people	280	77.8

When talking about reducing the risk of natural disasters, we can say rightly that schools are unavoidable entities that play an increasingly important role. They play a crucial role in providing basic information on natural disasters in a local community. Shivaku says that the importance of school education on natural disasters has increased rapidly, stating the following reasons: children are most susceptible category in society; they represent the future; school is a center of education and the actual outcomes of the educational process are transferred to their families and local community itself; schools are recognized as centers of culture and education.[30] The question is what the situation is with the education of students about natural disasters in Serbia. Based on survey results, it can be said that serious attention is given to these thematic units. Of the total number of respondents, 86.9% answered that someone at school talked them about natural disasters, as opposed to 13.1% who answered negatively (Table 6).

30 Lindstone, J.: *Isto, str 45.*

Table 6 *Review of answers to the question of whether someone at school has talked about natural disasters*

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	Yes	313	86.9	86.9	86.9
	No	47	13.1	13.1	100.0
	Total	360	100.0	100.0	

When asked to indicate person at school who has talked to them about some of the natural disasters, the respondents said: teacher 63.6%, school organized a lecture on the topic 10.8%, and some other services (police, first respondents, emergency service), 12.8%.

Of the total number of respondents, 79.2% were introduced with some of the natural disasters by a family member, while 20.8% were not introduced. When asked who in the family introduced them to some of the natural disasters, the respondents said: father 66.4%, mother, 55.3%, grandfather 21.4% , grandmother 15.3%. When asked to specify these natural disasters, they gave the following answers: floods 56.9%, flash floods17.2%, tsunami 22.5%, epidemics 39.4%, extreme temperatures 23.9%, droughts 38.9%, landslides 20.3%, volcanic eruptions 20.3%, about every disaster a little bit 23.1%, about some other disasters 5.6% (Table 7).

Table 7 *Review of answers to the question whether someone in the family has talked to you about natural disasters*

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	Yes	285	79.2	79.2	79.2
	No	75	20.8	20.8	100.0
	Total	360	100.0	100.0	

In order to improve the knowledge and security culture of Academy students, it is important to examine what are the most common ways in obtaining information about natural disasters. In this way, we can get clear arguments in encouraging certain ways of transferring knowledge. The largest number of students gained information about natural disasters through television 92.8% , the Internet 71%, lectures 37.5%, radio 13.9% and video-games 5.8% (Table 8).

Table 8 *Review of answers to the question about the way of obtaining information about natural disasters*

Sources of information		Frequency	Percent	Valid Percent	Cumulative Percent
Television	Yes	334	92.8	92.8	92.8
	No	26	7.2	7.2	100.0
Radio	Yes	50	13.9	13.9	13.9
	No	310	86.1	86.1	100.0
Video games	Yes	21	5.8	5.8	5.8
	No	339	94.2	94.2	100.0
Internet	Yes	256	71.1	71.1	71.1
	No	104	28.9	28.9	100.0
Lectures	Yes	135	37.5	37.5	37.5
	No	225	62.5	62.5	100.0

In order to better understand the attitude towards natural disasters, it is important to consider whether someone in the family suffered the consequences of natural disasters. The question that arises refers to the relationship between experienced natural disasters and education of children in such situations. According to the survey results, it is evident that a small number of people suffered the consequences and these are: fathers 13.1%, mothers, 6.9%, grandparents 10.8% and grandmothers 10.6%. The next question was related to the specifying the natural disaster that someone from the family suffered: earthquake 28.6%, flood 10.6%, flash flood 1.1%, extreme temperatures 6.4%, droughts 3.6%, landslides 0.6% (Table 9).

Table 9 *Review of answers to the question of whether someone in your family directly / indirectly suffered the consequences of natural disasters*

		Frequency	Percent	Valid Percent	Cumulative Percent
Father	Yes	47	13.1	13.1	13.1
	No	313	86.9	86.9	100.0

Mother	Yes	25	6.9	13.1	13.1
	No	335	93.1	86.9	100.0
Blanket	Yes	39	10.8	10.8	10.8
	No	321	89.2	89.2	100.0
Grandmother	Yes	38	10.6	10.6	10.6
	No	322	89.4	89.4	100.0

Given the seriousness of the consequences of natural disasters, one of the most important measures of preparedness refers to the education of citizens. In this part of the paper we examine the motivation of students to acquire knowledge about various natural disasters. Based on survey results, it is unequivocally recognized that the interest is high. Specifically, 81.1% of them said that they want to learn more, about 10% were not sure and 8.9% do not want to learn more. The question that arises refers to the way in which they would like to learn. Therefore, we asked students if they would like to learn more about natural disasters in school or family. 77.8% of them stated that they wanted to learn in school, while 9.7% chose the family. When asked why they want to learn more, most respondents gave as answer one of the reasons of security (Table 10)

Table 10 *Review of responses to the question of whether you would like to learn more about natural disasters*

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	Yes	292	81.1	81.1	81.1
	I'm not sure	36	10.0	10.0	91.1
	No	32	8.9	8.9	100.0

Being protected against natural disasters is a very important safety issue. Such a variable can be in a very close relationship with the taking of measures of preparedness for a specific natural disaster. The survey results indicate that 60.6% of respondents feel protected, 32.2.% are not sure and 6.9% do not feel protected in the facilities of the Academy when it comes to natural disasters. Of the total number of respondents who answered that they feel protected against natural disasters, the reasons were as follows: because the school buildings are safe, 22.5% of respondents; because teachers are trained in handling such situations, 23.6%; because I know what I should do in such situations, 30.6% (Table 11).

Table 11 *Review of answers to the question whether you feel secure in the building of the Academy from natural disasters*

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	Yes	218	60.6	60.7	60.7
	I'm not sure	116	32.2	32.3	93.0
	No	25	6.9	7.0	100.0
	Total	359	99.7	100.0	

Of the total number of respondents, 26.4% feel the fear from natural disasters, 20.3% are not sure and 53.3% do not feel fear. It can be said that the number of respondents who feel fear is not negligible, especially considering the number of those who are not sure. Accordingly, we wanted to examine in which natural disasters that fear reaches its highest level (Table 12).

Table 12 *Review of answers to the question of whether you have a fear of natural disasters*

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	Yes	95	26.4	26.4	26.4
	I'm not sure	73	20.3	20.3	46.7
	No	192	53.3	53.3	100.0
	Total	360	100.0	100.0	

By the question referring to the concern, we examined the level of concern for each of these natural disasters. Results correspond to logic of common sense that respondents are most unconcerned about natural disasters that have never happened in our area. For instance, 71.1% of respondents are not concerned about tsunamis and 70% about volcanic eruptions. However, when it comes to earthquakes 35%, extreme temperatures 36.4%, landslides 24.7% and epidemics 29.2%, there is a distinct level that refers to sporadic concerns. It is characteristic that most respondents are extremely concerned about epidemics with share of 8.6% (Table 13).

Table 13 *Review of answers to the question of how much you are concerned about natural disasters*

	Flood	Earth-quake	Extreme temperature	Land-slides	Tsu-nami	Volcanic erup-tions	Epidemics
I am not concerned	42.5%	42.5%	39.7%	56.7%	71.1%	70.0%	30.3%
Sometimes concerned	35.0%	35.0%	36.4%	24.7%	11.7%	10.3%	29.2%
Concerned	17.8%	17.8%	16.9%	12.2%	8.3%	10.3%	23.3%
Very concerned	3.1%	3.1%	3.6%	4.4%	5.3%	5.3%	8.6%
Extremely concerned	1.7%	1.7%	3.3%	1.9%	3.6%	4.2%	8.6%

A frequently asked question relates to the interest of citizens, students and pupils on training in emergency situations. That is why we wanted to examine the interest of students of the Academy for one such training. A large number of respondents 83.9% would like to undergo training, 8.9% are not sure and 7.2% do not want this training. The results are in some way expected bearing in mind the work of police officers which they are educated for. Of course, we wanted to examine the reasons why they would like training: 60.3% said they would feel safer; 45% said they could inform their family members about the ways of protection against natural disasters. Accordingly, we examined whether they are for the introduction of the subject on which they would be educated about emergency situations. 55.6% of them answered positively, while 37.8% were not sure and 6.7% answered negatively (Table 14).

Table 14 *Review of answers to the question of whether you would like to get some form of training in emergency situations caused by natural disasters?*

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	Yes	302	83.9	83.9	83.9
	I'm not sure	32	8.9	8.9	92.8
	No	26	7.2	7.2	100.0
	Total	360	100.0	100.0	

Most of the respondents 58.3% answered that they would like to obtain information about natural disasters and the way of protection through educational films and series. These are followed by workshops 41.1%, classical lessons 26.4%, case studies 25.8% and interesting video games 8.6% (Table 15).

Table 15 *Review of answers to the question of how you would like to gain information about natural disasters and how to protect against them?*

Methods of obtaining information	Classic lessons	Educational films and series	Case studies	Interesting video games	Workshops
Yes	26.4%	58.3%	25.8%	8.6%	41.1%
No	73.3%	41.4%	73.9%	91.1%	58.6%

To test the independence of individual factors and knowledge of the respondents it is used the chi-square test. The final results were obtained summing the test results for each type of natural disasters and dividing by the total number of disasters.

In order to determine a correlation between certain characteristics of respondent and his/her perception and knowledge on safety procedures for responding to natural disasters, we have opted for the chi-square test of independence (Chi-Square - $\chi 2$). In order to research the level of impact of gender, we used Cramer's V which takes into account the number of degrees of freedom. We chose Cramer's coefficient instead phi coefficient because it is a table larger than 2 by 2. Taking into account that for R-1 or K-1, in our case it is equal to 1, to assess the level of impact of gender on the knowledge of security procedures we used the following criteria: small = 0.01; medium = 0.30; big = 0.50 impact. Judging by the results, there is a statistically significant correlation between: father's education ($p = 0,03 \leq 0,05$, phi = 0.30 - medium); mother's education ($p = 0,04 \leq 0,05$, phi = 0.10 - small); employment of parents ($p = 0,05 \leq 0,05$, phi = 0.30 - medium) and knowledge about natural disasters. Also, there is a statistically significant relationship between television and the perception of knowledge about natural disasters ($p = 0,05 \leq 0,05$, phi = 0.21 - medium) (Table 16).

Table 16 *Results of testing the influence of selected factors on the knowledge of high school students about the earthquake*

		Gender	Living with father	Living with mother	Living with grandfather	Living with grandmother	Father's education	Mother's education	Employment of parents	Fear	Television	Radio	Internet	Lectures
Perception of knowledge	x^2	2.23	1.19	0.98	3.12	1.42	2.01	3.12	1.21	5.16	18.6	1.03	19.5	1.72
	df	2	2	2	2	2	2	2	3	2	2	2	2	2
	p	0.39	0.54	0.78	0.09	0.24	0.41	0.32	0.41	0.68	0.05	0.60	0.04	0.44
	V	0.07	0.03	0.04	0.01	0.10	0.02	0.17	0.05	0.08	0.30	0.20	0.20	0.02
Knowledge	x^2	1.10	0.38	0.18	1.96	2.65	23.7	18.6	19.6	1.73	0.43	1.14	3.41	2.57
	df	2	2	2	2	2	2	2	3	2	2	3	2	3
	p	0.57	0.62	0.96	0.36	0.08	0.03	0.04	0.05	0.42	0.80	0.12	0.12	0.09
	V	0.05	0.03	0.02	0.07	0.26	0.30	0.10	0.30	0.06	0.04	0.02	0.04	0.05
Knowledge of security procedures	x^2	5.12	1.28	1.90	9.79	1.18	1.90	1.73	0.477	2.66	1.42	2.14	3.1	4.1
	df	2	2	2	2	2	2	3	3	2	3	2	3	2
	p	0.24	0.43	0.13	0.58	0.93	0.13	0.28	0.38	0.07	0.55	0.28	0.30	0.41
	V	0.02	0.02	0.07	0.06	0.03	0.00	0.03	0.03	0.03	0.02	0.07	0.06	0.03

CONCLUSION

Experience has shown that access to high-quality educational programs about natural disasters is of crucial importance in protecting children and their families. It was also noted that instead of considering children and women as the most vulnerable categories (victims), they can be recognized as contributors to the recovery of community assuming that they have acquired a solid knowledge on natural disasters and elimination of their consequences. Education about risk of natural disasters can be represented through special programs or through the implementation into basic curriculum. Furthermore, such education can be realized through curricular and extra-curricular activities (such as, for example, various workshops, games, etc.). Although the education of young people for the protection of life, health and the environment has its roots in the family and pre-school education, the school is irreplaceable in achieving this goal. The school is obliged to develop the knowledge, awareness and habits that prevent dangers, in fact, in its basic function it has the task to enable humans, on the one hand, to rule over nature, and on the other, protection against hazards that may befall them and against his 'human nature' itself.[31] It is important to have awareness that we 'cannot escape' from dangers; they can only be prevented,that is, their consequences can be prevented by knowledge, awareness and education to automatism of habits. In addition, education for active and passive protection of self and others, physical integrity or natural properties and the environment, while creating habits and feelings of responsibility, truthfulness, humanity, justice, modesty is subject of educational influence of school education. The main findings are: respondents showed a high level of knowledge about natural disasters, however, the level is the highest in natural disasters that are present in our region; the best knowledge on safety procedures is in relation to droughts, because 98.6% of respondents indicate appropriate treatment. The lowest level of knowledge of safety procedures is registered in extreme temperatures and amounts 52.5%; of the total, 86.9% of respondents said that they had someone at school who talked about natural disasters, as opposed to 13.1% who responded negatively, 79.2% of respondents were introduced with some of the natural disaster by a family member, while 20.8% were not; 60.6% of respondents feel protected, 32.2.% are not sure and 6.9% do not feel protected in the facilities of the Academy when it comes to natural disasters; 26.4% feel the fear of natural disasters, 20.3% are not sure and 53.3% do not feel fear; 83.9% of respondents would like to undergo training, 8.9% are not sure and 7.2% do not want; the largest number of respondents gained information about natural disasters through television 92.8%, and the smallest number through video-games 5.8%. The results indicate that there is a statistically significant correlation between: the father's education ($p = 0,03 \leq 0,05$, phi = 0.30 - medium); mother's education ($p = 0,04 \leq 0,05$, phi = 0.10 - small); employment of parents ($p = 0,05 \leq 0,05$, phi = 0.30 - medium) and knowledge about natural disasters. Also, there is a statistically significant relationship between television and the perception of knowledge about natural disasters ($p = 0,05 \leq 0,05$, phi = 0.21 - medium);

31 Kuroiwa, J. A.: *Peru's national education program for disaster prevention and mitigation (PNEPDPM)*. Training and Education for Improving Earthquake Disaster Management in Developing Countries, UNCRD Meeting Report Series, 57, 95–102, 1993.

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IS RUSSIA A RE-EMERGING POWER: AN INQUIRY INTO FACTORS THAT INFLUENCE THE FORMULATION OF RUSSIAN FOREIGN POLICY[1]

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Abstract: This paper aims to provide some insight into what has become the troubling question since the beginning of the 21st century: *Is Russia a Reemerging Power?* The question is to be addressed trough the analysis of the factors that have influenced the formulation and conduct of Russian foreign policy since the collapse of the Soviet Union. For that purpose, after outlining the deciding factors, the paper divides Russian foreign policy into two timelines: 1) Foreign policy conduct during the Boris Yeltsin presidency and 2) Foreign policy during the presidency(ies) of Vladimir Putin. Special emphasis is to be placed on the second timeline, considering the recent developments in Ukraine.

Keywords: Russian Federation, Foreign Policy Analysis, Power Politics, Post-Cold War.

INTRODUCTION

The unexpected collapse of the Soviet Union tore down the bipolar structure of the Cold War international order that had shaped the international agenda for more than a half century. The United States became the world's only superpower whose primacy and power was beyond any other prospect challengers. As Hubert Vedrine, the French Foreign minister at the time, pointed out the United States became known as a hyper power, the country that had dominance or predominance in all categories of power.[2] On the other hand, the Soviet successor, Russian Federation, was caught in the process of transition towards this new external and internal environment. Overnight the world became unipolar, and thus the wave of universalization of the values of the liberal democracy and market economy was to follow. Within such international predicament, Russian Federation was finding its new place and at the same time building its new identity. Moreover Russia embraced the universalization wave too. Yet, the transition from the communist regime and the emergence of weak democratic institutions, followed by the embracement of free market based economy, has exposed the country to existential internal challenges. On that point, Michael McFaul notes that the breakdown of the old institutions and the simultaneous emergence of new political and economic institutions have constituted the fertile ground for a social evolution in Russia.[3] Faced with the internal challenges that were putting into question even the existence of the state, the new political establishment, led by the President Boris Yeltsin and Foreign minister Andrey Kozyrav, decided to frame the county's future identity within the winning liberal values of the West. Thus, the Russian Federation was on its way towards adopting the ways of democracy, free market economy and what became known as the pro-Western foreign policy approach.[4]

This pro-Western course of the Russian domestic and foreign policy, meaning the integration in world market economy and international institutions, as Steven Miller points out, was at that time the only reasonable option for the Russian government.[5] The country inherited the privileges and obligations from the Soviet Union, and yet was building itself from the scratch. With the economic and political reconstruction on the way, the political leadership was more interested in the consolidation of the country and its economy than in taking a major role in the international arena. Moreover, drawing on the transition experience of the other members of the Eastern block, Russian leadership perceived the West as a partner and was hoping to

1 This paper is the result of the research on the project: "Management of police organization in preventing and mitigating threats to security in the Republic of Serbia", which is financed and carried out by the Academy of Criminalistic and Police Studies, Belgrade - the cycle of scientific projects 2015-2019.
2 Norman Schofield, *Architects of Political Change: Constitutional Quandaries and Social Choice Theory,* (New York: Cambridge University Press, 2006): 43.
3 Michael McFaul, "A Precarious Peace: Domestic Politics in Making of Russian Foreign Policy," *International security, Vol. 22,* No. 2 (Winter 1997/98): 10.
4 Alla Kassianova, "Russia: Still Open to the West? Evolution of the State Identity in Foreign Policy and Security Discourse," *Europe-Asia Studies Vol.* 53, No. 6 (September 2001): 824.
5 Steven Miller, "Russian National Interests" *Damage Limitation or Crisis: Russia and the Outside World* (Cambridge, MA: CSIA, 1994): 80.

receive Western financial assistance for aiding its economic difficulties. Therefore, the shift to the West in the Russian foreign policy was also a sign of conviction, necessity and self-interest.

However, the much needed financial help from the West never came and the Russian Federation never become an equal member of the 'Western club". The failure of the economic reforms, followed by the military engagement in Chechnya and the lack of the public support for the transition processes lead to the changes in foreign policy as well. The Russian political elite stepped away from the unconditional support of the pro-Western approach and was seeking to play a more active role in the international affairs in order to regain its domestic support. As a sing of that change, the pro-Western foreign minister Kozyrav was replaced by a more "pragmatic nationalist" Yavgny Primakov.[6] Nevertheless, the economic support for these international ambitions and more assertive foreign policy rhetoric came after the economic crisis in 1998 that has led to the increase in energy, mostly oil, prices, from which Russian economy benefited the most. This new independent foreign policy approach, associated the most with Vladimir Putin's presidencies, relied heavily on the national interest framed on the bases of Russian geopolitical security situation, domestic economic goals and available resources. Such foreign policy combined with the announced domestic reforms in agriculture, labor and judicial system, led scholars to believe that Russia is back on the world stage of influential states. Within a decade, Russia shifted from a fragile state to a power willing to and capable of effectively projecting its military force on a neighbouring state in spite of the conviction from the West. In addition, this hard power and assertive international engagement has been to a large extent fuelled by Moscow's re-emergence as the hydrocarbon energy hub for Eurasia where the control of important pipelines heading to Europe have made Russia an increasingly influential geopolitical player. As Angela Stent concludes, Russia recaptured the role of an international player but by relying on economic and energy power and not by political-military influence.[7]

The change from pro-Western approach in Russian foreign policy and its re-emergence as an independent actor in the international arena introduced a new debate among the international relations scholars whose primary research forces is Russian foreign and domestic politics. The debate was set regarding the contested question whether or not the Russian Federation is a re-emerging power. On the one side of the debate scholars argue that considering the recent economic developments, Russia's energy potentials, its international engagement and projected influence Russian Federation can be seen as a good example of the re-emerging power. In order to give support for their claims scholars point to the timeline of the developments in Russian foreign policy regarding its relations with the European Union, China, its increased influence in the Central Asia and the Commonwealth of independent states (CIS). However, on the other side of the debate scholars emphasize that Russian Federation is far from being a resurgent power. On the contrary, drawing on Russia's domestic perspective, issues such as the lack of social stability, economic welfare, demographic, scholars go as far as describing Russia as a power in decline.

Following the argument made by both sides of the debate, this paper argues that Russian Federation, from the beginning of the 21st century onwards, did emerge as a resurgent power, which has, to a significant extent, restored its position as one of the influential states in the international arena. In order to support this claim the arguments from each side of the debate will be presented and analyzed with the purpose of concluding that considering the contemporary developments and the possibility of projecting and protecting its interest within what is perceived as Russia's spheres of influence, Russian Federation is powerful regional player and thus a state that has to be taken into account when dealing with the international issues.

THE PERSPECTIVE ON RUSSIA'S RE-EMERGENCE AS THE REGIONAL ACTOR

The scholarly debate on the abilities of Russian Federation to become a resurgent power that might put to question the post-Cold War world order began even before Russia adopted and actively perused independent foreign policy approach. However, with the recent developments in Ukraine, and not so recent war in Georgia, that debate gained even more attention. Drawing on Russia's international engagement, as well as on its latest Foreign policy concepts, the scholars argue that Russia, by distancing itself from the pro-Western foreign policy and by adopting a more assertive and self-confident international position, is in fact challenging the current state of world affairs. However, the question remains whether the increased desire to project and conduct an independent foreign policy, regardless of domestic factors, is sufficient to claim the status of a re-emerging power. One of the ways of shedding some light on this issue might be through the brief overview of the developments in Russian foreign policy that follows further below.

6 Robert H. Donaldson, and Joseph L. Nogee, *The Foreign Policy of Russia: Changing Systems, Enduring Interests* (Armonk, NY: M.E. Sharpe, 2005): 238.
7 Angela Stent, *Russia and Germany Reborn: Unification, the Soviet collapse, and the New Europe,* (Princeton, NJ: Princeton University Press, 1999): 1089.

The general outlook concerning the Russian foreign policy form the collapse of the Soviet Union onwards is that it can be divided into two distinguishable eras. The division is based on the foreign policy approaches of the two Russian presidents: Boris Yeltsin and Vladimir Putin. The differences in their foreign policy conceptions lead to a different aims, priorities and conduct of the Russian Federation in relation to the external environment during the long period of its transition and integration. Yeltsin's administration, faced with internal crises and inglorious past, adopted pro-Western foreign policy approach. The goal was to integrate the newly born Russian state into the world economy market and the Western international institutions. However, with the stabilization of economy sector and internal reforms that lead to the consolidation of the country, the new Putin's administration distanced itself from its predecessor's unconditional pro-Western projects. The new administration, drawing on its energy supplies potentials, adopted more assertive and decisive foreign policy that drew its goals from the realist and pragmatist approach to the international affairs.

The shift from the fragile state, which marked the presidency of Boris Yeltsin, to the perception of Russia as the important international actor in the 21st century can best be seen through the developments in Russia's economy, and above all its energy sector performance. During Putin's administration Russia pursued sound fiscal policy and regained control of its energy sector. With the state-dominated energy sector, the Russian Federation has become "the major global economic player, especially in energy field"[8]. According to Stent, more than 90% of Russia's energy exports goes to Europe and the role of energy in European-Russian relations has increased even more with the signing of the strategic energy partnership.[9] Moreover, Russia has used its energy potentials for improving its positions in China and Central Asia. Thus, as one of the world's largest oil and gas supplier, Russia has used its energy capabilities as a resource of *soft power* influence. By controlling the important pipelines that supply European and Asian countries and by relying on energy for political purpose, Russia has become influential geopolitical player. Furthermore, the role of energy in foreign policy has increased to such an extent, that some scholars argue that it has become Russians' *hard soft power*.[10]

However, Russia's energy capabilities were not the only fact that influenced scholars' conclusion that Russia is in fact a resurgent power. Apart form relying on its energy capabilities as a *soft power* resource, Russia also accounts for significant hard power capabilities. As Edward Lucas points out, Russia is still "intimidating military power"[11] and above all a nuclear power. The Russian Federation has one of the world's largest armies and with the increase in military budget and professionalization of the arms forces it is on the way of making its *hard pow*er capabilities more influential. Furthermore, with the increase in arms export Russia has become the world's second largest arms exporter after the United States. One of the Putin's administration first challenges was to restore control in arms export industry and to create a strong state arms export company, and now Rosoboronexport is providing weapons for China, India, Venezuela, Syria, Sudan and Iran.[12] Thus, with the arms sales increase, Russia's foreign policy engagement and influence in these countries is becoming more and more visible.

Moreover, as a result of Russia's increased presence in the region of Central Asia and CIS from 2000s and onwards, Russia has engaged in processes of multilateral cooperation within countries in the region with a goal of actively contributing to its security and stability. As Black points out, Russia is reaffirming its Eurasian connections through multilateral organizations such as the Collective Security Treaty Organization (CSTO) and the Shanghai Cooperation Organization (SCO).[13] The CSTO provides institutional mechanism for the formalization of the relations between Russia and newly independent states in the Central Asia. The purpose of such an organization is to pose the framework for its members' closer alliance in the foreign policy, military and military technology sector in order to make security challenges and threat in the region more tangible.[14] The cooperation against terrorism, separatism and extremism and the management of security and defense in Central Asia is also the objective of the SCO. The organization provides framework for the extensive cooperation between Russia, China and the Central Asia with the goal of averting the influence of outside powers in the region. Although the energy has become the main focus of the economic cooperation within the SCO, the organization developed strong military support mechanisms, and since 2007 joint military exercises of the SCO member states were conducted.

The change in Russia's foreign policy towards the Central Asia is not the only major change in the Russian foreign policy approach between the two presidential eras. The other valuable foreign policy change that came with the Putin administration's pragmatic approach was the shift in Russia's relations with China.

8 Angela Stent, *Russia and Germany Reborn,* 1089.
9 Ibid.
10 Angela Stent, *Russia and Germany Reborn,* 1904.
11 Edward Lucas, *The New Cold War: How the Kremlin Menaces both Russia and the West* (Great Britain: Bloomsbury, 2008): 245 – 268.
12 Edward Lucas, *The New Cold War,* 245 – 268.
13 J. L. Black, *Vladimir Putin and the New World Order* (MD: Rowman and Littlefield, 2002): 176-177.
14 Andrei Kazantsev, "Russian Policy in Central Asia and the Caspian Sea Region" *Europe-Asia Studies Vol. 60*, No. 6 (August 2008): 1077.

From the collapse of the Soviet Union and until the beginning of the 21st century, the relationship between Russia and China was influenced by the antagonisms from the Soviet era. The relations did not improve during Yeltsin's two presidential mandates. Due to the pro-Western foreign policy orientation, market reforms and the process of democratization, Russian liberal political leaders perceived China as a potential threat and thus argued for the militarization of the Russia's eastern border.[15] The incentives for the possible restart in the relations presented itself during Yeltsin's second mandate. Arguing for the multipolar world order and against the United States' hegemony, Yeltsin proposal for China was a "strategic partnership of equal, mutual confidence and mutual coordination directed towards the 21st century".[16] Nevertheless, only with Putin's administration cooperation with China become a reality. As Stent points out, during Putin's time the Sino-Russian relations improved to such an extent that analysts claimed that it was an impressive achievement, both in the political and economic realm.[17] In 2005 the major obstacle in the relations between the two countries was solved through the signing of the agreement that delimitated the 43,000 km long borders. With the border issue out of the way Russia and Chine engaged in carving the way for even closer economic and security ties. On that point, China became Russia's first arms export customer, but weapons are not the only Russian exports to China. The closer economic cooperation was reinforced even more with the building of the oil pipeline and exports of raw materials, which would significantly contribute to China's energy demands. The cooperation regarding energy and economy extended to the security sector as well. Both Russian and China, as members of the SCO, are interested in maintaining stability and security in the region of Central Asia. Therefore, the SCO's main purpose is to provide a framework for the extensive cooperation between Russia, China and Central Asia with the purpose of preventing the influence of others powers in the region. The improvement in Sino-Russian relations could be seen even in the United Nation's Security Council. As permanent members of SC Russia and China cooperated in mutual issues and often opposed to those coming from the United States. Hence, the positive aspect of the new Sino-Russian relationship is that it provided both countries with the alternative foreign policy approach.

Hence, drawing on the recent developments in the Russian foreign policy, its actions and the latest foreign policy concepts, it can be argued that Russia is taking more decisive and independent stand in the international arena. As the member of the BRIC countries, and based on the public statements of its political leaders, Russia "seeks to ensure that no major international problems can be resolved without its participation and ability to influence the terms of the settlement"[18]. Thus, Russia, followed by the other resurgent power, such as China, India, Brazil, Mexico and Indonesia, is advocating more and more for the multipolar world order that would challenge the United States' primacy, seen as the primacy of the West. For that purpose, one of the primary goals of the Russian foreign policy is to strongly support the multilateral principle within the United Nation Organization. As Russian Foreign minister Sergey Lavrov points out, Russia will continue to play a balancing role in the global affair, but it will not be a part of the new "holy alliance" against anybody.[19]

However, not all scholars agree that the new Russia is a resurgent power and the emerging challenger of the international state of affairs. The scholars who argue against the thesis about Russia becoming a re-emerging power claim that when it comes to Russia it is important to make distinction between the image and the reality. From their point of view, Russia is far from being a resurgent power and based on its domestic perspective it is in fact power in decline. Scholars further argue that it can be claimed that Russia is not what it used to be in the 90s, but even with the increase in the military budget and in arms sails Russia is far from reaching the military-industrial complex from the Soviet era. Even more, Russia's military spending seems naïve compared to the United States military budget which outspends Russia by around twenty-five to one.[20] The military reform and modernisation of the Russian army forces did have positive outputs, but such processes take time and continuous efforts. Furthermore, drawing on the domestic situation in the contemporary Russia, the question how strong Russia really is appears to be more than legitimate. As Stent points out, the demographic, social, ecological and health issues pose existential threats to the roots of the Russian state. The life expectancy in Russia is the lowest comparing to the other developing states due to human security crises. The public health system is inefficient, the death rate has exceeded the birth rate and Russian population could be facing serious "fall from 142 million in 2007 to 109 million in 2050"[21]. Moreover, the centralization of the economic investments in infrastructure has led to the migrations of the population from villages to industrial cities like Moscow and St. Petersburg. Consequently, Russia's economic growth is more fragile than it appears. Faced with such internal vulnerabilities the ability of the Russian Federation to pursue the resurgent power position might be put to serious questioning. In

15 Peter Ferdinand, "Sunset, Sunrise: China and Russia Construct a New Relationship," *International Affairs Vol.* 83, No. 5 (2007): 845.
16 Ibid, 846.
17 Angela Stent, *Russia and Germany Reborn,* 1099-1100.
18 Angela Stent, *Russia and Germany Reborn,* 1090.
19 Ibid.
20 Edward Lucas, *The New Cold War,* 246.
21 Angela Stent, *Russia and Germany Reborn,* 1104.

other words, scholars argue that despite its independent and assertive foreign policy, Russia is in fact a weak state trying to cope.

Nevertheless, even though domestic weakness connected with the demographic decline and social insecurities influence the perception of Russia as the re-emerging power, from the stand of power politics the position of Russia as a major energy supplier has more impact on its perception and place within the international system. The Russian Federation may not occupy the same position in the global affairs as the former Soviet Union had, but it is not certainly a state whose interest and influences can be easily discarded and put aside. Thanks to the favorable energy security policies the contemporary Russia is far from playing a defensive role in international arena. During the presidency of Vladimir Putin, the linkage between the state and energy companies were reaffirmed in a way that the *pipeline politics* became a key factor in the conduct of the Russian foreign policy. The energy dependence became a powerful tool of non-military coercion for countries such as Belarus and Moldova. At the same time, Russia has successfully used Europe's dependence on its gas supplies to enhance the division between the EU's "old members" and "new members" with regard to the Nord Stream gas pipeline. Although Ukrainian crises have severely damaged Moscow's image as reliable energy partner, the long-term mutual dependence guarantees an influential role for the Kremlin *vis-à-vis* the EU. Therefore, as one of the world's largest energy suppliers, owner of the hydrocarbon pipeline network, nuclear power, second largest arm producer and exporter, permanent member of the United Nations' Security Council, member of the G8 and other regional organizations, the Russian Federation has managed to restore its position as a valuable and influential international actor.

Within a decade of Vladimir Putin's presidency, Russia became a major regional player whose interest and influences could not be that easily questioned. In order to assert such position, Russia has engaged in the bilateral cooperation with the countries from the European Union and has redefined its relation with China. The underlining assumption of such strategic partnerships is the recognition of equal position within the international community. Furthermore, with the administration of the President Obama, even the United States reset its relation with Russia. The building of the Anti-ballistic missile shield in Europe was cancelled, the STAR III agreement was signed and Russia became a part of the international talks regarding the issues of nuclear program in Iran and North Korea. Therefore, the 21st century Russia restored its position as a power capable of formulating, perusing and defending its national interest, but that position is far from being world's superpower. With that in mind, Jeffery Mankoff is right to conclude that the West "need[s] to show Russia that it can have what it most craves – respect, recognition and responsibility for upholding order around the world – without having to restore to force of threats of force to make itself heard"[22].

CONCLUSION

The recent shift in Russian foreign policy from the pro-Western unconditional approach to a more assertive and independent international ambitions have brought about a debate on its capabilities and ambitions of becoming a re-emerging powered. The importance of the debate was further stressed by the 2008 Georgian war and 2014 the developments in Ukraine. The backbone of this dilemma is whether or not the Russian Federation has internal capabilities to rise to the international aspirations of reoccupying the place once held by the Soviet Union. On the one side of the debate, scholars argue that the internal challenges, mainly its demographic problems, lack of modernization, social, ecological and health issues question the very existence of the Russian state, not to mention its role of the re-emerging power. The scholar further stress that without dealing with these internal challenges, not even assertive foreign policy rhetoric can provide Russia with the ability to pursue its basic geopolitical national interests in the long run. However, not all scholars agree on the importance of the domestic factors in shaping the foreign policy perceptions and its conduct. On the other sides of the debate scholars pose an argument that Russia's military capabilities, its role as a major energy supplier and its decisive role in the regional development cannot go unnoticed. On that point, the control of oil and gas pipelines is certainly the most important mark of Russia's resurgent as a regional power, and an influential international actor. Therefore, to argue that Russia is a power in decline, taking into account its involvement in the developments in Ukraine is an argument difficult to make. To conclude, the 21st century Russian Federation restored its position as a regional actor capable of formulating, perusing and defending its national interest, but that position if far from being world's superpower.

22 Jeffery Mankoff, *Russian Foreign Policy: The Return of Great Power Politics.* (Plymouth, UK: Rowman & Littlefield, 2011): 276.

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MODERN SLAVERY AS A CHALLENGE TO CURRENT SECURITY

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Abstract: Continuous development of society including numerous social values has been changing through the centuries. On the other hand, security is one of a few that has retained its original function, starting with the basic needs for survival from the earliest human societies to modern security concept. Security is seen as a necessary condition for the existence and development of society, because it does not create anything, but only makes it possible. We must be aware that an absolute security situation does not exist and that no one can claim to be absolutely safe. One of the major challenges of current safety is modern slavery better known as human trafficking, which is definitely not just a problem of one country or region. This type of organized crime is widespread at the international level, therefore, in this paper we point out the current security problems and a number of human trafficking victims in the world, with a special focus on Europe and the Republic of Serbia. In this way we want to bring attention to this problem and try to raise awareness among potential victims of human trafficking and to contribute to the prevention of contemporary security challenges.

Keywords: modern slavery, human trafficking, organized crime, security challenge

INTRODUCTION

The development of society has made people aware of safety issues and the necessity for controling it. The roots of security have their origins in the oldest human communities, as the oldest form of social organization. The period we have just mentioned is not characteristic only for joint production and equal distribution of gathered goods, but it also represents the beginning of dealing with safety challenges and the reason for this is the first time society was faced with the problem of survival.

The development of society is conditioned by security of that society, provided that the question of security is conditioned by society, or social values. In other words, neither society without security nor security without society can exist.

Society values have changed throughout the history of the society but they were not always the same for all societies or for all generations in the same society. They are constantly changing, complementing and growing. The values involve an ideal characteristic of certain, standards, norms, appearance, condition and contents of consciousness, so that a society value is each value that is of a great importance to an individual, group and country representing all that is the object of social interest and thus social protection.[2] In order to function and survive as a whole, a society needs to build a value system. That value system represents a common goal of all the members of the society, but at the same time it also represents criteria and behavior patterns in it.[3]

An absolute state of security does not exist and that state is impossible to achieve but we should strive to accomplish it, because reviewing this issue in this way, we can improve the security issue. The United Nations, in their study of 1986, defined the security as a condition in which countries consider that there is no threat of military attack, political pressure or economic coercion, so they are free to grow and thrive.[4] Aristotle also dealt with the issues of country security believing that the main objective was to achieve a functioning state security and well-being of its population.[5]

The modern concept of security, in terms of comprehensive security, can be divided into two groups, internal and international security. There are several types of internal security: individual, social and national security, and when it comes to international security, there are regional, global, shared, collective and cooperative security.[6] Recent years we are witnesses of frequent security pressures on potential targets for

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2 Ljubomir Stajić (2008), *Osnovi sistema bezbednosti-sa osnovama istraživanja bezbednosnih pojava,* Pravni fakultet, Novi Sad, p.17
3 Milo Bošković (2002), *Kriminologija sa patologijom - Socijalna patologija*, Pravni fakultet, Novi Sad, p.25
4 Conception de la sécurité, Série d'études 14, Publication des Nations Unise, 1986, A/40/533
5 Mirko Grčić (2000), *Politička geografija*, Geografski fakultet, Beograd, p.132
6 Radoslav Gaćinović (2007), *Klasifikacija bezbednosti,* Nauka - bezbednost - policija, no. 12/2-3, p.5

possible terrorist attacks.[7] Modern security challenges are not just the uncertainty and fear of these attacks. Certain risks to security are represented by various forms of organized crime. The police role in dealing with security issues is significant because one of their main functions in the modern society is to protect and respect fundamental freedoms and human rights and freedoms guaranteed by the Constitution laws.[8]

In recent decades, the issue of security has been significantly affected by globalization, especially its negative effects. Globalization is most often seen from economic and commercial aspects, where the emphasis is on providing local and national economies possibility to integrate into the international economy through investments and the free movement of foreign capital through investments and technological development. This process often creates even greater economic gap between the rich and the poor. It is precisely the combination of globalization (in terms of freedom of movement of persons, services, capital and goods) and poverty, which are created so that in certain countries some parts of the population are at risk of becoming the victims of trafficking.

MODERN SLAVERY AS A HIDDEN CRIME

Modern slavery (human trafficking) is not only the problem of one state, but it has long been one of the main problems at the international level, primarily due to its specificity that human trafficking can take place in several territories, by which we mean the territory from where a victim comes from, transit countries and finally the country of destination. This form of organized crime is usually defined by multiple phases: recruitment or selling, threat or use of force, deception or abuse, transport and finally exploitation of the victims. The complexity of the problem is not only in finding and implementing effective measures aimed at preventing and combating human trafficking, but it is also reflected in the protection of victims and of course in adequate punishment of offenders.

The methods used by organized criminal groups, in order to successfully carry out their criminal activities, are constantly evolving. It is necessary to constantly raise awareness not only among potential victims, but also in government institutions and organizations that are trying to prevent human trafficking. Better understanding of contemporary security problems can improve prevention measures.

There are many types of crime, which in many ways can have consequences on society and an individual, e.g. a car theft as a form of extremely widespread organized crime. In 2013, 7.2 million stolen vehicles were reported worldwide. Without going deeper into this issue, it is clear that it is a theft of movable objects (cars) where (indirectly) the damage is of a financial nature. The consequence of this type of crime, in addition to the lost funds (money), is eliciting fear and insecurity to victims, especially because personal safety or security has been violated. After the initial consequences, and (often) after purchasing a new car, after some time has passed, fear is reduced to a level with which the victim, in most cases, can continue his /her normal life. The victims of human trafficking rarely have that privilege.

One of the specificities of human trafficking is that the victims are often forced into certain criminal offenses. There are numerous examples during the period of victimization when the victims of human trafficking are forced to commit numerous criminal activities, and the most common is theft, unauthorized production and transport of drugs, prostitution, terrorism and execution of serious crimes (murder). As an example we may mention organized criminal groups in Mexico that are forcing children and migrants to commit the just mentioned crimes (prostitution, murder, drugs ...) then, there are many examples in which Roma are forcing their children to do the organized thefts, and they physically abuse their children if they fail to obtain a certain amount of stolen goods. In Afghanistan, insurgent groups are forcing older children to be suicide bombers. Common examples are the victims of human trafficking from Vietnam and China, who are forced, either by verbal or physical coercion to work in illegal cannabis farms in the UK and Denmark.[9]

The prevalence of modern slavery is often, especially the forms we have mentioned earlier when the victims of trafficking are not recognized as such but confused with common criminals. Because of this, it is necessary to work on perfecting a system that would be able to identify the victims of human trafficking more easily, and thus save and protect their lives. Thus, by 'capturing' an obvious perpetrator, we could realize two forms of crime prevention. For easier understanding, we can give the example of prostitution and sexual exploitation, where we have a form of deviant behavior as opposed to human trafficking victims who are forced to provide sexual services.

7 Mina Zirojević and Željko Bjelajac (2013). *Blisko istočni terorizam i religija u savremenom polisu,* Kultura polisa, no. 22, year X, p.193-207

8 Vesna Stefanovska (2014), *Police role in building community safety*, Archibald Reiss days – thematic conference proceedings, vol.3., Academy of criminalistic and police studies, p.189-190

9 Department of State, *Trafficking in persons report 2014.*, p.14

According to the latest data released by the Department of State, in their annual report on human trafficking for 2014 (Table No. 1), at the global level, it is estimated that in 2013 there were about 44758 victims of human trafficking. Compared to the year 2012, the number of victims is about 1812 lower, but in comparison to the year 2011 increased by approximately 2467 victims.

Table 1 *Data on prosecutions, convictions and number of victims in period 2006-2013*
Source: Department of State, Trafficking in Persons Report 2014

YEAR	PROSECUTIONS	CONVICTIONS	VICTIMS IDENTIFIED
2006	5,808	3,160	
2007	5,682	3,427	
2008	5,212	2,983	30,961
2009	5,606	4,166	49,105
2010	6,017	3,619	33,113
2011	7,909	3,969	42,291
2012	7,705	4,746	46,570
2013	9,460	5,776	44,758

The above table shows that in 2013 9460 cases were filed against persons who were charged with some form of human trafficking. When compared to the year 2012, we can see that the number of cases increased by 1755 persons. When it comes to prisoners, according to the data from the table we can see that in 2013 5776 persons were convicted, while in 2012 4746 were convicted.

Modern slavery represents the grossest violation of human rights, because the victims are usually denied the right to liberty and security, the right to freedom of movement, the right to education. It also represents the violation of the law that prohibits slavery and forced labor, prohibition of torture, inhuman and degrading treatment as well as many other things. It is necessary to point out that especially when we talk about sexual exploitation, the implementation of adequate measures of health care and prevention are often prevented, thereby violating the right to life.

According to Article 2 of Directive 2011/36 / EU, exploitation includes: exploitation of prostitution of others or other forms of sexual exploitation, forced labor or services, slavery or practices similar to slavery, criminal activities, or the organ harvesting (black market). As we can see in the mentioned article, we can distinguish two different groups, sexual and labor exploitation.

CONTEMPORARY SECURITY CHALLENGES

Human trafficking is often an integral part of the large and important cultural and sporting events. The existence of this form of organized crime takes place in the shadow of above mentioned events and is not visible on TV screens. Large concerts or sporting events that happen throughout the year represent a serious challenge to identify victims of trafficking but also is a test for the police and prosecutors in the fight against this form of organized crime. The events we have mentioned last only a certain length of time (a few days or weeks, depending on the type of event), but keep in mind that they do not last only during the broadcasting of that event. It is needed to make certain infrastructural preparations, often before the starting of the event and also after the event. All these circumstances are may be the starting point for the exploitation of victims of human trafficking. The most common forms of the exploitation of victims before and during the above mentioned events are mainly related to labor exploitation, sexual exploitation and coercion in the exercise of criminal offenses (begging, theft).

During the 2004 Olympic Games in Greece, a potential risk of human trafficking was recognized. According to some estimates, around 2000 women and girls for sexual exploitation arrived during the games. The Greek Government and non-governmental organizations succeeded in taking preventive actions which resulted in the fact that there were no reports of trafficking. The Olympic Games were followed by the doubts about the accuracy of the data, because some reports were not complete.[10]

Shortly before the World Cup in Germany in 2006, there was information that about 40000 victims of human trafficking could be exploited in various ways during the Cup. One of the first concerns was how

10 Victoria Hayes (2010), *Human trafficking for sexual exploitation at worldsporting event*, Chicago-Kent law review, vol.85., p.1121-1123

such a large number is possible. After the conducted researches, it was concluded that that was only an assumption based on about 40000 ads published throughout Russia for a temporary job in Germany during the World Cup, having in mind that most of those ads were scam. There were no data on the reported cases of human trafficking, only that the number of girls involved in prostitution increased from about 500 to about 800 (in Munich) during the Cup which did not suggest that there was human trafficking because prostitution had become legal since 2002.[11]

As a positive example of the prevention in human trafficking, we can mention the preparation for the 2012 Olympic Games held in London, when the city council, in collaboration with the Government of the United Kingdom, formed a report on the potential impact that Olympics Games could have on human trafficking. It is the kind of responsible behavior by which a community can improve safety especially if it becomes a model of conduct in other countries, in which a large sporting and cultural events will be held. In this way by analyzing the circumstances we may identify potential gaps and loopholes which can stimulate the existence of modern slavery. The importance of these and similar analyses and strategies can be of great importance in future Olympics Games: 2016 in Brazil, 2018 in South Korea and 2020 in Japan, and also during the World Cup that will be held in Russia in 2018 and in Qatar in 2022, etc.

The most dominating forms of exploitation during the mentioned events were sexual exploitation, and labor exploitation to a lesser extent. We have already mentioned that these events, especially when it comes to preparing the infrastructure and facilities for the Olympics, require significant financial projects which create a substantial need for cost-effective (cheap) labor. An example of exploitation of labor was seen in early 2014 during the construction of Olympic facilities in Sochi, when Serbian construction workers were subjected to forced labor.[12]

PROBLEM OF MODERN SLAVERY IN EUROPE

The analysis of the problem of human trafficking in Europe is nothing less complex task considering that Europe is usually considered as a quite safe place. According to the available data, modern slavery is significantly represented in Europe so we can raise the question about the security level.

The European Union countries in the chain of modern slavery are the countries of origin, transit countries and countries of destination, keeping in mind that most of the victims, around 65%, are citizens of the European Union. Most of the victims come from Romania, Bulgaria, the Netherland, Poland and Hungary. When it comes to the victims outside the European Union, the victims of modern slavery usually originate from Nigeria, Brazil, China, Vietnam and Russia.[13]

The members of organized criminal groups engaged in human trafficking, doing business in Europe are often the citizens of the EU Member States and most of them are from Bulgaria, Romania, Belgium, Germany and Spain. Beside these countries, traffickers come from countries which are not members of the European Union, and usually from Albania, Turkey, Nigeria, Morocco and Brazil.[14]

According to the Eurostat, in its report on human trafficking from 2014 which summarizes the data for the three-year period (from 2010 to 2012), from all 28 member states of the European Union together with the candidate countries and EFTA / EEA, there were 30146 registered victims. According to the data shown in Table No 1, which is related to the number of victims at the global level in the same period, there were 121 974 victims of human trafficking.[15]

The country with the highest number of registered victims is Romania (6101), followed by Bulgaria (3043), Netherland (1080), Hungary (1046) and Poland (976). Some EU member states (Belgium, Denmark, Malta and Austria) have a noticeable increase of registered victims, while in the Czech Republic, Cyprus, Ireland and Romania the number of registered victims gradually reduced during that three-year period.

The total number of human trafficking victims consists of up to 80% of women - 67% of adults, while 13% of them are underage. About 20% of victims are men - 17% are adults and 3% underage (Chart No. 1).

11 *Ibid.,p.*1124-1127
12 Vlada Republike Srbije: Saopštenja Vlade ministarstva, taken from: http://www.srbija.gov.rs/vesti/vest.php?id=74886, (March 7th 2014)
13 Nikolaj Nielsen: *EU counts tens of thousands of human trafficking victims*, taken from: https://euobserver.com/justice/126137 (January 15th 2015)
14 *Ibid.*
15 Eurostat, *Trafficking in human beings 2014*,p.10-11 and 35

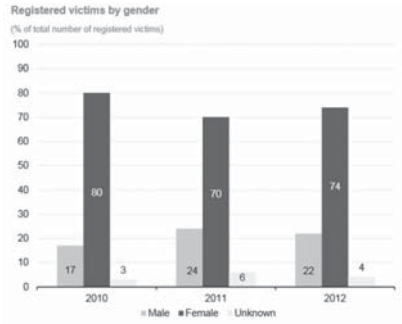

Chart 1 *Data on the registered victims by gender for period 2010-2012*
Source: Eurostat, Trafficking in human beings 2014

When it comes to the age categories of the registered victims for the same time period, the data show that 45% of victims are 25 and older, 36% of the victims were aged 18 to 24 years, 17% of the victims were aged 12 to 17 years while 2 % of victims aged 0 to 11 years (Chart No. 2).

Chart 2 *Data on the registered victims by age categories for period 2010-2012*
Source: Eurostat, Trafficking in human beings 2014

The most common two forms of modern slavery in the European Union countries are sexual and labor exploitation, and both of these categories can additionally be categorized. Sexual exploitation can be categorized into several groups: street prostitution, brothels, strip clubs, porn industry, modeling and escort agencies, massage parlors and other unknown categories, while labor exploitation can be categorized as working in: agriculture, construction, textile industry, catering industry (hotels, restaurants), fishing industry and other industries.[16]

Based on the available data, for the combined period of three years, we can conclude that sexual exploitation is dominating with close to 69%, while labor exploitation is represented with an average of 19%. Other forms which are not categorized (sale of organs, the sale of children, etc.) are represented with an average of 12% (Chart No. 3).

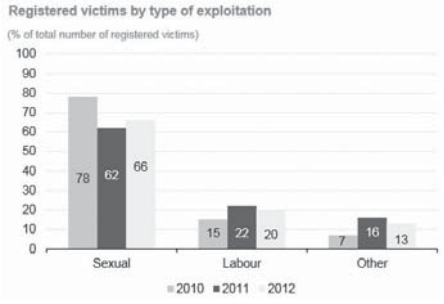

Chart 3 *Data on the registered victims by type of exploitation for period 2010-2012*
Source: Eurostat, Trafficking in human beings 2014

In addition to the above information, we can also emphasize the number of represented victims of human trafficking by gender in sexual and labor exploitation for the time period we have researched. The

16 *Ibid.*,p.29-30

sexual exploitation is absolutely dominated by women as victims with 95%, while 4% of victims are men and 1% of victims'gender is not known. The labor exploitation involves more male victims, their participation being 71%, while 27% of victims are women and 4% of victims of gender is not known. In not yet categorized exploitation (forced begging, selling children, etc.) 52% of victims are women, while 38% of victims are men, and 10% of victims of gender is not known.

Chart 4 *Data on the registered victims by gender and type of exploitation for period 2010-2012*
Source: Eurostat, Trafficking in human beings 2014

Analyzing the existing data on the number and types of registered victims of modern slavery, we can conclude that it is an extremely prevalent and widespread form of organized crime. The question is whether trafficking can be completely eradicated (we doubt it can be), but we can definitely work on improving preventive measures aimed at raising awareness in society, particularly among potential victims.

PROBLEM OF MODERN SLAVERY IN THE REPUBLIC OF SRBIA

The problem of modern slavery in the Republic of Serbia, as well as in the world, is one of the most important issues. The Republic of Serbia because of its geographic predisposition but also because of more then a decade long economic crisis is also the country of origin, country of transit or final destination, especially for the victims of sexual and labor exploitation.

The victims of sexual exploitation, mostly women, as the victims of the organized crime groups from the Republic of Serbia become human trafficking victims exploited in northern Italy, Germany, Montenegro, Bosnia and Herzegovina, Austria and Sweden. Labor exploitation victims from the Republic of Serbia usually end up in some European countries, but also in Azerbaijan, Russia and the United Arab Emirates. The Republic of Serbia is also the country of destination for the victims of modern slavery from Montenegro, Bosnia and Herzegovina, Bulgaria, Romania and Moldova.[17]

The report on human trafficking in Serbia published by the United States Embassy states that the victims, usually belonging to a Roma nationality, are forced by their families into prostitution, forced labor, begging on the streets and performing minor offenses.[18]

Human trafficking is incriminated in the legislation of the Republic of Serbia in a way that Article 388, paragraph 1 of the Criminal Code of the Republic of Serbia, prescribes as a criminal offense punishable by imprisonment from three to twelve years.[19]

In order to prevent human trafficking, the Government of the Republic of Serbia founded the Center for the protection of victims of human trafficking, as a social welfare institution in 2012. The main objective of this center is to provide assistance and support to the victims of trafficking. This Center combines identification, coordination and urgent care for the victims of human trafficking, where the center operates through two organizational units, through the Agency for Coordination of Protection of the Victims of Human Trafficking and the Shelter for emergency accommodation of the victims of human trafficking.

Based on the report on the identification of the victims of human trafficking for 2014 drawn up by the Centre for the protection of the victims of trafficking, we can see that 125 victims of human trafficking were identified (of the reported 351 possible victims and 19 on which work began in the previous year - Table no 2), which accounts for about 33% of the victims in relation to the number of reported cases. Compared to the year 2013, this is a notable increase of identified victims by 26%.

17 Ambasada Sjedinjenih Američkih država u Beogradu, *Izveštaj o trgovini ljudima 2014*, taken from: http://serbian.serbia.usembassy.gov/izvestaji/izvetaj-o-trgovini-ljudima-2014.html, (December 19th 2014)
18 *Ibid.*
19 Krivični zakonik, Službeni glasnik RS, no. 85/2005, 88/2005 - ispr., 107/2005 - ispr., 72/2009, 111/2009, 121/2012 & 104/2013121/2012 i 104/2013

Table 2 *Identification resaults during 2014*

Identification results	Number
Identified as a victim of human trafficking	125
Not a victim of human trafficking	104
Contact with victim is not possible	115
Not within the jurisdiction of this center	20
Person refuses to be identified	4
Identification in process	22
Total	370

Table 3 *Identified victims of human trafficking by age and gender Source for tables 2 and 3 is: The Centre forHuman Trafficking Victims Protection*

Age	Gender		Total
	M	F	
Underage	3	16	19
Adults	98	8	106
Total	101	24	125

Analyzing the identified victims of human trafficking by age and gender, we can see the prevalence of male victims with about 80% of which 97% are adults and 3% minors, while 20% of victims are women, of which only 33% were adults and 67% were minors (Table No. 3)

During the studied period, the most predominant form of exploitation was the labor exploitation with 78%, followed by 12% for a sexual exploitation. Among other forms of exploitation that were observed, 3% of the victims were forced into marriage, 2.5% of the victims were forced to beg, 1.5% of the victims were forced into criminal activity while the same number of victims were forced to sell children for adoption (Table No. 4).

Table 4 *Data about the types of exploitation*
Source: The Centre forHuman Trafficking Victims Protection

Type of exploitation	Up to 18 years		Over 18 years		Total
	M	F	M	F	
Sexual		7		8	15
Forced marriage		4			4
Labor exploitation			98		98
Forced begging	1	2			3
Coercion to commit criminal acts	2				2
Trafficking in children for adoption		2			2
Other forms of exploitation		1			1
Total	3	16	98	8	125
Total	19		106		125

We must point out that most identified victims (96%) in the Republic of Serbia are the victims of human trafficking. Juvenile victims of trafficking are exploited in Serbia in 94% of cases, while the adult victims are primarily exploited in the Russian Federation (92% of adult victims). We believe that the reason for such a high number of victims of labor exploitation in this period is the preparation for the Olympic Games which were held in Sochi in early 2014.

CONCLUSION

The development of modern society, in addition to its positive effects, has enabled the creation of the gap between the rich and the poor. Such conditions create possibilities in which the poor population is at risk of becoming the victims of human trafficking.

Keeping in mind that human trafficking, or modern day slavery, is not only a security problem and the question of just one country, it must be viewed from a different angle, because only that way, we can identify possible threats to modern security.

During our research, analyzing the number of victims both at the global and European level, particularly emphasizing the situation in the Republic of Serbia, we have tried to draw attention to the problem of human trafficking, the problem that lasts all 365 days a year, and requires a constant battle all year round.

The aim of our research is not only to point out the actual statistical data pertaining to modern day slavery as a form of organized crime. Our basic idea is to join a constant actualization of this international problem, because we can use this to raise awareness as regards potential victims of human trafficking to a higher level. We are aware that the indicated statistical data are not just ordinary numbers, but also a suffering, pain, sadness and fear, of a victim - people around us.

Modern slavery indisputably represents one of the great challenges of modern security and this was pointed out during the research. The reasons for such prevalence lies solely in huge profits the organized groups are making, reaching tens of billions of euros a year. Such large profits that could be made on the victims are often more than sufficient motives for individuals to enter into this chain of organized crime.

One of the most effective ways of combating this global problem is in effective preventive actions and measures, but of course also in adequate penal policy. Additionally, it is necessary to work on improving the system of recognizing the victims of modern slavery. We must provide necessary assistance to the victims, primarily for their own protection, and indirectly for the protection of their families, because in this way we might prevent the secondary victimization. In the countries of origin of victims, transit and destination, the imperative is the work on continuous training of police and prosecutors, with a goal to identify victims easily.

Finally, without even considering whether demand dictates offer or vice versa, we believe that it is necessary to make certain efforts in order to make demand for the 'services offered' by the victims of human trafficking, reduce to a minimum, which can be achieved with the help of state authorities and their productive and adequate work.

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Topic IV

STRENGTHENING THE STATE'S INSTITUTIONS AND FIGHT AGAINST CRIME

UDC: 343.848/.85

LEGAL PROBLEMS IN USING PREVENTIVE DETENTION OR PREVENTIVE SUPERVISION OF OFFENDERS DANGEROUS TO SOCIETY

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Abstract: Under the influence of crime management ideology in European legislatures, the measures of preventive detention of persons marked as dangerous to society (offenders of sexual crime - especially if victims are children, offenders of violence crime, terrorists etc.) "are brought to life again". After completed prison sentence, the preventive supervision of dangerous offenders can be applied indefinitely. The preventive detention and preventive supervision questions basic human rights of convicts. Therefore, the paper examines the judicature of the European court for human rights and the Recommendations of the Council of Europe (2014) 3 in connection with dangerous perpetrators and evaluated the adjustment of criminal legislature of the Republic of Serbia with them. It is stated that by the preventive detention and supervision, the network of social control is unjustly widened. Criticizing the legislature of the Republic of Serbia, the author warns that the introduction of infallible legal presumption on dangerous condition of each perpetrator of criminal offences against sexual freedom committed against minors, regardless of the seriousness of the criminal offence, circumstances under which it was committed and perpetrator's personality traits is not in keeping with democratic values and the Constitution. Because they are not individualized, preventive supervision measures will not be effective and their execution presents unnecessary financial burden to society. Because of this, the changes of the law, which foresee subsequent supervision of perpetrators of criminal offences against sexual freedom committed against minors, are recommended.

Keywords: preventive detention, preventive supervision, dangerous offenders, the Council of Europe, human rights, the Republic of Serbia.

INTRODUCTION

In accordance with the ideology of crime risk management, since the end of 20th century, within the framework of "new penology", different techniques of control of behaviour of convicts and other persons which are designated as dangerous to society - like perpetrators of criminal offences against sexual freedom (especially if victims are children), perpetrators of serious criminal offences with elements of violence, potential terrorists and the like, have been developed (hereinafter, following abbreviated terms will be used: "dangerous perpetrators", "dangerous convicts", while criminal offences which are classified as especially socially dangerous will be called 'dangerous criminality"). The control of the behaviour of dangerous perpetrators is achieved by the application of the so-called preventive detention against persons on probation or convicts after completion of prison sentence. Instead or on the lapse of preventive detention, the control of the behaviour of those persons who are at large is achieved by the application of measures of preventive supervision and correction. Such supervision can be of indefinite duration, even life-long. In addition to obligation to suffer limitation of freedom of movement, which is connected with supervision, a dangerous perpetrator can be obligated to participate in proper treatments and programmes (medical, educational, correctional). The violation of these obligations leads to repeated detention of that person.

Where do such measure in modern criminal law come from? The "revamped" positivistic idea on preventive detention of persons dangerous to society was accepted in a series of European penal codes during the 30's of the last century, including the Penal Code of the Kingdom of Yugoslavia. Just as a reminder, similar provisions were used in Nazi Germany for fighting political opponents and members of non-Aryan race.

On the other hand, preventive supervision which is usually carried out by the application of electronic devices, represents modern measure of techno-correction, applied for the reduction of expenses of prison system and minimizing crime risks. The idea to preventively supervise dangerous "sexual predators" first came into being in the USA, as the result of "moral panic" and "penal populism" demands. From the USA,

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the practice of proactive crime risk management spread to Europe, despite different social policy. This was influenced by similar social movements and severe crackdown of the public and media on "sex monsters", after discovering organized activities of pedophiles and commission of series of kidnappings and brutal murders of minor victims in the last decades of the 20th century in Great Britain, France, Belgium and many other countries. In the period from 1993 to 1997 in Czech Republic, Poland, Russia and in other parts of Europe, the increase of child pornography was noted.

Measures of preventive detention or supervision of persons - dangerous perpetrators of criminal offences are expression of modernization of punishing according to the needs of consumer-oriented society. Such approach neglects the importance of sociological and individual-psychological factors of criminality and artificially equals criminal behaviour with other detrimental phenomena in the society. Approach to prevention of such detrimental phenomena, regardless of the difference in their cause is the same - forecast of risk of damage and undertaking activities for elimination or minimization of risk. When that approach is applied to the prevention of criminality, formal state reaction to criminality ceases to be connected with moral condemnation of the behaviour of the perpetrator of criminal offence (which was until now the basic characteristic of criminal punishment). It gives rise to spreading the network of social control towards dangerous criminality, to which all attention of the society is directed. Symbolic reduction of risk from committing dangerous criminality is experienced as success in preventing total criminality, although it is not in keeping with the reality. The consequence is the "holy war", which modern society has declared to dangerous criminality, in which all means are allowed, even those which additionally limit the freedom of convicts, although they have already served a sentence. In conditions of shaken or unaccepted democratic values in some environments, the application of such conservative attitude can be problematic from the standpoint of constitutionality. In view of the fact that in the Republic of Serbia, the first step was made towards the introduction of the preventive supervision of dangerous perpetrators made in 2013, by passing the Act on special measures for the prevention of criminal offences against sexual freedom committed against minors (hereinafter ZPM), it was necessary to examine to what extent that legal act is adjusted with international standards of the Council of Europe and to remind ourselves of actual judicature of the European court for human rights (hereinafter European court).

RECOMMENDATION OF THE COUNCIL OF EUROPE (2014) 3 REGARDING DANGEROUS PERPETRATORS

The resurrected positivistic ideology about the need for the continuation of detention for preventive reasons or supervision of dangerous convicts, was expressed in the Recommendation of the Committee of Ministers of member states of the Council of Europe, in connection with dangerous perpetrators, which was adopted on 19 February 2014. It should provide equalization of national legislatures regarding risk management from dangerous criminality and basic level of respecting basic human rights of dangerous perpetrators, where the application of "implements" of new penology against dangerous criminality could not be avoided. Article 1 (a) defines the concept of a dangerous perpetrator - it is a person caught in committing a very serious sexual or criminal offense of violence against a person, where there is big probability that that person will commit serious criminal offences again. The recommendation includes the definition of violence, risk, risk management, as well as secure preventive detention and preventive supervision. According to the definition, the measure of preventive detention of a person dangerous to society is determined by court, on the basis of the requirements prescribed by national legislature. These conditions do not need to be connected only with gravity or type of previously committed criminal offence, but can relate to the forecast of future criminal activity of a dangerous perpetrator. The measure is carried out as part of probation or after completion of prison sentence, when the convict is to be released. In paragraphs 16 and 17 of the Recommendation, it is stressed that the requirement for detention is the very estimation of the risk of danger of that person to society, while par. 18, 19, 20 and 22. emphasize the requirement to be provided for respect of human rights and dignity of the person convicted, against whom the measure is imposed, as well as to motivate the convict to join the programmes meant for changing his attitudes and habits.

Preventive supervision against a dangerous perpetrator can be imposed as alternative to preventive detention or as part of probation, pardoning release or after completed imprisonment sentence (par. 23). With preventive supervision, the court can instruct the convict to fulfill one or more obligations such as: regular reporting to competent authorities, reporting change of place of residence, work place or status in proper way and within certain time-limits, prohibition to leave place of abode or territory without approval, restrain order or prohibition of contact with victim, his/her relatives or certain other persons, prohibition of visiting certain area, place or institution, prohibition of residing in certain place, prohibition of performing certain jobs which could lead to the commission of criminal offences of similar nature, participation in training programmes, professional, cultural, educational or similar activities, participation in different treatments and regular subjection to analyses, carrying electronic devices for continual electronic monitor-

ing and the like (par. 24). Such supervision can be of indefinite duration or life-long. As we can see, preventive supervision fits into the so-called alternative measures applied after condemnation ("*back door*" system), as the treatment in community is the basis of risk management. Bearing in mind that these measures are more humane than detention, we must point out the possible uncertainly long limitation of freedom and rights of the convict and that the intensifying of punishment inevitably leads to a greater social isolation of individuals. For these reasons, par. 41 points out that the level of security measures should be adjusted to the necessary minimum and secure their re-examination after the lapse of certain period. The execution of preventive supervision is entrusted to the national probation departments, whose work is monitored by the European Committee for criminality issues.

The data in the reports regarding the needs, capacity and possibilities of dangerous perpetrator are the basis for application of proper mental or medical treatment (and if necessary, placing the same in prison hospital) or the programme of social hospitalization - par. 42-44. The treatments should maintain health and self-respect of dangerous perpetrators, to the extent in which it is allowed by the duration of sanction and to enable the development of feeling of responsibility and encourage him to change attitudes and develop social skills in order to include better in the society and respect the laws in the future (par. 45). To that end, such person can be included in proper work or educational activities (in keeping with par. 46), and special attention of prison management should be directed toward specific needs of older perpetrators and needs for education of younger people (par. 47).

As we can see, the Recommendation (2014) 3 favours introduction of different security measures which mean "punishment after punishment" of dangerous perpetrators, which already became a usual phenomenon in England and Wales, Scotland, in Scandinavian countries, France, Belgium and Germany. But, such practice sometimes comes to collision to judicature of the European court.

ATTITUDES OF EUROPEAN COURT ON PREVENTIVE DETENTION

In judicature of the European court is not moot that preventive detention of dangerous offenders can be considered legitimate under terms of Article 5 of the European Convention, if it is imposed by court decision on any ground stipulated in section 1-a-f, providing that accumulation of several reasons is possible in the same case. When talking about the detention of a dangerous perpetrator who could repeat the crime, court practice gives only the framework criteria for evaluation when it will not be in keeping with the European Convention on human rights and basic freedoms (hereinafter European Convention). In individual judgments, the existence of causal relationship between the conviction of a perpetrator for criminal offence (as documented by his dangerous condition) and his preventive detention is evaluated differently. In case X versus the United Kingdom, the European court determined that forced hospitalization in a mental institution of the person who was released on probation (meaning "after conviction"), is not in contradiction with Art. 5-1-a and 5-1-e of the Convention, although the deprivation of freedom did not occur because of the violation of probation release and condemnation for new criminal offence committed, but according to the decision of competent administrative authorities and evaluation of a psychiatrist that that paranoid person, due to the progression of the disease, became dangerous to the environment. That way, the court determined that the deprivation of the freedom of a dangerous individual which "follows or depends on" or comes "on the basis" of condemnation can be legitimate, although it needs not follow directly after it. But in the case Guzzardi versus Italy, the European court pointed out that the condemnation represented "token that the person was pronounced guilty" and it cannot be connected with Art. 5-1-a of the Convention – the deprivation of the freedom of a person which is undertaken without condemnation, only for the purpose of the prevention of his future criminal behaviour.

In the case Van Droogenbroeck versus Belgium, the European court took the stand that there was no violation of Art. 5-1 of the Convention, but adjudged compensation of non-pecuniary damages to the petitioner, because of violation of Art. 5-4. Van Droogenbroeck was convicted of repeated property-related crime. Since 1972, when he was, by the decision of the minister responsible for legislature, assigned for the first time on completion of the sentence, to the programme of semi-detention for a more successful reintegration (from which he fled) until 1978, Van Droogenbroeck was arrested several times on charges and convictions for criminal offences committed, whereupon against him preventive detention was extended. Each time he was assigned to the prison bloc meant for repeat offenders, and in the case of probation release he refused to observe obligations which were imposed upon him, so that he was jailed again. By examining Belgian regulations, which allow executive authorities to apply preventive detention of shorter or moderate duration, on the basis of forecast on dangerous repeat offenders, the European court warned of the possibility of wrong assessment, but nevertheless stated that Belgian authorities showed much patience and trust toward the ex-convict and gave him several opportunities to improve his behaviour, which he abused. As

regards the connection between condemnation and imprisonment, the European court was satisfied that "condemnation" of criminal offence committed can entail not only punishment but some other measures too, and that condemnation and preventive detention should make "an integral whole".

According to this, the attitude that "condemnation" under terms of Art. 5-1 of the European Convention, does not mean only punishment pronounced for committing a criminal offfence, but it can also imply the method of executing part of prison punishment, security measure of obligatory treatment or some other measure of the deprivation of freedom which follows after completed prison sentence. But such detention must be causally connected with earlier condemnation of a dangerous person and be founded on a court decision. Such interpretations are completely explained in the judgments related to the case M. versus Germany and Haidn vs. Germany in which Germany was pronounced responsible for the violation of Art. 5 and 7 of the European Convention. After the judgment in the case M vs. Germany, followed the "avalanche" of similar cases in which only the violation of Art. 7 of the European Convention was mostly stated.

At the time when M. (a habitual offender) was convicted of a committed criminal offence, preventive detention could last up to 10 years after completed punishment. On the basis of the court decision, as he had already spent 5 years serving sentence of imprisonment, M. was preventively detained for 7 more years, when he was to be released. Due to the changes in German penal code, the preventive detention extended to the period longer than 10 years, so in 2001 the court rejected appeal by M. to be released. By checking legitimacy of the deprivation of freedom in this court, the European court determined that preventive detention could be summarized as "condemnation". By analyzing German system of criminal sanctions, in which preventive detention is regulated as a security measure, the court determined that such preventive detention has the character of a specific deprivation of freedom for preventive reasons. The preventive component of the decision of criminal court must be connected with condemnation, even if it reduces to statement of possible future danger of convicted persons. However, the danger cannot be connected with general possibility that a convict can commit a criminal offence in the future, but must be concretized in terms of the type of criminal offence, the commission which is likely to be expected and sometimes, a circle of potential victims. Besides, it was questionable that mental disorder of M. had been stated, but not to the extent of pathological, so that the question of his accountability or reduced degree of guilt when he was convicted of criminal offence committed, was not asked. Nevertheless, the circumstances under which he committed the attempt of murder and banditry, as well as later criminal offences, indicated his inclination to spontaneous violence which seriously impairs physical integrity of victims, and thus his danger to society, which was accepted by the European court too.

But in the case of M. vs. Germany, the direct causal-consequential relationship between previous condemnation and preventive detention was broken by the completion of imprisonment of 7 years, so that further detention of M. meant arbitrary continuation of the deprivation of freedom, which cannot be connected with Art. 5 of the European Convention. The fact that preventive detention was extended by retroactive application of the law, which was not valid at the time of condemnation of M for criminal offence committed, was the reason that the European court established the violation of Art. 7 of the European Convention.

SOLUTIONS IN THE LEGISLATURE OF THE REPUBLIC OF SERBIA

In the Republic of Serbia, ZPM was passed in 2013, which introduced the control of behaviour of the released convicted persons, who committed a criminal offence against sexual liberty against minors. Although ZPM does not speak of a dangerous perpetrator, from nature of measures which would be applied towards convicts for criminal offences against sexual liberty after the completion of imprisonment, it is obvious that this is a preventive supervision of a dangerous convict. Article 7 sect. 1 of ZPM foresees the following measures: reporting to the police and administration for the execution of criminal sanctions, prohibition of visiting places where minors gather (kindergartens, schools, etc.), obligation to attend professional counselling and other institutions, obligatory reporting change of residence, place of abode or work place and obligatory reporting travelling abroad. Such limitation of rights and freedom of convicts can last up to 20 years after the completion of imprisonment, providing that the need for further application of the measure can be re-examined after 2 years at the request of the convict, and in each case the court is obligated to do such ex-officio after 4 years. It remains unsaid whether each convict is automatically affected by all 5 limitations or not and with what circumstances the court will be guided in deciding on termination or extension of further supervision. It is unusual that the type of criminal offence committed (against sexual freedom) and the age of the victim automatically indicate that we are dealing with a dangerous perpetrator, although those offences mutually considerably differ both according to the characteristics or by social danger (which is expressed by prescribed punishment span). The law does not foresee a possibility that the forecast of danger of a convict can be established on the basis of medical or mental expertise of personality

of perpetrator and does not consider necessary social anamnesis of conditions he lives in. So the law, not the court, gives "legal diagnosis" of the dangerous condition of a perpetrator. For this reason, the solutions in ZPM decline from par. 13 and 14 of the Recommendation (2014) 3, according to which the risk of future criminal behavior of a dangerous perpetrator must be established by the decision of the court, providing that it is possible that separate expert report could form the basis for such court decision. Putting all criminal offences against sexual freedom into the same basket is contrary to Art. 1 a of the Recommendations, which determines who is considered to be a dangerous perpetrator.

The persons convicted of criminal offences (even against sexual freedom), should not be treated as "enemies" of society. In order to give a chance for reintegration into society of such convicts, it is necessary to fulfill preventive supervision with correctional measures. The success of the application of those measures depends on the readiness of the convict to cooperate by active participation in proper programmes. Because of this, the Recommendations indicate the need that a dangerous convict be motivated to participate in a programme. In ZPM, this is not mentioned even in declarative way - obviously because the obligations and prohibitions in Art. 7 sec. 1 are construed as new punishment after punishment. Admittedly, the measures stipulated in Art. 7 sect. 1 par. 1-5 basically correspond to those which are prescribed in the Recommendations. But legal nature of those measures is not clear - they cannot be classified as criminal sanctions, or legal consequences of condemnation, but represent measures sui generis, which re-sanction the perpetrator for criminal offence committed. As ZPM does not define any criteria or procedure of the evaluation of the danger of a convict, the measures stipulated by the law cannot be considered even as the so-called *risk-based sentence*, which are founded on the evaluation of the risk to society (such as for example, security measures). Hence, they represent anomaly of criminal and legal system which is contrary to constitutional guarantees of citizens' rights and freedoms.

ZPM could remain an example of a hurried acceptance of an unusual and ineffective legal solution which unjustly favours the request of the public that the law on the execution of un-custodial sanctions and measures (hereinafter: ZIVS), does not regulate the execution of measures of Art. 7 of ZPM. The probation department is competent for their execution. The provisions of chapter VII ZIVS (Art. 58-61) indicate the urgency of the procedure: within 3 days the perpetrator of a criminal offence against sexual freedom must be reported to the competent custodian, who within 3 days should start the preparations for the execution of measures and establish the cooperation with the police, counselling institution and other subjects involved in the execution of the measure, and in subsequent-time limit of 8 days to make the operational programme with which the convict should be acquainted. The operational programme will be obviously made on the basis of those reports which were acquired during the detention of the person in a correctional institution. ZIVS does not develop details regarding the manner of the execution of certain obligations, which were necessarily just because ZPM did not foresee them either. For example, where and how long a person convicted of a criminal offence of illicit sexual act will execute the obligation of visiting professional counselling and other institutions, what those institutions are and how long the therapy will last - for 2, 4 or 20 years. Unusual legal void in ZIVS seems to be the result of the need to regulate, at any price, even provisionally, a method of the execution of measures of Art. 7 sect. 1 of ZPM. As in ZPM or ZIVS there is no mention of the criteria the court will be guided with during extending the measures which will motivate the convict to participate actively in the programme, when ZPM has a completely passive role in their execution. Because of this, in addition to the basic idea which follows a foreign model, everything else can be evaluated as error in legislature, which should be improved as soon as possible, not only for the protection of human rights of convicts, but in the interest of the efficient protection of the society from crime.

CONCLUSION

As we can see, the Recommendation of the Council of Europe (2014) 3 in connection with dangerous perpetrators tries to establish sensitive balance between the need for the protection of society from criminality and basic human rights of dangerous convicts. It is not an easy task and for this reason, measures of additional detention or supervision of dangerous perpetrators should not be imposed without clear evidence that such measures are necessary for the protection of society. In conditions of not firmly established rule of the law in certain countries, such as Serbia, the introduction of such measures bring bigger damage to constitutionally guaranteed rights of citizens than benefit to the protection of society and potential crime victims. But at the same time, it surely prevents social reintegration of perpetrators. Even if we had ideal legislature, limited economical resources and insufficient capacities of the probation department would make moot the possibility of effective execution of supervision measures and correction of behaviour of dangerous convicts. For this reason *de lege ferenda* should re-examined the need for the existence of ZPM or at least to change its provisions, so that they are in keeping with the most important international standards for the protection of human rights of convicts.

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JUDGE FOR EXECUTION OF CRIMINAL SANCTIONS IN SERBIAN PENALTY SISTEM

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Abstract: With the entry into force of the new Law on Execution of Criminal Sanctions, which was adopted by the National Assembly on May 23, 2014, the Republic of Serbia joined countries which have for many years had judges for execution of criminal sanctions as part of their penitentiary systems. In this way, our positive criminal legislation is harmonized with the relevant standards in this field established in a number of international documents adopted under the auspice of the United Nations and the Council of Europe.

The aim of introducing the judge for execution of criminal sanctions as a new institute in our legislation is to establish effective judicial protection and supervision of the observance of the rights of persons deprived of their liberty, and ensuring their equal rights and equality under the law. The paper analyzes in detail the role, authority, organization and procedural framework for the functioning of judges for criminal sanctions and suggests a number of advantages of this solution in relation to judicial protection of the rights of convicted persons, under the provisions of the 2005 Law on Enforcement of Criminal Sanctions. Personal integrity, professional reputation, affinity for working in this area, good knowledge of penitentiary issues, and the willingness to continuously improve these skills are the qualities that an enforcement judge must possess. The author points out that only a competent, objective, independent and timely judicial protection provides the rights of persons deprived of their liberty. Efforts have been made to ensure that the normative plan complies with the highest international standards in daily practice, yet there is a need to remove the still present substantial difference between the prescribed and actual.

Keywords: criminal executive legislation; penalty system; judicial protection of the rights of persons deprived of their liberty; judge for execution of criminal sanctions; the Republic of Serbia.

INTRODUCTORY CONSIDERATIONS

The execution of a sentence of imprisonment is an operation *in vivo*, an extremely complex process, often burdened with numerous problems, some of which are allocated by the destructive impact of violation of human rights of prisoners. Serbian penalty system is not an exception in this regard. Recognizing the necessity to immediately solve this situation, our legislators in the Law on Execution of Criminal Sanctions in 2005 (hereinafter: LECS/05, act)[2] introduced the possibility of judicial protection of the rights of the convicted. In particular, the LECS/05 provided that a final decision against them during the execution of a sentence of imprisonment or a violation of a limited statutory right, convicted persons have the right to judicial protection[3], which is realized in an administrative dispute. The claim for judicial review shall be filed within three days from receipt of the decision, and the competent court shall decide about it, within 30 days of receipt of the complaint. The lawsuit delays the execution of the decision, except in cases specified by law when the appeal does not suspend execution of the decision (Art. 165–166).

The possibility of instituting administrative action means that the execution of this sentence is no longer the exclusive jurisdiction of the Administration for Enforcement of Penal Sanctions (Administration). It is a solution based on the view that the protection of the rights guaranteed by the position of the prisoners should not end at the institute or the Administration, but that can be realized on the court.[4] However, it soon became clear that the administrative and judicial protection is not a form of effective judicial protection, considering that it was usually limited to the control of the legality of administrative acts issued during

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2 "Službeni glasnik RS", no. 85/05, 72/09 and 31/11.
3 See: Article 8 of the Universal Declaration of Human Rights; Article 2 paragraph 3 of the International Covenant on Civil and Political Rights; rule 36.3) of Standard Minimum Rules for the Treatment of Prisoners; principle 33. par 1 and 4 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment; Article 13 of the European Convention for the Protection of Human Rights and Fundamental Freedoms; Article 36 paragraph 2 of the Constitution of the Republic of Serbia ("Službeni glasnik RS", no. 83/06 and 98/06.).
4 V. V. Veković, Sistem izvršenja krivičnih sankcija, Beograd, 2013, p. 118.

the imprisonment. In addition to that, the convicted have rarely used the right to judicial protection. The number of charges, keeping in mind the size of the prison population was almost symbolic: for example, in 2009, 23 lawsuits were filed for court protection against final decisions of the director of Administration and all were rejected, and in 2013 there were 49, out of which 39 complaints were denied or dismissed, six were resolved, and in four cases the procedure has not been completed by the end of the year.[5]

The said shortcomings were one of the main reasons that the National Assembly of the Republic of Serbia adopted a new Law on Enforcement of Criminal Sanctions (LECS/14) in 2014.[6] The law has introduced a new institute – the judge for enforcement of criminal sanctions (or the judge for execution), to ensure strict administrative supervision over the execution of criminal sanctions passed to judicial control of execution of criminal sanctions, considering that the role of the court must not end with the imposition of sanctions, but should also include monitoring of their execution. The establishment of judges for execution of criminal sanctions provides more effective judicial protection of the rights of persons deprived of their liberty, as well as monitoring the judicial authorities in the enforcement of criminal sanctions. This solution is in accordance with the practice that exists in a number of European countries. In fact, the judges for execution were introduced in Italy, France, Germany, Spain, Portugal and several other countries, in order to reduce recidivism rates and relieve the capacity of penalty institutions. They all have had a positive experience with this new kind of judicial protection of the rights of persons deprived of their liberty. It should be noted that the Council of Europe, which has done an analysis of the draft text of LECS/14, praised the regulation of this institute. All of the abovementioned gives grounds to conclude that the consistent application of new legal solutions in the field of judicial protection of the rights of persons deprived of their liberty and control the execution of criminal sanctions can achieve much better results than has been the case so far.

JUDGE FOR ENFORCEMENT OF CRIMINAL SANCTIONS

The LECS/14 devotes considerable attention to the judge for enforcement. This new institute has been thoroughly regulated by the provisions of Art. 33–42, which will be addressed below.

1. The term of the judge for enforcement of criminal sanctions – The judge for enforcement of criminal sanctions in any higher court by the court president from among the judges of that court. In cases where the charge is treated by a single judge, the judge for enforcement may be assisted by a special expert service from the employees of the court. In accordance with the Court Rules,[7] the enforcement judge shall keep separate records of cases handled.

2. Subject matter jurisdiction – The judge for enforcement: a) protects the rights of detainees, prison inmates, the persons to whom the security measure of compulsory psychiatric treatment and confinement in medical institutions, compulsory treatment of drug addicts or alcoholics when compulsory treatment is conducted in the institute, b) supervises the legality in the enforcement of criminal sanctions, and c) ensures equality of these persons before the law.

In addition, the enforcement judge also decides on:

– protection of the rights of complaints by inmates and the request for judicial protection of convicts, persons subject to a measure of compulsory psychiatric treatment and confinement in a medical institution, compulsory treatment of drug addicts or alcoholics when compulsory treatment is conducted in the institute;

– protect the rights of convicts deciding on appeals against decisions of warden or the director of Administration, in cases stipulated by law;

– other cases provided by law.

Based on the above it can be concluded that the jurisdiction of the judge for enforcement is relatively limited, which is not surprising if we consider that it is a completely new institute in our criminal law enforcement. On the other hand, it should be noted that, in relation to the LECS/05, the circle of people that enjoy legal protection has been significantly expanded. In fact, LECS/14 establishes an effective judicial protection of the rights of two extremely vulnerable categories of persons, frequently exposed to the risk of ill-treatment, even torture. They include detainees and persons subject to some of the abovementioned measures of medical security when conducted in the institute.

5 4 2009 Annual Report on Prison Administration Operations, Ministry of Justice of the Republic of Serbia, Belgrade, 2010, p. 45; 2013 Annual Report on Prison Administration Work, Ministry of Justice of the Republic of Serbia, Belgrade, May 2014, p. 45.
6 "Sužbeni glasnik RS", no. 55/2014.
7 "Službeni glasnik RS", no. 110/09, 70/11, 19/12 and 89/13.

3. Territorial jurisdiction – To protect the rights of the convicted person during imprisonment is authorized by a higher tribunal according to the headquarters of the institution where is serving a prison sentence, while protecting the rights of detainees during the detention measures by higher courts where the headquarters of the institution where the measure is executed.

In case of changing the place of execution of imprisonment or detention measures, for further treatment of the prisoner or detainee, a higher court is in charge of deciding on the institution where the convict/detainee is to be moved. The judge for execution of the institution from which the convict/detainee is transferred, immediately submits documents to the judge for execution in the seat of the institution to which he is moved.

4. The procedure before the judge for execution – In the procedure before the judge for execution in accordance with applicable provisions of the Code of Criminal Procedure,[8] if LECS/14 or any other law provides otherwise.

The proceedings before the judge for execution are initiated at the request of a prisoner or detainee and in the second instance on appeal.

If a detainee finds that during the execution of detention measures in the institution some of his rights have been violated, he has the right to submit a complaint to the judge for execution either orally, on the record, or in writing.

A prisoner has the right to apply for judicial review of the decision of the director of Administration within three days from receipt of the decision, if the decision implies that it has illegally restricted or violated any of his rights provided in Art. 76–125 LECS/14 (for example: the right to humane treatment, visit, the right to health care, religious rights, etc.). Before submitting a request for judicial protection the convicted need to address to the authorities for the protection of his rights, as prescribed in Art. 126 (complaint to the warden, and if he does not receive an answer to it or is not satisfied with the decision – appeal to the director of Administration) and 127 (complaint to the director of Administration). Exceptionally, the convicted person may file a request for judicial protection directly to the judge for execution when his right to life or physical integrity is seriously threatened.

A complaint to the judge for execution shall be filed within three months from the date of the violation of rights, and exceptionally within six months if there is objective inability.

LECS/14 provides that the enforcement judge may hold a hearing at which the participants in the process may present a spoken opinion on the facts and evidence relevant to a judicial decision. However, if the allegations of the complaint or request for judicial protection and other evidence assessment imply that the right to life, physical integrity and health of detainees/convicts are threatened, the judge will hold a hearing.

Hearing shall be held the proxy, if the detained or convicted person has one. In case where the summoned proxy does not respond to the court, hearing will be held in his absence. The hearing may be held both in court and in the premises of the institution.

During the process of enforcement judge may examine as witnesses persons employed in the institution, other convicted persons, obtain or inspect the documentation of a bureau and other government agencies, visit the premises of the institution or establish the facts otherwise.

5. Decisions of the judges for execution – The judge for execution makes decisions in the form of solutions. He may:

– dismiss the complaint of detainees, a request for judicial review or appeal of convicts, if untimely, messy or unauthorized;

– reject a complaint or a request for judicial protection if it proves to be unfounded;

– adopt a complaint or a request for judicial protection when it proves reasonably founded, and order that the established irregularities be eliminated within a specified period and that the persons in charge inform him about the measures taken to this end. In cases when the elimination of violations is not possible, the judge will determine the illegality and prohibit its further repetition.

6. The process of appeals against decisions of the prison governor and the director of administration – Convicts may appeal against the judge for execution or against the decision to the prison governor or the director of administration within three days from receipt of the decision in the cases provided by LECS/14. They can directly file a complaint against a judge for the execution of the decision of the governor of the prison disciplinary punishment (Article 174), determining the specific measures for accommodation under enhanced surveillance (Article 151) and isolation measures (Article 152), as well as an appeal against the decision of the director of Administration on subsequent deployment of the convicted in another institution (Article 52), move the convicted (Article 130) and termination of the execution of a sentence of imprisonment (Article 132).

8 "Službeni glasnik RS", no. 72/11, 101/11, 121/12, 32/13, 45/13 and 55/14.

In order to ensure that the process is undisturbed, the appeal must contain the information about the decision appealed against, the reason why it is submitted and the signature of the person filing the complaint. The appeal shall be filed through the office of the first instance authority. The applicant can appeal to propose the establishment of new facts and obtaining new evidence if they were not known at the time of the adoption of the contested decision. A timely filed appeal does not stay the effect of the decision.

When deciding on an appeal against the prison governor or the director of Administration, the judge for the execution will:

– reject the appeal as unfounded and confirm the first instance decision;

– uphold the appeal, abolish the impugned decision and refer the case to the first instance authority for retrial or appeal to adopt and modify the first instance decision.

7) The process of appeals against decisions of the judges for execution – Against the decision of the judges for execution of the complaints of detainees and the application for judicial review may be filed with. The appeal shall be submitted to the judge panel of the same court over the enforcement judge who made the first decision within three days of its receipt.

Extraordinary chamber shall decide the appeal within eight days of receipt of the appeal.

8) Notification on the rights of convicts – The judge for the execution of sanctions are to make tours of the territory of their territorial jurisdiction, talk to the inmates and inform them on how to exercise their rights at least once every four months during the year.[9]

Generally speaking, the convicted are not sufficiently informed about their rights and possibilities of their realization and protection. In recent years there have been significant qualitative improvements in this area: law libraries were established in institutions, so that the copies of the Constitution of the Republic of Serbia are available to the prisoners, the laws in force in the field of substantive, procedural and enforcement law, appropriate bylaws, relevant international documents relating to the enforcement of criminal sanctions and the protection of fundamental human rights and freedoms, as well as numerous manuals in this area.[10] However, the legislator held that these periodic visits to prisons and interviews with the convicted may contribute to better information about their rights and ways of achieving them.

CONCLUSION

Upon entry into force LECS/14 the Republic of Serbia joined the countries which have for many years had judges for execution of criminal sanctions as part of their penitentiary systems. The systems of judicial supervision over the execution of criminal sanctions exist in a number of European countries and they are adapted to the needs of their criminal justice systems. All continental systems of judicial supervision over the execution of criminal sanctions share a joint responsibility for deciding on the protection of the rights of persons deprived of their liberty. An effective judicial protection of their rights, which complies with relevant international standards both on the normative plan and in daily practice ensures elimination of substantial difference between the prescribed and the actual situation. Objective, independent and timely judicial review aims to: a) provide direct protection of prisoners, but also other inmates, b) achieve significant preventive function and c) reduce the huge gap in terms of power that, on the one hand, has a staff of penalty institutions and, on the other hand, persons who are placed in them.

Keeping in mind that a judicial supervision system directs the execution of criminal sanctions towards proper functioning and subsumes its entire operation under the principle of the rule of law, high criteria must be set for appointing the enforcement judges pertaining to the following: personal integrity, professional reputation, affinity for work in this area, rich experience and good knowledge of the penitentiary issues are the qualities that an enforcement judge must have. Considering that these are specialized judges, they must show willingness to continuously improve their skills through training organized by the Judicial Academy, OSCE Mission in Serbia, and other competent bodies. It is necessary that new legislation in this area really works in practice as it is a prerequisite for providing effective judicial protection of the rights of persons deprived of their liberty and control over the execution of criminal sanctions.

9 Paragraph 54, 2nd General Report on the CPT's activities [CPT/Inf (92) 3].

10 V. V. Veković, *Izvršenje kazne zatvora u Republici Srbiji – skromni dometi i nužnost suštinskih reformi, Vladavina prava i pravna država u regionu* (Proceeds from the International Academic Conference held in Pale on 26 October, 2013), Istočno Sarajevo, 2014, pp. 701-702; V. V. Veković, *Sistem izvršenja krivičnih sankcija*, *op. cit.,* pp. 100-101.

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PROTOCOLS OF THE CONGRESS OF PARIS AND THE PARIS PEACE TREATY 1856

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Abstract: The analysis of the events preceding the Congress of Paris, during the very Congress and those taking place after it, unambiguously point to its place among the most important events of the 19th century. Those events not only crucially defined the so called prolonged 19th century, but they also paved the way for the development, the rise and falls of the future intrenational relations and international law. The theoretical and historical views according to which the Congress of Paris is not labelled a Congress but merely an important Conference, is undermined by the very content of the Protocols of the Congress. The very participating countries regarded this convention as a congress. The topics discussed at the congress and its results also testify to that. The issues discussed at the Congress, the decisions that were passed as well as the very content of the Peace Treaty, testify to it that the Congress had by far exceeded the main reasons for which it had been convened. What the Congress achieved was not only to pass a peace treaty and put a formal end to the Crimean War. The Congress posed and then regulated a number of questions such as safe and free navigation on the Danube, the status of the principlities having access to the Danube, the freedom of trade and the navigation of the Black Sea. Many questions having no relation to the war were also posed and discussed; such questions included the state of the press in Belgium, the intervention of the great powers in the states of crisis, the Greek Question, the Montenegrin Question, the question of intervention in the papal countries and the Napolitan kingdom, and the like. The questions which even some of the great powers had considered internal, were internationalized and the achieved solutions were then given international guarantees. Consequently, the Peace Treaty drawn up at the Congress also dealt with questions that were not directly related to the Crimean War, but very very important for the international relations in Europe.

The way the Congress proceeded, the decisions passed at it and the Peace Treaty itself were of great importance for the Principality of Serbia, too. At the Congress, Serbia emerged as a subject of international law, an entity whose status was guaranteed by all the contries that had signed the Peace Treaty, rather than an entity owing dual allegiance to the suzerain and the protector state.

Keywords: Crimen War, Congress of Paris, Paris Treaty, Protocols of the Congress of Paris, Guaranty powers.

I

The views of history researchers tend not to differ too much when it comes to momentous historic events, which, naturally, possess the traits of the historical context in which they happened. In that sense, such events tend to be the object of little disagreement among researchers. There are, however, those events that, though unarguably of great significance, seem to have become overshadowed by the subsequent ones, those that in many respects constitue the logical consequence of the former. The Crimean War and the Congress of Paris, two of the watershed events of the 19th century, seem indeed to be rather unjustly overshadowed by both the preceding and the subsequent events.

The so-called prolonged 19th century, which, judging by the unity of the relevant historical processes, can be said to have started with the French Revolution and to have ended with the First World War, brought along a number of civilizational legacies, topped by industrialization and the concept of nation. Those legacies were then to determine the course of the 'shortened' 20th century. The 19th century fundamentally changed the pace and rhythm of people's lives in all aspects. The first two decades of the the 20th century saw the nations and countries draw towards one another much faster than it had ever happened before.[1] The curve of the historical graph of the 19th century shows both the necessity of war on the one hand and the urge for stability on the other, exemplifying thereby the clash between the revolutionary character of historical changes and the stative one of the great-power states. The principle of the inevitability of change, confronted with the static nature of countries and religions, was bound to claim supremacy sooner or later.

1 S. Zvajg, *Izabrana dela 4*, Beograd 1983, 139.

This principle, which made the very change legal, was badly received by various religious fractions, as well as by states, that tried to defend their right, that they considered to be entitled to, to remain static, or at least stable.[2] The power of change however, was so overwhelming that even the great empires had to bend under its weight, only to eventually succumb to it completely. The inevitability of the change within states was the result not only of the revolutonary heritage of industrialization and nation, but a consequence of an entire system of new developments and achievements in all the spheres of social life. The already established principles of the philosophy of materialism and the theory of social contract singalled a changed attitude to social and political thinking, and consequently toward the state and the legal system.[3]

The static nature of the state was manifest in all the great European powers. The states that had for some time been a fertile ground for revolutionary ideas (Great Britain, France) were quicker to absorb the various clashes within their societies when compared to the empires in which revolutionary ides were systematically supressed or where revolutions proper were crushed in blood right at their outbreak. Both their partner and their foe was the Ottoman Empire, which was incapacitated itself by the weight of the vastness of its own territory, and which was kept alive only by the disagreement among the great powers in the struggle for its heritage. The war however, as the only possible precursor of stability, and as something that was both encouraged and shunned, showed that conflicting social processes could be overcome if that was in common interest, which in turn led to formerly unimaginable alliences. As Clausewitz himself said, although feeling and loyalty are the things that are obviously mobilized for the purposes of war, the war is primarily a rational action.[4] Absolute wars, or those that come close to being characterized like this, are doubtlessly characterized by irrationality and abstraction. The grander and stronger the causes of a war are, the more they permeate the whole being of a particular nation, and the greater the tension that precedes the war, the more a war will approach its abstract characterization, the more a country will tend to completely destroy its enemy, the more the war aims and the political purposes will stand alligned, and the more a war will have a military character rather than merely a political one. Conversely, the weaker the roots of war and the tension, the more the purely miltary power will be alligned with politics, the more the natural course of a war will be disturbed, the more the political purpose will be different from the aims of the ideal war, and the more a war will seem to be gaining political character.[5]

It was in the nature of the Crimean War to be characterized by both of the given extremes. At its outset, it seemed merely to be a minor confrontation, that would, without escalating, be resolved politically. But then it was intensified so much by the number of countries involved in it and the deployed military forces that its sheer scale approached the other extreme, only for the war to then be ended politically when it started to seem that it would have the gamut of unforseeable consequences. The political end of the war the Congress of Paris.

The Congress of Paris is doubtlessly one of the watershed events in the process of resolution of the Eastern Question. In the view of some authors, the great peace treaties represent the baptismal font used to perform the ritual of entering the great powers into the birth records.[6] According to Ekmecic, four such 'baptismal fonts' were critical for the history of the Eastern Question: The Peace of Utrecht of 1714, The Congress of Vienna of 1815, The Congress of Berlin of 1878 and the Peace Treaty of Versailles of 1919. The fact that this list does not include the Peace Treaty of Paris can be ascribed to the fact that this assembly has never been branded 'congress' by the history of diplomacy, although some attempts have been made in that direction. Diplomatic congresses represent the summits of a now gone era, at which an individual state's status, which was previously proven in war, and always in a decisive battle at that, was conclusively acknowledged.[7] This definition implies that in such summits states could both assume and lose the status of a great power. It also implies that at congresses new rules in the relations among the great powers and their satellites could be established and the old ones get confirmed, that important historical processes are opened or the stage is simply set for their opening in the future, and that new great powers and alliences could be heralded. When all the distinctive attributes a congress should have are taken into account, a conclusion can be drawn that the Congress of Paris, or the Paris Conference, as the event was also called by the mentioned authors, has unjustifiably faded into the background. In that sense, Ekmecic adds that the alliences of the great powers engaged in a power struggle to safeguard their military, strategic and commercial interests in the Ottoman domains were being created, and then dissolved, and then recreated throughout the second half of the 18th century. Because of war defeats or its internal revolutions, Russia was dropped out of this circle three times – in the Peace Treaty of Paris 1856, after the defeat in the war with Japan in 1905, and in the Peace Treaty of Versailles of 1919.[8] In addition, the Congress of Paris dissolved the notion of the sovereignty of individual states and inaugurated the system of collective security. In addition, it heralded the rise of the new super

2 G. F. Hegel, *Filozofija povjesti*, Zagreb 1951, 64.
3 G. F. Hegel, *Istorija filozofije*, Beograd 1949, 114.
4 M. Kaldor, *Novi i stari ratovi*, Beograd 2005, 42.
5 Klauzevic, *O ratu*, Beograd 1951, 54.
6 V. Popović, *Istočno pitanje*, Beograd 1996, 9.
7 *Ibid.*, 9.
8 *Ibid.*, 9.

powers, the dissolution of old alliences and order, and the establishemnt of a new division of power. In the end, the Congress of Paris was the staring point of the processes epitomized by the Germanic expansion. Such a view is advocated by a number of authors, especially the Russian ones.[9]

In addition to being an attempt to resolve the Eastern Question, the Congress of Paris was of critical importance for the Serbian Question as well. This issue managed to emerge out of the confines of the bilateral, and sometimes trilateral relations between/among the great powers. Serbia became and object of negotiations, and a part of the Peace Treaty signed by all the relevant European powers of that time. Its position was not guaranteed any more by the protector state and the suzerain, but by all the relevant European powers. It was due to this treaty that Serbia ceased to be merely an object but became a partner in some issues.

II

The crisis that culminated in the Crimean War meant a number of open questions for Serbia and a lot of imposed problems. Both the sides involved in the war and the other great powers interested in Serbia, expected Serbia and demanded from it to behave in keeping with the interests and the current state of those powers. Those demands were often conflicting and could geopardize Serbia's status should it have opted for one side at the expense of the other.

Legal theory has it that the obligations of a vassal state towards the one that controlled it are not predetermined in an *a priori* way as generally acknowledged regulations. Instead, the nature of the relationship between the two and the precise rights and duties of one with respect to the other were established by the contracts they mutually signed or the unilateral acts of the controlling states.[10] All such acts, however, provided Serbia no set guidelines as to how it should behave in the given situation.

The very status of Serbia was unclear. Although the Sultan called Serbia his province in his acts, thus wanting to reconfirm its being inseparable from the empire, the very content of those acts showed that Serbia for the Sultan himself was a tributary principality with considerable internal independence. Although the actual events testified to the contrary, Serbia itself tried, officially at least, to behave according to the provisions of those acts.

Apart from the suzerain however, Serbia also had its protector. Ever since the Peace Treaty of Bucharest, all the acts that were passed and that were related to Serbia had had to first be approved of by Russia. Russia was the protector state of the Danube principality and a constant threat for the full sovereignty of Turkey.

When some of the provisions of international public law are put into the context of the 19th century, it follows that it was impossible for Serbia to be both a vassal state and a protectorate. But the joint Russo-Turkish acts and the unilateral acts that pertained to Serbia and that were passed by the Sultan, as well as the conduct of Russia in the matters related to Serbia, showed that Russia, in view of its power, had firmly assumed the position of Serbia's protector.

At the first sight, it seemed that Serbia could not be in a worse position at the time. It was precisely its suzerain and its protector that were in war. Austria, a neighbouring power state, the one on which Serbia's foreign trade depended as well as a fair share of its entire economy, had proclaimed neutrality. At the same time, it took actions in direct contrast to the interests of Russia, deploying troops on the border with Serbia, unmistakably showing its intentions towards the principality. France and Great Britan, that Serbia expected guaranteees from, openly sided with Turkey and declared war on Russia. In Serbia, however, it was Russia that enjoyed overwhelming popular support. In such a situation it seemed that Serbia had much more to lose than gain whichever move it should have decided to take. And the number of possible alternatives was quite limited. Serbia could either enter the war or stay neutral.

Neutrality seemed to be an untenable and the most complicated option. Both Russia and Turkey had their reasons to require Serbia's support in the war, and even its direct participation in it. In addition, Serbia's neutrality meant not only that it would be passive during the war but also that its territory could not be used for the purposes of war. How could Turkey be prevented from transporting war materials and troops across Serbia? And, how could Austria be prevented from deploying its troops on the Serbian territory under the pretext of keeping peace and establishing the balance of power in Serbia? And finally, was Serbia capable of preventing those two powers from anything? The realities of life in Serbia testified to the contrary.

Eventually, Serbia opted for neutrality. Before the war began, the Serbian government of that time ('Praviteljstvo') sent a statement to Istanbul, saying that Serbia would remain neutral in the event of a war between Russia and Turkey, but that it intended to get armed so as to be able to confront any army that should cross Serbian border.[11] The ensuing events proved that that was a good move.

9 P. Miljukov, Š. Senbos, L. Ezenman, Istorija Rusije, Beograd 1939, 616.
10 See: M. Novaković, *Osnovi međunarodnog javnog prava*, Beograd 1936.
11 J. Ristić, *Spoljašnji odnošaji Srbije novijega vremena I*, Beograd 1887, 133.

The actions of Fonton, a Russian diplomat in Serbia, the public opinion and the views of some of distinguished Serbs testify to it, however, that no option was excluded[12], but that a well thought-out decision to steer a middle course between wishes and the actual reality prevailed. What surrounded Serbia and what people thought in Serbia proved that such a course was a realistic one.

The actions of Ilija Garsanin, while he was one of the most prominent political officials in Serbia, and especially his contacts in France and his encounters with Napoleon III, provided new ways of safeguarding the position of Serbia.[13] Seguirre, the French consul to Serbia, is known, however, to have pointed out that should the Russo-Turkish agreements be rescinded because of the war, then the foundations of the public law in Serbia would crumble down, and that that law could be annulled by the Sultan at any time.[14] The reality, however, testified to the contrary. The autonomy of Serbia and its future were never questioned by the European powers. The position of Serbia, which had been achieved by Serbia itself rather than simply groundlessly granted to it by the great powers, could not that easily be endangered by a possible cessation of effect of Russian guarantees or a unilateral act of the Sultan. That is what is put forward by The Memoire on the Eastern Question submitted to the Prussian king Friedrich Wilhelm in the summer of 1854. The Memoire says: It is not to be expected that the position Serbia has achieved could easily be established everywhere in the Turkish empire, and especially not in the Turkish European provinces; all the more so as Serbia has several times already reconfirmed its special status through the power of arms, so that that status represents, to a degree, national independence[15]. This was also confirmed by the position of the official France that opposed any changes to the position Serbia had achieved.[16] The Western powers supported Serbia in its decision to be neutral. It could not count on any significant improvemnt of that position, yet could be confident that the status it had achieved would be guaranteed internationally. And such a standpoint assumed by the always calculating great powers was more than enough for Serbia.

As for Austria, there were many things at that time that indicated that it was precisely that country that Serbia could expect trouble from. The attitude Austria had had towards Serbia for centuries, the way it had treated Serbia before and after the crisis, clearly signalled something like that. A special means of Austria's exerting pressure on Serbia was interfereing with its internal affairs, epitomized in the actions of Teodor Radosavljevic, the Austrian consul.[17] The amassing of troops on the border and the role of Austria in the Crimean War posed an explicit threat to Serbia. There was, however, another side to Austria's attitude towards Serbia at the time. When Franz Joseph and Prince Alexander met in Zemun on July 4th 1852, the Emperor expressed his gratitude to Serbia for the role it played in the events of 1848.[18] In addition, Franz Joseph treated Serbia as an independent state. On no occasion in those negotiations did he make any references to the Serbia' being dependent on Turkey, nor did he consider his good relations with Serbia in view of his relations with Turkey. He talked about the good relations of his government and the government of Serbia, expressing his wish for the good understanding between the neighbours to develop further.[19] In his contacts with foreign diplomats the Emperor of Austria made no effort to hide that it suited him at that time for the state of affairs in the Balkans to remain unchanged. He is supposed to have said to Meyendorf, a Russian diploomat in Vienna, that 'the state of affairs in the East is one I find appropriate'.[20] What Austria needed in the Russo-Turkish clash in order to maintain such a state was precisely the neutrality of Serbia. That is why the official Vienna demanded from the Serbian government to 'issue an unambiguous written statement in which the Serbian government would pledge not to take a part in the Russo-Turkish war in any conceivable way, and that it would also not use arms against Austria, nor against the suzerain, nor against the protector state'.[21]

Russia also found the neutrality of Serbia a favourable move. Naturally, what Russia preferred the most with regard to the issue was for Serbia to openly back Russia and participate in the war on its side. Russia had actually been setting a stage for such a development in Serbia by removing Garasanin from power, by insisting that all the other political opponents of its policy be removed from power as well, by its other diplomatic effors in Serbia and by preparing the Serbian public for its cause.[22] It seemed, however, that the standpoint that Serbia should be neutral at the beginning of the conflict, had prevailed in the meantime. The Russians indicated that by reassuring Serbia that it had best preserve the position it had achieved. Fonton stated: 'There is no need to be afraid of the Serbian army as long as the people are in peace. Russia's wish is for Serbia to remain in peace, and peace is something that both the Prince and the Praviteljstvo should always make sure they maintain for the sake of their people ... Russia wants to preserve the present state of

12 *Ibid.*, 156-157.
13 Pisma Ilije Garašanina Jovanu Marinoviću, knjiga prva, sredio St. Lovcevic, Beograd 1931, 26.
14 *Ibid*, 175.
15 L. Ranke, *Srbija i Turska u XIX veku*, Beograd 1892, 544.
16 *Pisma Ilije Garašanina Jovanu Marinoviću*, knjiga prva, p. 26.
17 *Ibid.*, 136, 187.
18 *Srbske novine* 75/1852.
19 *Ibid*.
20 J. Ristić, 203.
21 *Ibid.*, 134.
22 *Pisma Ilije Garašanina Jovanu Marinoviću*, *knjiga prva*, 121, 128.

affairs in Serbia, and the new Russian consul to Serbia will be instructed in such a direction, requiring the Prince and the Praviteljstvo to remain faithful to him".[23]

It was Turkey that had the strongest reasons to support the neutrality of Serbia. The circumastances in Serbia indicated that should the Ottoman government start treating Serbia in what was even a remotely condescending manner, then that could make Serbia take actions that were preciesely the opposite of what Turkey wanted. Regardless of the elaborate preambles of the Sultan's acts legalizing the position of Serbia, the Ottoman government, in its relation with Serbia, always had to factor in the fact that it had not granted that position to Serbia, but rather that Serbia had militarily and otherwise forced Turkey to grant it the position it had. Therefore no official commands and orders for Serbia to do anything could be sent from Istanbul to Belgrade. The acts of the Ottoman goverment later on showed that it was relieved to learn that Serbia would be neutral in the war. In the December of 1853 the Sultan issued a Hatisherif reconfirming the status and the rights Serbia had won.[24] Serbia had to be supported in its decision to be neutral. The above-mentioned interpretation according to which the Russo-Turkish agreements might be rescinded as the result of the war, put forward by Seguirre, could make Serbia apprehensive and make it take unwanted actions. Therefore, Serbia had to be shown that it did not need any other protector apart from the sultan, and that Serbia need not be concerned about its position. The Hatisherif stated: Due to the fact that the state of war between my empire and Russia has made all the acts signed between these two states null and void, this is to certify that I and my imperial government will do everything to preserve the peace and well-fare of our loyal subjects. Consequently, this imperial act, that bears all the trappings of an official imperial document, is produced to the end that it be made public that my imperial govermnet is firmly resolved to guarantee the status and the rights and prerogatives of Serbia'[25]

What the Ottoman govornment had to offer Serbia with regard to its neutrality were not words only. It tried to reduce the ever-increasing pressure Austria exerted on Serbia by acting as a mediator. So as to relieve the tension, it ordered Serbia to stop getting armed.[26] However, later events showed that this order was nothing more but a declarative diplomatic act of good will on the part of the Ottoman government. Even if Serbia had decided to respond to any Austrian attack by force, the Ottoman government would not take that against Serbia. Azis Pasha, a son of the commander of Belgrade fortress, and the one who was effectively the commader-in-chief of the army in Serbia, offered 30 cannons to the Serbian army. In response, the Serbian government said that 'it would accept the offer should an occasion arise and should it be forced to defend'.[27] When he visited Belgrade in the summer of 1855, the Grand Vizier himself – Ali Pasha, expressed how satisfied he was with the conduct of Serbia.[28]

All the given events fortified Serbia in its decision to remain neutral. Such a decision, however, had not been made overnight. The people of Serbia were clearly in favour of Russia. Such a feeling was shared by some of the circles close to the Serbian government, too. Despite some misgivings that could be seen in bilateral relations, Serbia never forgot that the Russians were their brothers in blood and in language. However, the assistence Russia offered had always been considered to be an expression of brotherly closeness and support, rather than as an act of submission. It was expected that Russia would tolerate and support a strong, independent Serbia and the expansion of its territory.[29] Needless to say, wishes were one thing, and the reality something quite another. Apart from treating Russians as Orthodox Slovene brothers, Serbia was also acutely aware of what it meant geostrategically and politically To Russia and Austria in view of their sstruggle to safeguard their military, strategic and commercial interests in the Ottoman domains once the Ottoman empire collapsed. Garasanin himself, anticipating a clash of these two powers in the future, said that 'whichever power claimed victory, I'm afraid that those would be the last days for Serbia. The victory of Austria would obliterate Serbia's political life; the victory of Russia would destroy its people without which a Serbian state would be inconceivable; If Austria won, Russia would remain intact, as it were, and will be getting ready for an opportunity to reorganize and start the war anew until it has won. If Russia won, any disagreements which may have existed will be ironed out. I have always been convinced that the supremacy of Austria in the Balkans would constantly provoke Russian reaction. In a life-or-death struggle between Russia and Austria, in which the latter country won, Serbia would become its province, and would remain in that state for years…[30] Any possible territorial expansion of Serbia or a realization of an uncontrolled national mission, would represent a problem for these two powers. Serbia, as a disturbing factor inside and for Turkey, could still be of some use to them, but a large Slavic state instead of European Turkey would only help to disrupt their plans. This is what Garasanin insisted on in his *Nacertanije*. Austria and Russia, he said there, know very well that the Ottoman Empire is bound to crumble down. Therefore, both

23 *Ibid.*, 125.
24 *Srbske novine*, 9/1854.
25 *Ibid.*
26 *Pisma Ilije Garašanina Jovanu Marinoviću, knjiga prva*, 217.
27 J. Ristic, 173.
28 *Pisma Ilije Garašanina Jovanu Marinoviću, knjiga prva*, 175.
29 I. Garašanin, *Moji spomeni, Grocka 1868*, Fond Ilije Garasanina, No. 1683, Arhiv Srbije.
30 *Ibid.*

these states are making various plans regarding what would happen to their borders. Both of them want to prevent the birth of a Christian empire in place of the Ottonam one; because, if that indeed happend, Russia would lose any hope that it would take Istanbul, which had been its dearest plan ever since the time of Peter the Great; and Austria would be faced with the prospect of losing its South Slavs. Therefore, Austria has to permanently remain the enemy of the Serbian state at all costs; hence, any understanding and good relations with Austria are politically impossible for Serbia, as it would that way be working against its own interests.[31] This was furthermore confirmed by the statement of Meyendorf, the Russian representative to Austria, that Russia did not contemplate any possibility whatsoever of Serbia becoming independent. In his conversation with Garasanin right before the Crimean War, he said: To tell you the truth, we cannot possibly allow your independence from Turkey, as we do not what might happen thereafter'[32]

All the given circumastances suggest that neutrality was the least painful solution. Still, there were opinions expressed in the Council (the government) itself that Serbia should openly side with Russia and go into the war. Paun Jankovic advocated such a view saying: We had better perish honourably than live on dishonoured; even if Serbia fell, Russia would help it rise once again; people are like a meadow, even when you have scythed it, grass will continue growing." Still, a more rational stance to the position Serbia had found itself in prevailed. The best answer to the former ideas seems to have been given by Mitropolit (regional head of the Orthodox church) Petar, who is supposed to have said this at the Council: I understand what it means to say to live honourably, but I do not happen to understand what it means to say to perish honourably.[33]

Serbia's decision to be neutral in the given conflict was perhaps most thoroughly justified by Jovan Marinovic, who at that time time held the position similar to that of the Minister of Internal Affairs nowadays. In his memoires, 'which were intended to keep the relevant Serbian circles informed', he sais: „... Our neutrality, which is recognized by the Ottoman government, is a huge leap forward, as it makes us an almost independent state, because that neutrality, that we have decided on by our own free will, does not only concern our relations with Turkey but also our relations to all the other states.[34] The memoirs then cite the standpoint of the Western powers that supported Serbia's position in the given circumstances, but also expected it to firmly adhere to its decision: „...the French Minister of the Foreign Affairs appreciates such a wise move taken by Serbia, and as long as Serbia remains faithful to it, it need not fear that the Turkish military would enter its territory. This should be regarded as France guaranteeing Serbia's neutrality. The English consul Fonblanc has also been notified about this ...It can be seen from this that our neutrality is not a decision made randomly, something that Europe can be indifferent to and something that we may change at will. That neutrality has in the meantime become a necessity and an obligation for us, so that if we do not fulfil that obligation, we can easily not only be plunged into war, but run the risk of losing the political protection of the European states...[35] Eventually, together with the analisys of the hypothetical outcome of the war and its consequences, Marinovic points to a huge risk Serbia would undertake should it have sided with Russia: „If we didn't opt to remain neutral but instead sided with Russia, that would mean that we want to sacrifice everething that is certain and assured enough now, with the hope that we would gain something if Russia won. If we sided with Russia, we would be gambling with our present position and our future, and by wanting to gain more, we run the risk of losing what we have now"[36]

This was the decision the Serbian government adhered to right to the end of the Crimean War and the Congress of Paris. The defeat of Russia in that war and the consequnces of it testified to the fact that Serbia had taken the right road.

III

The Crimean War, once its military part was over on the battlefield, was put a final stop to diplomatically at the Congress of Paris. Although conceived of as a conference of equals, the Congress was a convention of the powers that had won, on the one hand, and the defeated party, on the other, and was about to introduce novelties into the international relations and international law. The way the Congress proceeded, which was scrupulously recorded in the Protocols, determined the content and the significance of the Treaty of Paris.

The importance of the Treaty of Paris is perhaps best evidenced in the introductory paragraphs on the issue in *Srbske novine*, that announce the publication of the Treaty itself, The Protocols of the Congress or those of its articles that were relevant for the pricipality of Serbia. Making reference to The Daily News, a newspaper expressing the views of the Torries, Srbske Novine announced that they were publishing this

31 *Pisma Ilije Garašanina Jovanu Marinoviću, knjiga prva*, 352.
32 *Ibid.,* 120.
33 J. Ristic, 157.
34 *Ibid*., 159.
35 *Ibid*., 160.
36 *Ibid*., 161.

important 'tractatus' and making the Serbian public acquainted with it, before it would be published in the official government newspaper.

The given documents were unarguably important for Serbia especially when it came to its status, and the European press and the diplomatic public were right in ascribing great importance to them in view of the novelties they had introduced into the functioning of the European public law.

The Treaty contained thirty four articles, that were systematically ordered according to the chronology of the standpoints of the participating countries being harmonized and the process of those standpoints and the achieved agreements being recorded in the Protocols of the Congress

The first article of the Treaty of Paris contained an instance of diplomatic courtoisie (pledging to eternal peace and frienship can only represent diplomatic courtoisie and definitely not a legal norm). The very next article is formulated as legal norm that should be abided by. The articles 2 through 8 contained provisions regulating the structure of the peace, and technical details pertaining to how the achieved peace would be kept. Judging by the reasons that had led up to convening the Congress of Paris, these were supposed to be the central parts of the Treaty. The rest of the articles, however, suggest that the ambitions of the Congress had by far exceeded the reasons it had been convened for. A major part of the Treaty dealt with questions that had not been posed by the Crimean War, nor could this war have been their root.

It was already article 9 that regulated the position of the Christians in Turkey, which represented interfereing into Turkey's sovereignty. Although this article reconfirmed the Sultan's sovereign rights, the fact that the Sultan's Ferman was announced to the participating countries, that they, as the sides guaranteeing peace had taken note of them, and that that was entered into the text of the Peace Treaty, actually testified to the contrary to the faxt that the Sultan's rights had at least in part been compromised. 'As His Highness the Sultan' – this article says – 'as a result of his care for his people, has signed a Ferman, which improves the state of his subjects regardless of their creed and nation, and testifies to His noble intentions towards His Christian subjects, and as He intends hereby to give a new proof of the aforesaid, He has decided to announce His Ferman, which He has passed of His own sovereign will, to the participating parties'. The crucial change with regard to the previous state of affairs concerned the fact that Russia was stripped of its right to be the sole patron of the Ottoman Christians. Articles 10 and 11 also had to do with the once uncontested rights of Turkey. Article 10 modified the rights of Turkey in the straits, and Article 11 declared the waters of the Black Sea neutral. Preventing Russia to have a war fleet in the Black Sea was understandable, as Russia had lost the war, but Turkey was denied the same rights, too, although it was one of the winning sides in the war. Articles 12 and 13 guaranteed the freedom of trade in the Black Sea, in accordance with the principles of international law. Article 14 went one step further and made a bilateral agreement between Russia and Turkey an integral part of the Peace Treaty. In addition, the article provided that in case the bilateral agreement was to be modified, the joint will of the signing parties would not suffice, and that any such modifications could be made only if all parties paricipating in the Congress agreed to such modifications.

Article 14 says: 'Since their Highnesses the Emperor of all Russia and the Sultan have signed the agreement by which they determine the number and strength of the light boats they need in their coastal waters of the Black Sea, that agreement is now attached to the Peace Treaty, and will exert the same legal power and have the same validity as before. It cannot be possibly modified or annulled without the consent of the parties that have signed this Treaty.'

The following articles, too, internationalize the rights hitherto deemed a part of the internal legal system of Turkey, as well as of the other powers. Articles 15 through 20 regulate the navigation on the Danube and the maintenance of that navigation route. Technically, the eastern part of the Danube was an integral part of Turkish territory. The principalities having access to that part of the Danube were formally vassals of Turkey and recognized the sultan's sovereignty. The upper part of the Danube had traditionally been considered by Austria as its internal question. The Treaty of Paris, however, created two committees that were empowered to make such decisions that showed that the described state of affairs was thoroughly changed at the congress.

The co-called European Committee was made up of France, Austria, Great Britain, Prussia, Russia, Sardinia and Turkey. This committee was empowered to undertake the cleaning of the Danube delta, to make it navigable, and was also in charge of its security. The structure of the committee, however, pointed to the fact that the traditional rights of Austria and Turkey had been thoroughly modified. The committee was made up of one representative of Austria, Bavaria, Wuertemberg and Turkey, respectively, as well as of a commissioner representing Wallachia, Moldavia and Serbia. The European Committee had a temporary character (it was supposed to exist for 2 years), whereas the River Committee was a permanent one. The latter one was empowered to regulate free and safe trade on the Danube, and after two years of existence was to undertake all the powers invested in the former one.

Articles 21 through 27 regulated the status of Wallachia and Moldavia. The fact that the war had been fought in these principalities, that they had been occupied and that the creation of the state apparatus there had been disrupted, urged for their status as well as their internal questions to more precisely regulated

The position of Serbia was approached in a different manner. Serbia's territory had not been used during the war, and the attitude the warring sides had towards it, and it having chosen to be neural in the war, had enabled it to pass acts reserved for independent states only, and not vassal ones.

Judging by the way it behaved during the Hungarian Revolution of 1848 and the Crimean War, Serbia seemed to have to a considerable degree taken on ius legationum, ius foederum and ius armorum et belli, which were the prime characteristics of soverignty at that time.[37] Despite its drawbacks, the Constitutionalist Government (Ustavobranitelji) had a solid structure, in which there was no need to change anything by the Peace Treaty. Therefore, Articles 28 and 29 reconfirmed and provided guarantees for the position of Serbia. The crucial change was that Serbia no more had Russia as its protector, that status having been taken on by the sides that signed the Peace Treaty. That was of great importance in fortifying the position of Serbia. Serbia had in that way become a part of a newly-established system of collective security, and due to the given articles and due to its being included into the Danube Committee, it became a serious and legitimate subject of international law.

Article 30 regulated the Russo-Turkish disagreements about their common border in Asia. It is interesting that the committee which was to deal with this question was established by the very Peace Treaty, and was comprised not only of two Russian and two Turkish members, but also of a representative of France and Great Britain, respectively.

The concluding articles (Articles 31 through 34) contained the details regarding how the parties that had participated in the war would re-establish their diplomatic and other relations, as well as the technical details regarding the implementation of the peace treaty.

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TOWARDS NEW SOLUTIONS IN THE LAW ON INSPECTION SUPERVISION IN THE REPUBLIC OF SERBIA[1]

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Abstract: The paper is dedicated to the most important issues which are the subject of the new Law on Inspection Supervision the adoption of which is currently in progress. Bearing in mind that inspection, as one of the responsibilities of state administration organs, has not yet been systematically arranged, the effects of the Law are expected to be effective.

In the study of administrative law there is a prevalent view that inspection represents a continuous and systematic activity of a subject which is manifested in monitoring and evaluating the work of another subject. Depending on the criteria used as the starting point for classification, we can distinguish among several types of supervision. These criteria may include: goals, subjects, resources, objects of supervision, supervisory procedures, etc.

In this sense, legal supervision is the kind of supervision that is regulated by legal norms outlining the issues of who performs the supervision, who is supervised, what procedures are used and what kind of supervisory powers are involved, including legal sanctions, all of which constitutes the legal framework of supervision. A special form of legal supervision is inspection.

According to the Law on State Administration of Serbia (Article 18), the organs of state administration apply inspection in order to examine the implementation of laws and other regulations by direct insight into the activities and operations of individuals and legal entities and, depending on the findings of the inspection, impose measures in keeping with the powers vested in them. The inspection is regulated by a special law and until its adoption the provisions of Articles 22-37 of the former Law on Public Administration remain effective. The procedure of passing the new Law on Inspection Supervision is in the final stage. There are numerous questions that it arranges in a new way, and this paper will focus on some of them, including the following: a) the legality of operations and actions of supervised subjects (compliance with the law and other regulations) as an objective of inspection; b) the method of risk assessment as one of the key innovations in the overall model of inspection; c) support for sustainable functioning and development of businesses in accordance with regulations; d) coordination of inspection and mutual cooperation of supervisory organs; e) clearly and strictly defined powers of the inspection bodies in the suppression of activities of unregistered entities (the so-called grey economy); f) transparency of work and documents of inspection and standardisation of inspection practices; g) electronic networking and exchange of information and documents among inspection bodies through a unified inspection information system (e-inspection); h) the standardisation of the concept and procedures of inspection, etc.

There is no doubt that the effects of the new Law on Inspection Supervision will contribute to a better quality of law implementation and institutional strengthening of the rule of law and the principle of fair competition.

Keywords: supervision, administrative supervision, inspection, inspection authorities, inspectors, inspection procedures, legality.

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INTRODUCTION

The study of administrative law frequently considers the terms control and supervision to be synonymous and does not distinguish between the two. There are different opinions, although they are rare. [3] Supervision, as a rule, is a relationship between two entities within which one monitors and evaluates the work of the other in a systematic way and permanently with the aim that "the work done is (transformed) in the work that ought to be done" [4]. Therefore, supervision in any case represents a systematic and permanent activity of an organ which consists of observing and evaluating the work of another entity. With regard to the criteria which are chosen as a starting point in classifying them, we can distinguish among several types of supervision. These criteria may, for instance, include: objectives, subjects, resources, objects of supervision, supervisory procedures, etc. [5]

Thus legal supervision would represent the kind of supervision which is guided by legal norms. Its legal regime would be arranged with respect to the following issues: who performs it, who is supervised, what procedures are used, and what are the supervisory powers, including the legal sanctions. Administrative supervision would be a special form of legal supervision. The studies of both administrative and positive law in Serbia deal with the concept and essence of administrative supervision. Theoretically speaking, administrative supervision can be determined from the formal and substantive aspects.[6]

From the formal point of view, administrative supervision represents the supervision exercised by the administrative authorities. What is important here is who is in charge of supervision, and not what the object of supervision is (administrative or other activities), as well as what is the nature of supervisory powers (administrative or other) vested in the controller.

If we want to define the concept and essence of administrative supervision from the substantive point of view, we have to start from the object of supervision and the legal nature of supervisory powers. Hence, administrative supervision in the substantive sense would represent supervision over non-authoritative activities of the supervised subject, carried out on the basis of administrative powers of the supervisor. The theory of law in this way draws distinction between administrative supervision and administrative control of administration. Administrative supervision and administrative control of administration are forms of legal supervision performed through the implementation of administrative powers. However, administrative supervision using administrative powers controls non-authoritative activities, whereas administrative control of administration controls the administrative (authoritative) activities of controlled entities. Our prominent legal scholars who have dealt with these issues in their works mainly opt for the substantive concept of administrative supervision, pointing out that of all forms of legal supervision it is only inspection supervision that can be regarded as administrative supervision.[7]

When elaborating on theoretical grounds of formal and substantive concepts of administrative supervision, we have to bear in mind the existing legal solutions regarding this legal institute of administrative law. The current Law on State Administration, adopted in 2005, defines the concept of state administration in functional and organisational terms. Thus the state administration is part of the executive government of the Republic of Serbia, responsible for performing administrative activities within the rights and duties of the Republic of Serbia. The legislator specifies that the term "affairs of state administration" is to be used to denote these activities. The state administration of the Republic of Serbia comprises the ministries, administrative bodies within the ministries and special organisations. The concept of state administration defined in such a way is denoted using the term "state administration bodies". [8]

The provision of Article 18 of the Law on State Administration classifies inspection within the group of state administration affairs and envisages that "by performing the inspectory supervision state administration authorities shall supervise the implementation of laws and other legislation by direct scrutiny of the management and action of natural and legal persons and, depending on the results of the supervision shall pronounce administrative measures they are authorised to undertake", all of which is regulated by special law.

With regard to supervision of organs of state administration, the Law on State Administration, in its provisions under Articles 45-50, introduces a new concept – 'internal supervision' - and defines it as super-

3 For more on this issue, see: L. Kostić: Administrativno pravo Kraljevine Jugoslavije, III, Nadziranje uprave, Beograd, 1930, p.3; S. Popović, B. Marković, M. Petrović: Upravno pravo, Beograd, 1995, p. 572; D. Milkov: Upravno pravo, II, Upravna delatnost, Novi Sad, 1997, p. 287; Z. Tomić: Upravno pravo, Beograd, 1998, pp. 48-51; D. Vasiljević: Upravno pravo, Beograd, KPA, 2011, pp. 227-249. For instance, L. Kostić and S. Popović regard the terms 'control' and 'supervision' as synonymous, whereas according to Z. Tomić, supervision is a broader and more lasting process within which, as a rule, control is performed.

4 See more in: P. Dimitrijević: Elementi upravnog prava, Beograd, 1980, p.126.

5 D. Vasiljević, D. Milovanović: Important novelties in the law on administrative disputes of Republic of Serbia, SS. Cyril and Methodius University in Skopje, Iustinianus Primus Faculty of Law, Zbornik na Pravniot fakultet „Justinijan Prvi vo Skopje", Proceedings in honour of professor Naum Grizo, Skopje, 2011, pp. 111-121.

6 D. Vasiljević: Upravna inspekcija-organizacija, poslovi i postupak rada, Bezbednost, Beograd, year LIV, no. 3/2012, pp.110-121.

7 N. Bačanin: Upravni nadzor u pravnom sistemu Republike Srbije, Pravni život, no. 11/2009, pp. 91-94.

8 See Article 1 of the 2005 Public Administration Act, the Republic of Serbia Official Gazette, no. 77/05; 101/07; 95/10.

vision exercised by state administration authorities over other state administration authorities and holders of public powers performing conferred state administration tasks.

It includes: a) the supervision of work; b) inspectory supervision through administrative inspection regulated by special law on administrative inspection; and c) other forms of supervision regulated by special law.

CURRENT SITUATION REGARDING INSPECTION IN THE REPUBLIC OF SERBIA

As pointed out in the introduction of this paper, inspection represents specialised administrative supervision which involves immediate insight in operations and activities of non-state entities, citizens, as well as organs of state administration (the lattermost performed exclusively by 'administrative inspection'), by taking appropriate measures prescribed by law.[9] Subject to supervision are generally non-authoritarian activities of the supervised entities (except for supervision performed by administrative inspection), with regard to which the supervision examines compliance with laws, other regulations and by-laws. Inspection activities are immediately executed by authorised officers – inspectors, who enjoy autonomy in their work, have considerable legal powers, but also pronounced responsibility. [10]

The main features of inspection can be said to include the following: a) it is carried out in a number of different spheres of social life (health, transport, commerce, city planning, forestry, as well as municipal, mining, educational and other activities); b) inspection is undertaken by the ministries or their organs (inspectorates), or the regional organs and organisational units of the ministries or inspectorates - with the possibility of delegating them to the organs of territorial communities; c) inspection is carried out using specific methods and powers.

Inspection services are in charge of inspection. The services of inspection supervision are usually referred to as inspection services. Within the existing legal system, the inspection services are established as: a) internal organisational units of the ministries, or b) special organs within the ministries (inspectorates). They are specialised for performing inspection tasks in the ministries or outside. As an illustration, let us mention some types of inspection: communal, sanitary, market, labour inspection, foreign currency, construction, mining, geological, transportation, educational, agricultural, veterinary, urban planning, forestry, etc. There is special legislation regarding each of them.

When performing tasks of inspection, inspection services have a range of various powers, defined by regulations, and aimed at exerting influence over the controlled entity regarding the object of supervision. Inspection activities may be of a preventive, corrective, and, sometimes, repressive nature, depending on their contents. The most important and most frequent inspection powers involve direct insight into the work and operations and taking measures envisaged by law.

The inspection procedure follows the rules defined in the Law on General Administrative Procedure, with certain departures and additions in terms of special procedural regulations in certain matters. Inspectors make the reports of every inspection act and it contains the findings regarding the state of affairs and proposed or imposed measures. The report is always submitted to the entity subject to inspection. The inspected entities are obliged to inform the inspectors about the measures taken in keeping with the report.

Inspectors are independent in their work within the limits of powers set by law and they are personally accountable for their work. In addition to criminal liability and violation liability, they have disciplinary and material liability (just like other civil servants). They will be held particularly responsible if: a) upon inspection, they fail to take, suggest or order a measure that they are authorised to; b) they do not suggest or initiate a procedure before a competent authority regarding unlawful or irregular activities they have discovered; c) they exceed the limits of their powers; d) they reveal classified data acquired in the course of inspection.

Mutual relations of inspection bodies are carried out through: a) cooperation on issues of common or related fields of work, preventive measures and joint actions; b) the hierarchical powers of state inspection bodies over the bodies of territorial units entrusted with certain inspection tasks. These powers include: a) the issuance of mandatory instructions and control over their execution; b) exercising direct control over their work; c) the assumption of jurisdiction if they fail to perform; d) revocation of powers of inspectors and establishing their liability if they performs the delegated tasks illegally, untimely, in an incompetent or negligent way.

9 See Article 18 of the Law on State Administration, ref. Articles 22-37 of the old Law on State Administration the provisions of which remain in power until the passing of the special law on inspection as provided by Article 93 of the Law on State Administration.
10 For more detail, see: Z. Tomić, Opšte upravno pravo, Beograd, 2009, pp.224-226.

SOME NEW SOLUTIONS ENVISAGED BY LAW ON INSPECTION IN THE PROCEDURE OF ADOPTION

The Law on State Administration, along with the Civil Servants Act, Law on Administrative Inspection and some systemic laws in the field of public administration, represents in fact the beginning of transformation and adaptation of the public sector in the Republic of Serbia to the new social changes and the need to comply with European legislation. [11]

It is essential to provide legal regulations pertaining to inspection on a new basis in order to raise the level of integrity of exercising administrative affairs and providing all forms of administrative supervision of both state administration bodies and holders of public authority and other entities, while protecting and guaranteeing their position in performing tasks, the principles of accountability and independence in particular, but also in terms of request that the said organs perform their tasks lawfully, timely and effectively, to the benefit of citizens and other legal entities.

The changes in and harmonisation of the overall legal system with the Constitution and new social needs and requirements of adapting to modern, especially European, practices and solutions, have caused an expansion of competence of administrative bodies to a number of new social areas. All of this, and especially an increase in the volume of work and types of tasks, changes in the way of their performance, a sudden increase in the number of supervised entities, lack of regulations regarding certain issues of particular importance for the inspection and many other things, has called for very broad and fundamental changes in the arrangement of inspection supervision that can be achieved only by passing special systematic law on inspection supervision. Its adoption is in progress and it is in the draft stage, so we will give an overview of some of the most important solutions in this place. Unlike the usual practice, the justification of innovations that the law is to introduce does not consist of interpretations of the established norms and institutes. Namely, efforts have been made to give reasons for accepting certain models and solutions, making them more readily understandable, which would eventually contribute to their proper interpretation and simple implementation in practice.

Numerous analyses have been made of the current situation regarding inspection, all pointing out to examples of good practice as well as numerous problems that are encountered. Among the most prominent problems that have been noted, the following stand out: inefficiency, insufficient transparency, and ineffectiveness of inspection supervision; uneven measures of inspection services in the same or similar situations, leading to legal uncertainty; untimely performance, duration and inappropriate measures taken upon inspection, disproportionate to the severity of infraction of regulations and the needs of contemporary business operations; lack of coordination and frequent conflicts of jurisdiction of inspection services; lack of continuous professional development and in-service training for employees in charge of inspection; abuse related to (non)exercising the supervisory powers; evaluating the work of inspection services, which is not primarily adjusted to the purpose of this category of state administration activities (effective management of public risks); absence of adequate legislation in this sphere.

Bearing in mind the above mentioned and other related problems, their frequency and causes, as well as the consequences they produce, a view has been taken that no substantial progress in the field of inspection supervision can be achieved without comprehensive and in-depth reforms which, among other things, include the adoption of a system law and the alignment of special laws and by-laws with contemporary standards of performing the inspection.

In accordance with the recommendations of the GIZ Study on improving the legislative process and the principles and solutions contained in the Resolution of the National Assembly focusing on legislative policy, the procedure of drafting the law from the very beginning to this stage has taken all the steps that are deemed to be a necessary prerequisite for passing a good-quality regulation. It has also been envisaged that as the further course of action, when establishing the final solutions in the Bill, by-laws should also be drafted so that the Government and the members of Parliament should have a full insight into future solutions, which would ensure better quality of implementation of the Law.[12]

Compared to the existing situation, the Law envisages several innovations:

1) The starting point in defining the very concept of inspection supervision was the provision of the Law on State Administration, but, among the numerous methods of operation of inspection services, the emphasis is placed on the preventive ones. Thus the primary objective of inspection is to ensure lawfulness, and not sanctioning. This represents the most effective protection of the vital social values that constitute the public interest. When other prerequisites are met, the significance

11 For more detail, see: D. Vasiljević, D. Milovanović, „The participation of stakeholders and general public in the legislation process (the situation in the Republic of Serbia and a comparative overview)", international scientific conference Archibald Reiss days, Thematic conference proceedings of international significance, KPA, IRZ, Belgrade, 2014, volume III, pp. 55-63.

12 For more detail, see: D. Milovanović i D. Vasiljević, Unapređenje modela inspekcijskog nadzora u Republici Srbiji, Pravni život, no. 10, Beograd, 2014, pp. 110-112.

of corrective, coercive and punitive measures will be comparatively less pronounced. Inspection supervision, according to the provisions of this Law, includes other forms of supervision and control, which are performed in order to examine the implementation of law and other regulations through direct insight into operations and actions of the supervised entities, performed by other entities with public powers. The new concept is based on the provisions contained in the Public Administration Reform Strategy, according to which the inspection includes all forms of supervision and control (regardless of whether they are referred to as checks, overviews, examinations, investigations, monitoring, etc.) which essentially have characteristics of this type of work of the state administration whether they are carried out immediately or conferred to them. These solutions are in keeping with international standards and good regulations and practice.

2) An important novelty concerns the method of risk assessment. This method starts from the actual situation in the sphere of inspection and supervision activities. There are instances of the inspection services not being able to exercise control over all entities at all times or to detect all irregularities. It is therefore necessary to rank the supervised entities in order of priority according to the level of risk. This would ensure timely and effective response. Risk assessment is carried out at all stages of the inspection.

3) The application of this method should significantly reduce the arbitrariness, lack of uniformity in treatment, corruption and other possible abuses in performing the inspection. For a successful risk assessment, it is necessary to establish analytical departments with qualified personnel, as well as to establish and use the appropriate information system.

4) Encouraging the legality and preventive activity of inspection services as well as ordering measures in proportion to the assessed risk, illegal practice and economic power of the supervised entity provide support for sustainable business operations and development of economic entities in keeping with the regulations.

5) The Law gives due attention to the issue of inspection coordination and mutual cooperation of inspection services. Increased effectiveness and avoidance of conflicts of jurisdiction (positive or negative) are ensured in a number of ways, including: mutual cooperation in establishing a program of work and cooperation in the very process of inspection supervision; joint inspection in situations when several inspections are to carry out supervision simultaneously over the same entity; through a coordination body.

6) In order to achieve coordination of inspection and mutual cooperation of inspection services, the Government is expected to establish the Coordination Committee, a coordinating body with clearly defined tasks, in accordance with the law governing the public administration. Working groups and expert teams are to be organised within the Coordination Committee to deal with specific areas or specific issues of inspection supervision.

7) One of the key objectives of the Law on Inspection Supervision is combating grey economy. In this regard, broad and clear powers have been envisaged for inspection services responsible for suppressing the performance of activities of unregistered entities, as well as effective measures aimed at their registration and inclusion into the legal flows.

8) From the aspect of greater legal predictability, certainty and security of citizens, businesses, and other legal entities, the transparency of work is very important, along with the transparency of general by-laws, as well as standardisation of activities of inspection services towards the supervised entities, which is emphasised by the law. Among other things, it involves the preparation and publication of relevant regulations, plans, control lists of priority checks and activities that the inspection is authorised to perform on the internet pages. It also includes the passing of laws on the implementation of legal documents (opinion, explanations, interpretations, etc.). As regards transparency of work, there is the question of relation towards the Law on Free Access to Information of Public Importance. It is also important to ensure equal treatment of inspectors in identical situations. Thus the objects of supervision would be in an equal position and they would have certainty in their activities and operations.

9) An important novelty envisaged by the law is electronic networking and exchange of information and documents among inspection services through a single information system. This will allow the creation of a comprehensive database and access to information and documents. It will result in reducing the administrative burden of supervised entities and inspections and bring about better utilization of inspection services' resources. Finally, all of this should contribute to better efficiency and effectiveness of the inspection.

10) The provisions of the law contribute to standardisation of the notion of inspection and its procedure, but also to mutual relations with other regulations in this area. The law standardizes inspection according to the type and form. The standardisation is achieved by rules guiding the implementation of this law in relation to other laws. Namely, this law and a number of special laws define the

contents, boundaries, powers, rights and duties related to performing inspection. In the process of inspection, the inspector or other authorised officer shall act in accordance with the principles and rules of operation of the state administration and the principles and rules guiding the engagement of civil servants or officials of the autonomous province and units of local self-government, but also in accordance with the principles and rules which apply to the general administrative procedure. This law is directly implemented in the inspection procedures performed by the state administration authorities, but also by the organs of autonomous provinces and local governments, when delegated by the state administration. In the process of performing inspection and other forms of official control that derive from the ratified international treaties, special laws shall be directly applied if certain issues of inspection and official control in certain areas are differently regulated by any such laws. This law shall accordingly apply to the inspection procedures performed by organs of autonomous provinces and units of local self-government as part of their original jurisdiction, as well as to various forms of control and supervision exercised by other holders of public powers as provided for by special law. There will be three legislative levels of inspection: first, special – departmental law; second, intermediate – the Law on Inspection Supervision, and third, general – the Law on General Administrative Procedure. Further, inspection supervision, as defined by this law, also includes other forms of control and supervision which supervise the implementation of laws and regulations through direct insight into the operations and activities of the supervised entities performed by other entities with public powers. This is the way to achieve standardisation of work and activities of state bodies and public institutions that essentially perform the same or very similar tasks, all of which leads to greater legal certainty and security. This view has also been taken in the Strategy of Public Administration Reform, as well as in the international standards and good international practice and regulations, which stress the view that it is necessary for the laws and by-laws governing the inspection to be applied to all forms of control which actually represent the inspection, even if they are referred to differently, such as, for instance: checking, examination, overview, investigation, supervision, etc. [13]

CONCLUSION

Unlike the neighbouring countries and other transition countries, which have implemented the reform of inspection and inspection services in keeping with modern standards, the Republic of Serbia has so far performed no comprehensive and substantial reform in this area, which is of great importance for public administration, economy and citizens. The passing of a special law that provides for inspection supervision is envisaged in Article 18 paragraph 2 of the Law on State Administration adopted in 2005 and amended several times since then. The existing solutions are outdated and insufficiently functional, because their contents and scope cannot meet the challenges and needs of modern inspection supervision, primarily because they are incomplete and inconclusive, having been adopted in essentially different economic, financial, social and political circumstances and within a significantly different legal system, with a different understanding of the role and purpose of the inspection. The law that provides for the general administrative procedure therefore applies to the inspection supervision procedure, but there are certain limitations, since the provisions of the general administrative procedure cannot fully compensate for the lack of provisions pertaining specifically to the inspection procedure, which requires independent legal regulation due to its distinguishing features.

In addition to the lack of a unified, systemic law that would govern the inspection, analyses have shown that the subject matter pertaining to certain areas of inspection is regulated by approximately 1000 laws, decrees, regulations, and other by-laws. Thus the legal system shows some disorganisation and excessive governance in the sphere of this subject matter. Such a large number of regulations frequently results in inconsistency and conflicts of legal norms as well as very different treatment in the same or similar situations, causing, in turn, legal insecurity, uncertainty, unnecessary costs to the economy and inefficient utilisation of inspection resources.

The main reason in favour of adopting a system law on inspection is the need for a legal act that would regulate the methodology of conducting inspection, the powers and duties of the parties to the inspection, coordination of activities of inspection services and better utilisations of their resources. The need for passing such a law has been underlined by the supervised entities, as the situation in the sphere of inspection or rather its adverse effects limit the competitiveness of the economy of the Republic of Serbia on both domestic and international markets.

The strategic basis for adopting the Law on Inspection Supervision has been outlined in the Strategy for Public Administration Reform in the Republic of Serbia adopted by the Government at the meeting held on

13 The novelties analyzed in this paper as well as other innovations to be introduced by the Law on Inspection that have not been dealt with in this paper, are explained in detail; in the explication and justification of the said law and represent its integral part in the process of adoption. See more at www.mduls.gov.rs/dokumenta-ostalo.php

January 24, 2014. It is noteworthy that there was an agreement among the stakeholders regarding the need and necessity of passing this law. The procedure of its adoption, its legal power and social authority provide guarantees that the problems calling for such a legal act will be resolved. In the existing circumstances, the most appropriate and optimal way for the implementation of the envisaged reforms in the area of inspection supervision is formulating peremptory norms within a unified, system law, resulting in a higher degree of reliability and probability that these reforms will be implemented. At this point, the adoption of the Law on Inspection Supervision is in the draft stage. Time will be the best judge as to whether the proposed solutions will meet the expectations of the society or not.

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THE USA AS A STATE OF FINAL DESTINATION FOR PASSIVE SUBJECTS OF HUMAN TRAFFICKING

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Abstract: This essay disserts the position of the USA as a state of final destination for the passive subjects of human trafficking. Establishing the fact that there is a large gap between proclaimed i.e. declared goals of the fight against the human trafficking and real actions of the USA, both normative and actual, the essay explains the causes of this situation.

Firstly, the USA, as well as any other rich western country being a final destination for the passive subjects of human trafficking, has no interest to deal with this criminal form on its own territory. They find it much easier to transfer the burden of this fight by a malicious substitution of roles to the "transit" or passage states. They do this by promoting international normative related to human trafficking and sponsoring various means necessary for fighting it, and doing so, create a global prohibitive regime under which the unwanted migrants remain stuck in transit before arriving to the states of their final destination, meaning that they remain in transit states, while they create more liberal rules regarding legal migrations of the wanted migrants.

Secondly, the USA, due to the lasting tradition of tolerating the exploitation of forced labour created both the system of labour ethics incorporated in the domestic legislation, and also the practice that emphasizes the human trafficking for the purpose of sexual exploitation while ignoring the one done for the purpose of labour exploitation. It contravenes both the wording and the intention of the international legal documents regulating the human trafficking, providing the same treatment for human trafficking whether committed for the purpose of labour or sexual exploitation.

Keywords: human trafficking, criminal law, the USA, forced labour and sexual exploitation, migrations.

INTRODUCTION

The common discourse on human trafficking, both lay and scientific, contains several classical presumptions or beliefs that rarely survive the test of critic. The first one is that it is the fastest growing form of international crime. According to the second one, unscrupulous traffickers grab young and innocent women into their hands against their will, depriving them of their freedom and control over their lives. According to the third one, the forced prostitution is final destination for all these women. And the fourth one states that the international efforts in restraining and fighting this type of crime are stronger, more comprehensive and engage more resources every year.

Even one superficial consideration of these very easily causes a reader to have certain doubts. How is it possible that the type of crime being under such a close attention of the international community and in suppression of which such extraordinary efforts are being undertaken and huge sums of money are being spent is still growing unstoppably? How is it possible that the "oldest trade" since the beginning of the world all of the sudden lacks "apprentices" and the new "recruits" have to be involved by force or coercion? It is clear that something in these presumptions or preconditions, beliefs or opinions is not true.

The subject of this essay shall be the gap between actual and declarative approach in the sense of criminal policy to the human trafficking in one of the states positioning itself in the center of the efforts undertaken by the international community in fighting this problem, such a state is the USA. In the sphere of actual application of provisions regulating the human trafficking in the USA one may notice significant falling behind the official public discourse of the USA in which it holds itself a champion of this fight and stands up for it. Also, one may notice the different treatment of human trafficking depending on its purpose.

In order to explain this difference the essays starts from the usual classification of the states standing on directions of illegal movements of humans to the starting point states, transit states and states of final destination in human trafficking. After this topic the essay deals with the difference between the interests of these states in the sense of criminal policy. These groups of states standing on directions of, not only human trafficking, but also all kinds of illegal human migrations, do not share the same necessities in criminal

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policy. The essay shall then deal with the position of the USA as the typical state of final destination for passive subjects of human trafficking and point to some irregularities with this discursive champion in fighting against human trafficking, with the special review on the different perception and understanding, and thus different treatment of the two purposes of human trafficking – sexual and labour exploitation. The conclusion of the essay is that the real interest of the USA in the sense of criminal policy as the state of final destination of passive subjects of human trafficking is significantly different than the interest proclaimed and declared in fighting this type of crime. It shall be illustrated by providing the analysis of some of the provisions of American domestic legislation aimed at the protection of human trafficking victims and by the results of actual applications of such legislation.

THE DIFFERENCE IN INTERESTS RELATED TO THE CRIMINAL POLICY OF THE STATES STANDING ON DIRECTIONS OF ILLEGAL MIGRATIONS

The most powerful states of the world, primarily the USA, have formed the international legal regulation for all forms of illegal migrations pursuant to their interests. They turned it into a comprehensive system for controlling the migrations of people. It includes all forms of illegal migrations, and thus also the human trafficking. The specific thing about it is that this regime covers those migrating for the purpose of entering the prostitution. Through this regime, when it comes to human trafficking big and powerful states turn sexuality into a mechanism of power and technology of human control.[2] Only the careless and superficial observer may think that the fight against this type of criminal is guided by the concern for human rights of the victims.[3] However, the primary interest of the developed western states who have been initiators of the global campaign against human trafficking is their security.[4] The best illustration of this statement are the provisions of the crucial international legal document dealing with human trafficking, the Protocol on Human Trafficking adopted in 2000, related to the protection of the human trafficking victims which have been declared as "disappointing" by the scholars since they are barely binding. Even these diffuse, amorphous and imprecise provisions are barely being applied.[5] So it happens that the largest, the most forceful and powerful states of the world intentionally equate all criminal forms related to migrations, such as immigration, smuggling, terrorism and prostitution, so they can fight them while seemingly fighting against human trafficking.[6] Do all the countries in this global prohibitive system of control have the same interests?

This problem may be observed in the best manner by overtaking one of the usual scientific classification as per which there are three groups of states when observed by the position on directions of illegal migrations.[7] The first one includes the starting point states, the second one states of final destination and the third "passage" (transit) states.

MIGRATIONS STARTING POINT STATES

Because of high birth rate and short lifetime due to low health care, the population of these states is young. This creates a need for export of workforce. By human trafficking and smuggling they deal with problems of population pressure and pertaining problem of extra working force, which, being unsatisfied represents the constant source of instability at home. They have no interest to fight illegal migrations. On the contrary, they occur in their best interest since they represent a kind of outlet or a safety vent for the biggest problems of their society. Therefore the starting point states of migrations have the least reasons to fight against the human trafficking. One of the most important forces causing the human trafficking is imbalance in working force markets in these states.

2 Branislav Ristivojević, The Myth on Human Trafficking in International Criminal Law, Novi Sad, 2015, being printed.
3 Naganand Medeiros finds that "establishment of general dignity represents an antithesis [of slavery], and therefore the possible solution for slavery and all forms of human trafficking": Winston P. Nagan & Alvaro de Medeiros, *Old Poison in New Bottles: Trafficking and The Extinction of Respect,* Tulane Journal of International and Comparative Law, No. 2, 2006, p. 267.
4 Anne Gallagher, *Human Rights and New UN Protocols on Trafficking and Migrant Smuggling: A Preliminary Analysis,* Human Rights Quarterly, No. 4, 2001, p. 976; Shrikantiah Yayashri, *Perfect Victims and Real Survivors: The Iconic Victim in Domestic Human Trafficking Law,* Boston University Law Review, No. 1, 2007, p. 168.
5 Gabrielle Simm, *Negotiating the United Nations Trafficking Protocol: Feminist Debate,* Australian Yearbook of International Law, 2004, p. 154.
6 Dina Franceska Haynes, *Used, Abused, Aressted and Deported: Extending Immigration Benefitsto Protect the Victims of Trafficking and to Secure the Prosecution of Traffickers,* Human Rights Quarterly, No. 2, 2004, p. 229.
7 Clara A. Dietel, *Not Our Problem: Russia`s Resistance to Joining The Convention on Action Against Traficcking in Human Beings,* Sufolk Transnational Law Review, No. 1, 2008, p. 165.

The major international legal document in the area of fighting against the human trafficking – the Protocol – recognizes the reality. Pursuant to its provisions, the human trafficking exists only when the migration is cross-border. In this sense, the introductory provisions of the Protocol (Article 2) states that the purpose of it is to create the conditions for suppression and fighting against the human trafficking and to serve as an instrument for promotion of inter-state cooperation for the same purpose. Only the cross-border human trafficking committed by the organized criminal group represents the subject matter of this protocol.[8] It is a clear indication that the writers of the Protocol were primarily interested in protection of state borders, i.e. the protection of legal system.[9] No criminal act occurring within the borders of the migrations starting point states is considered as the human trafficking, i.e. it is not prohibited. In this way complete legal pressure of fighting against human trafficking is transferred to the other two groups of states.

MIGRATIONS PASSAGE (TRANSIT) STATES

The "passage" i.e. transit states bear the largest obligations in fighting against human trafficking although they are not the key reason for it, since they, regularly have significantly lower population pressure than the "Third world" states which are usual starting points of illegal migrations. In case the population problem does occur in these states, they solve it by legal migrations. The most important thing is to point out that these states are not final destinations for illegal migrations since they are not rich enough to be attractive as the final destination. The result of these conclusions shows bad prospects for the "passage" states. They are neither the sources of migrations since they lack population pressure and therefore they are not creators of the human trafficking problem, or showing need for extra working force, which could attract the passive subjects. However, they bear the largest part of obligations in this fight. How is it possible if, in principle, all signing states of the Protocol share the same obligations?

Strictly speaking the rich states, which are the final destination of the human trafficking passive subjects, also have certain obligations, the same as transit states. However, rich and powerful states are replacing roles by creating legal, technical and organizational prepositions[10] for criminal prosecution of human trafficking in transit states. The transit states this way become the states of final destination. Rich, powerful states of final destination, especially the USA, use their political, economic and every other influence in international community to create a pressure on transit states to accept this role. For the purpose of hushing down every voice of criticism in transit states that describes the human trafficking in its reality and which would try to demystify it, the final destination states launch sensationalism on human trafficking in public preventing any voice other than the accepted discourse on human trafficking to be heard.[11] Acting so, they deal with the problem of human trafficking before it arrives to the powerful states of illegal migrations final destinations.

STATES OF FINAL DESTINATION OF MIGRATIONS

The rich states of final or last destination hold the first position when it comes to the scope of problems created by illegal migrations since people involved in them wish to end their journey in these states. They solve these problems by holding the advantages of legal immigrations, choosing the best human "material" for themselves (young, educated, healthy, Christians, …), as their future citizens while at the same time they are stopping everyone else who do not fit the described pattern from crossing the border. That way they, by implementing restrictive immigration policy, additionally provoke the occurrence of human trafficking since they leave no choice to the migrants. The migrants have to address the criminals to organize their immigration. Since the mechanism of fighting the human trafficking by prohibiting movements in the states where the sources of illegal migrations are located are very hard to implement, as it was previously explained, it has to be done on the only place left (apart from the state of final destination) which are the transit states. For this reason the powerful states, which are the target of illegal migrations, provide financial support for organizational and technical means necessary for fighting against human trafficking in transit states. They are the main promoters of international treaties in the area of human trafficking.[12] They use

8 Article 4. SCOPE OF APPLICATION "This Protocol shall apply, except as otherwise stated herein, to the prevention, investigation and prosecution of the offences established in accordance with article 5 of this Protocol, where those offences are transnational in nature and involve an organized criminal group, as well as to the protection of victims of such offences."

9 Brenda Carina Oude Breuil, Dina Siegel, Piet Van Reenen, Annemarieke Beijar, Linda Roos, *Human Trafficking Revisited, Legal, Enforcement and Ethnographic Naratives on Sex Trafficking to Western Europe,* Trends in Organised Crime, No. 1, 2011, p. 33.

10 Potts underlines that rich states should provide financial and technical support to the impoverished states for the purpose of fighting against the human trafficking:Le Roy G. Potts JR., *Global Trafficking in Human Beings: Assesing the Success of the United Nations Protocol to Prevent Trafficking in Persons,* Georg Washington International Law Review, No. 1, 2003, p. 249.

11 Branislav Ristivojević, ibidem.

12 The USA shall continue to insist on international or supra national regulation of many cross-border issues (terrorism, human and drug trafficking, environmental protection, whaling and fishing in international seas, money laundering, legal migrations, disease con-

them to create a kind of worldwide prohibitive system, which completely illustrates their political and economic interests.[13] The mentioned system allows them to impose the obligations to the transit states to firstly detect and then provide hospitality and take care of the passive subjects of human trafficking along with people participating in all other forms of illegal migrations.[14] By doing so, they achieve two desirable effects. Firstly, they transfer the financial cost of taking care for illegal immigrants, which is extremely high,[15] to transit states. Secondly, and more important, they transform transit states into shelters for illegal immigrants. By the specific substitution of roles transit states become the states of final destination against their will.

This is the right moment to point out the fact that the question whether the information and data on human trafficking used for creating strategies and setting means for fighting it are credible.[16] The most referent institutions for gathering the data on human trafficking are located in Western Europe, and the USA (or working under their prevailing influence – the UN). Since these are, almost without exceptions, the states of final destinations for illegal migrations, one may contest the objectivity and impartiality while approaching, processing, gathering and representing the information and data on human trafficking.[17] In that sense, Kinney holds that USA constantly present forged data on questions of human trafficking, i.e. they lower the number of victims coming to the USA year after year, for the purpose of maintaining the self-proclaimed position of overall leadership in the world when it comes to suppressing the human trafficking.[18]

Such practice has oppressed all national information on human trafficking in their larger part, which would naturally lead not to one uniform, as it is now, but instead, more different national or regional separate strategies for fighting the human trafficking that would include all the local particulars pertaining to this form of crime.[19]

Even without this problem, one fact has been generally noticed among scholars – that all researches on human trafficking are principally insufficient due to their improper empiric basis.[20] No wonder they provide inadequate basis for creating ideas on how to fight human trafficking, or, which is even worse, are being used as a suitable material for misuses and manipulations.

THE USA AS A STATE OF FINAL DESTINATION OF MIGRATIONS

In achieving the mentioned policy of switching roles of different states on the directions of migrations the principal position belongs to the most important and the most influential state in the international community – the USA. American official policy on this issue has been construed based on the "carrot and stick" approach. The "carrot" is a reward, meaning the money provided for financing technical and legal conditions necessary for fighting the human trafficking. The "stick" is the consequences including possible economic sanctions and other international political insistences such as termination of cooperation with the IMF or the WTO. One of the key efforts of the USA while trying to stop human trafficking is a constant attempt to "export" the policy of prostitution prohibition and its criminalization all around the world.[21]

trol, air traffic, …) since the consequences of these cannot remain within the borders of one state. Therefore, these questions may not be effectively resolved within the borders of one state: Alexander T. Aleinikoff, International Law**,** *Sovereignity and American Constitutonalism: Reflections on The Customary International Law Debate,* American International Law Journal, No. 1, 2004, p. 103.

13 Georgios Papanicolaou, *The Sex Industry, Human Trafficking and The Global Prohibition Regime: A Cautionary Tale from Greece,* Trends in Organised Crime, No. 4, 2008, p. 380.

14 For the best example of the stated see Articles 12 to 15 of the Convention adopted by the Council of Europe on acting against human trafficking in which the illegal immigrants are named "victims". Among others, it introduces the obligation for the states to provide the renewable staying permit for these persons under certain conditions. This question shall be thoroughly explained in the part six of the book, where a comparison of differences between the obligations introduced by international legal documents in this area shall be given.

15 Anke Sembacher, *The Council of Europe Convention on Action Against Trafficking on Human Beings,* Tulane Journal of International and Comparative Law, No. 2, 2006, p. 454.

16 It is hard to gather the information on human trafficking therefore there is no real database on this issue:: Natalia Ollus, *The United Nations Protocol to Prevent, Supress and Punish Trafficking in Persons, Especially Woman and Children: A Tool for Criminal Justice Personnel,* p. 23, published in: UNAFEI, *Resource Material No. 62,* Tokyo, 2004; The reliable statistical information on human trafficking are really hard to find and are dubious when it comes to quantification of any aspect of this issue: Dina Franceska Haynes, *Not Found Chained to a Bed in a Brothel: Conceptual, Legal and Procedural Failures to Fullfill the Promise of The Trafficking Victim Protection Act,* Georgetown Immigration Law Journal, No. 3, 2007, p. 341; Similar also: Susan Tiefenbrum, *Saga of Susannah – A U. S. Remedy for Sex trafficking in Woman: The Victims of Trafficking and Violence Protection Act of 2000,* Utah Law Review, No. 1, 2002, p. 126.

17 Niklas Jakobsson & Anderas Kotsadam, *The Law and Economics of International Sex Slavery: Prostotition Laws and Trafficking for Sexual Exploitation,* European Journal of Law and Economics, No. 1, 2013, p. 94.

18 Edi C. M. Kinney, *Appropriations for the Abolitionists: Undermining Effect of the U.S. Mandatory Anti-Prostitution Pledge in the Fight Against Human Trafficking and HIV/AIDS,* Berkeley Journal of Gender, Law and Justice, 2006, p. 169-170.

19 Georgios Papanicolaou, ibidem, p. 380-381.

20 Brenda Carina Oude Breuil, Dina Siegel, Piet Van Reenen, Annemarieke Beijar, Linda Roos, ibidem, p. 32.

21 Judith Resnik, *Law's Migration: American Exceptionalism, Silent Dialogues, and Federalism's Multiple Ports of Entry,* Yale Law Journal, No. 7, 2005-2006, p. 1662.

The states following this USA policy (the scholars named it abolition policy) and thus fully equating the prostitution with human trafficking[22]get the "carrot" while other states not following it get the "stick".[23]

The best indicator of this policy is the American Trafficking Victim Protection Act, shortly TVPA.[24] A part of its provisions, actually the key part from the position of declarative purpose of the act, the protection of the victims, confirms that the USA went no further from the usual state interests of any of the countries being the final destination.[25] Thus, pursuant to § 7105 of the Act, the USA allows temporary stay to the foreigner only if he/she is a victim of the "severe form of human trafficking" or a "potential witness in a procedure".[26] The rightful question to be asked is what happens to all persons who have been victims of a regular form of human trafficking instead of a severe form? The potential witness rule forces victims to confront the criminals providing faster and easier criminal procedure against the organizers, but has nothing to do with the interests of the victim and his/her human rights. Also, the USA approves only 5,000 so called special "T" entering visas, being the special category of visas reserved for human trafficking victims, regardless of the fact how many people holds the status of victim.[27] The application of the Act supports the previous statement. Although the Act provides generous measures of protection and help for the human trafficking victims, during the first two years after the law was adopted, these people were granted only 23 entering visas, despite the fact that the estimated number of those who would have right to this position is more than 50,000 per year, while during the same time only 36 people were successfully prosecuted in criminal proceedings under the charge for organizing the human trafficking.[28] Up until the middle of 2003, the total of 172 visas was granted, while only 113 people were successfully prosecuted.[29], [30] The 2005 amendments abrogated the statutory limitation for this criminal act when the victims are children, and allowed measures of electronic surveillance without the court order along with introducing active personal approach for application of this law even when the perpetrators are not American citizens, but instead employees of the legal entities registered in the USA.[31] The purpose of these amendments is to widen the possibilities for criminal prosecution for human trafficking, not in the USA, but instead outside its borders by exporting these rules into other states, which would naturally be the "transit" states.

The legal scholars in Anglo-Saxon states also support this course of actions. They propose changing the principle or territorial application of criminal law. One proposition is based on the position that instead of classical, territorial principle, in cases of extraterritorial conspiracy, the applicable rule should be the protective principle of territorial application of criminal law. This way, the possibilities for criminal prosecution are much wider.[32] The second proposal goes even further asking for introduction of universal principle in applications of criminal law when it comes to human trafficking, again for the purpose of widening the possibilities for criminal prosecution.[33] All these suggestions coming from the American scholars are pointed at widening the possibilities for criminal prosecution abroad.

The efforts and endeavors being invested, at least in discourse, by the USA in fighting against human trafficking for the purpose of sexual exploitation stand far from the American quite tolerant and friendly relation to the labour exploitation, although the Protocol positions them as the same and completely equal. The American society is probably the largest consumer of the labour based on exploitation of others whether as sexual tourists or as users of benefits gained from labour exploitation in developing countries.[34] The natural course is that this kind of relation has been transferred onto human trafficking for the purpose of labour exploitation.

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22 See provisions of Article 7102 pursuant to which sex trafficking exists even in the cases when it is completely voluntary, while different forms of human trafficking for the purpose of labour exploitation have to be committed with use of force or by fraud: *The Trafficking Victim Protection Act* of 2000, 22 U.S.C. § 7102 (8) – (9).

23 Edi C. M. Kinney, ibidem, p. 169-170.

24 *The Trafficking Victim Protection Act* of 2000, 22 U.S.Code § 7101-7110 (2000)

25 For correct review of criminal and political purposes of this Act, see: Barbara Ann Stolz, *Interpreting the U.S. Human Trfficking Debate Through the Lens of Simbolic Politics,* Law & Policy, No. 3, 2007, 311-338.

26 *The Trafficking Victim Protection Act* of 2000, 22 U.S.C. § 7105 (c) (3) (A) (i)

27 Ibidem, 22 U.S.C. § 7105 (e) (2)

28 Dina Franceska Haynes, ibidem I, p. 241.

29 Richard Stephanie, *State Legislation and Human Trafficking: Helpful or Harmfull?,* University of Michigan Journal of Law Reform, No. 2, 2004-2005, p. 453, 460.

30 No other developed country, i.e. the state of final destination is an exception. In this manner, Finland, since proscribing human trafficking as a criminal act in 2004, had only 15 investigations and one final judgment for human trafficking until 2008: Minna Viuhko, *Human Trafficking for Sexual Exploatation and Procuring in Finland,* European Journal of Criminology, No. 1, 2010, p. 64; Scotland had no cases of human trafficking before its courts until 2010: Korin Lebov, *Human Trafficking in Scotland,* European Journal of Criminology, No. 1, 2010, p. 87.

31 Cynthia Shepherd Torg, *Human Trafficking Enforcement in the United States,* Tulane Journal of International and Comparative Law, No. 2, 2005-2006, p. 510.

32 Joshua D.A. Blackmore, *The Jurisdictional Problem of the Extraterritorial Conspiracy,* Criminal Law Forum, No. 1, 2006, p. 101.

33 The universal principle should be applied in the same way as for the slavery since human trafficking represents its continuation: Dina Franceska Haynes, ibidem II, p. 260, footnote 154.

34 Cynthia L. Wolken, *Feminist Legal Theory and Human Trafficking in the United States: Towards a New Framework,* University of Marylend Law Journal of Race, Religion, Gender & Class, No. 2, 2006, p. 413-414.

DIFFERENT COURSES OF ACTION FOR DIFFERENT FORMS OF EXPLOITATION IN THE USA: THE UNCLE TOM'S CABIN

Notwithstanding the fact that the USA is discursive champion in prosecuting human trafficking for the purpose of sexual exploitation, it is crusty when it comes to embracing the same course of action for human trafficking for the purpose of labour exploitation. For this reason this deduction is true for labour exploitation itself. This does not happen by chance:

„The slave trading and production using the slave working force have created a basis for wealth of the American nation, supporting the industrial revolution and enabling it to project its power to the rest of the world."[35]

The American wealth and political power have been built on the "back of slaves, debt laborers and others like them".[36] The working ethics of the American society is completely indifferent to, e.g. exploitation of foreign working force in American agriculture since this kind of exploitation already left a deep mark in American culture. Therefore, the American public opinion in most cases does not react to the labour exploitation. On the other hand, it is highly sensitive, for the purposes beyond the subject matter stated in the introduction to this essay, to the scenes of sexual exploitation.

The completely different treatment provided for labor and sexual exploitation in the eyes of the American public is well illustrated by the state in American legislation and the fact that during a hundred years only few acts regulating the forced labor and slavery-like status were adopted. This is highly disproportionate to the fantastic legal effort invested by the American legislator during the past hundred years (starting from the 1910 Man Act until the 2000 TVPA) dealing exclusively or in their larger part by sexual exploitation.[37]

The summary review of only few provisions of the TVPA provides the previously described image. It is shaped by the large difference between sex trafficking and all other forms of exploitation (involuntary servitude, peonage, debt bondage, slavery). These other forms, which are not defined by the Act as labour exploitation, but instead given a number of names as one may notice, substantially are equal to it. In this manner, the sexual exploitation exists and is punishable even when it is completely voluntary, and in case it was committed with use of force or coercion, it is considered as the "severe form of human trafficking". In order to mark the labour exploitation with the same label, it has to be committed by use of force or coercion, and in case there is none of these, it is not punishable at all.[38] The conclusion is that a person in the USA may voluntarily submit himself/herself to the exploitation of his/her labour (e.g. hard working conditions, low wage, etc.) with no responsibility of the exploiter, while the same situation involving sexual exploitation (e.g. prostitution) does not exist. The only possible deduction is that the American legislation recognizes the difference between the engagement in labour and engagement in prostitution. At the same time prostituting may not be considered as a form of work, otherwise the working engagement of a prostitute would be tolerable to a certain extent. The state of overstressing sexual to the detriment of labour exploitation is apparent in application of the law. The rough assessments are that the 2/3 of the federal criminal prosecutions are related to the human trafficking for the purpose of sexual exploitation, while the remaining is related to all other forms of exploitation.[39]

Another argument that may be invoked in order to illustrate the benevolent attitude toward labour and strict attitude towards sexual exploitation in American law is the period of time that was needed to ratify the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families**.** Thus, it took the United States 13 years to ratify the afore-mentioned international convention, while it took only 3 years to ratify the Protocol.This condition on the legislative level exists, although the evidence of the abuse of the rights of migrant workers in countries of their final destination, including the US, are well-documented[40] unlike the data reflecting the occurrence of human trafficking that is, to put it mildly, seriously questioned in science and is also mentioned in this essay.The reasons for such different attitudes toward two types of exploitation,which are very close, are best described in the following quote:

"The exploitation such as human trafficking would not be possible unless there is a far less recognizable and insidious exploitation of women and racial minorities which is happening in our society every day without consequences … No longer should the largest population of vulnerable victims in the United States, namely migrant workers on farms, be ignored just because including them into dialogue would necessarily require broad debate about race, ethnicity and failed immigration policy".[41]

35 James Oliver Horton & Lois E. Horton, *Slavery and the Making of America,* New York, 2005, p. 7.
36 Ibidem.
37 Rebecca L. Wharton, *New Paradigm for Human Trafficking: Shifting the Focus from Prostitution to Exploatation in the TVPA,* William and Mary Journal of Woman and the Law, No. 3, 2010, p. 763-764.
38 *The Trafficking Victim Protection Act* of 2000, 22 U.S.C. § 7102 (8) – (9).
39 Rebecca L. Wharton, ibidem, p. 775.
40 Janie Chuang, *Beyond A Snapshot: Preventing Human Traficking in the Global Economy,* Indiana Journal of Global Legal Studies, No. 1, 2006, p. 150.
41 Americans are mostly looking for Russian women who work at brothels and for which they are convinced that they are located somewhere around the corner, while not caring for Hispanic workers who cut their lawns, build their houses or reap their food: Cynthia L. Wolken, quoted, p. 409.

CONCLUSION

Starting from the easily visible and significant divergence in legal practice with the official public discourse in the United States, in which it sees itself as a champion of the fight against human trafficking, this essay has focused on finding the reasons for this condition. The gap existing between the real and declarative criminal-political approach to human trafficking in the United States can be observed both in the legislature and in the sphere of practical application of standards dealing with human trafficking.

This situation is attributed mainly to the position, which the United States have on routes of illegal migration as a state of final destination.The conclusion of this essay is that the real criminal and political interest of the United States as a state of final destination of passive subjects of trafficking is significantly different from the proclaimed and declarative interests ofthe fight against this criminal phenomenon and this applies to all states being in this position.Countries of final destination are interested in dealing with human trafficking, as well as all other forms of illegal migration primarily in passage or "transit" states of these migrations. They do it in a way so they keep to themselves the privilege to choose desirable migrants through legal migration, while for the "undesirable" as states of final destination happen to be "transit" states.Through international norms governing the fight against human trafficking or through sponsorship of technical, technological or legal assumptions for the fight against the same, they create a kind of global prohibitive regime of control over migration by which they perform one type of perfidious replacement of roles in which the transit states become the states of final destination for those who cannot meet the rigorous requirements of legal migratory flows.

Elsewhere described situation is the consequence of a specific relationship with various types of exploitation existing in the virtue ethics of the American Society. This society is built on the most severe forms of labour exploitation, and last of all the countries of Western civilization dealt with slavery. Sensibility of the American Society towards scenes of sexual exploitation is far not the same as indifference following the scenes of labour exploitation.It is therefore no wonder that different normative and practical treatment of human trafficking in the purpose of labour and in the purpose of sexual exploitation appears, being illustrated in the essay by using a title of one of the most famous literary works speaking precisely about the attitude of American Society toward work and work ethics in general -**The uncle Tom's cabin**. One probably does not need to make a remartk that this is contrary to the intent and letter of the international legal acts regulating human trafficking which do not make this distinction.

Equal treatment of both exploitations would mean a new social dialogue in the United States, for which, by all accounts, this society is neither ready nor able, because it would mean a completely new attitude toward the millions of exploited labour. This new approach would mean their full involvment in society, i.e. realocation from the margins to the center of social flows, recognition of their employment status and, consequently, adequate payment for their work. It is likely possible that the latter is the key reason for the persistence on the old and outdated attitude toward the exploited labour. Moreover, the US, and other Western societies, are inventing new forms of work engagements which make the position of the workforce even more unstable and insecure such as leased workers, temporary work, etc. which leads to enhanced exploitation of emigrant labour force.[42]

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THE ENFORCEMENT AND PROTECTION OF FREEDOM OF ASSEMBLY IN THE REPUBLIC OF SERBIA[1]

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Summary: The first part of the paper is dedicated to the presentation of the most significant aspects of the theoretical and international legal framework of the freedom of assembly. The second part concerns the analysis of the constitutional framework of the freedom of assembly in Serbia. It thereby draws a parallel with the constitutional solutions of 1990 and points to significant changes in the constitutionalisation of this right. The main part of the paper deals with the analysis of the legislative framework of the freedom of assembly. It specially examines the controversial and obsolete provisions of the Public Assembly Act, which need to be aligned with the Constitution and the European legal standards. This particularly concerns the provisions on: reporting a public assembly and its location; harmonisation of legislative and constitutional grounds for restricting the right to public assembly; introduction of effective judicial control (protection) over the restriction of the right to public assembly. Finally, following the analysis of the existing normative solutions, the paper provides guidelines for the future legislative framework for the enforcement and protection of the right to peaceful assembly.

Keywords: public assembly, freedom of assembly; reporting a public assembly; judicial control of public assemblies.

OUTLINES OF THEORETICAL AND INTERNATIONAL LEGAL FRAMEWORK OF FREEDOM OF ASSEMBLY

Freedom of assembly is an indispensable form of citizens' participation in the political and public life of modern democracies. It is one of the fundamental human rights of the first generation, constitutionalised as early as in the first French Constitution of 1791 as a democratic means of expressing the will of citizens directly against the state (Solyom, 2008: 36). Thus, it was initially perceived as a mechanism to control the state. Freedom of assembly includes the right of individuals to freely express, in association with others, their opinion on relevant issues in the political community. Undoubtedly, the right to demonstrate and protest - as history attests - represents relevant segment of the democratic core of modern states (Hamilton, 2007: 84).

Public assembly is a collective meeting or gathering convened for the purpose of expressing the collective attitude or opinion, in a silent or verbal manner, in an outdoor or indoor public place (Stojanović, 2007: 357). It should also be noted that the term 'public meeting' refers to various peaceful assemblies aimed at publicly expressing attitudes to defend certain ideas or achieve interests (Colliard, Leteron, 2005: 499). In this respect, freedom of assembly is inextricably linked to the freedom of expression, since each public assembly represents an expression of an attitude.

In order to further clarify the notion of freedom of assembly it should be noted that people assemble daily in various ways and on various occasions. However, not all situations which concern private life of individuals fall under the scope of freedom of assembly. In order for an assembly to enjoy special protection of the state, it needs to be directed towards public action (V. Dimitrijević et al., 2007: 250). Thus,

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the term 'assembly' means intentional and temporary presence of a number of individuals in a public place for the purpose of expressing common views (Mršević, 2007: 23). Therefore, 'peaceful assembly is a broad term and its existence is not dependent on the purpose of assembly, which may not necessarily be political, but can be based on other pursuits as well, such as social, religious, cultural, etc. Another factor of no significance for the existence of this concept is the form of assembly.' (Popović, 2012: 358). It can be practiced in the form of gathering, demonstrations, manifestations or protest processions. Regardless of the fact that it is an individual human right, freedom of assembly does not exclude the possibility for legal persons to initiate public meetings (Solyom, 2008: 39). In modern states, most of the public assemblies have been initiated exactly by political parties, various citizens' associations or non-governmental organisations.

The theory has crystallised three constitutive elements of the notion of public meeting, which include: 1) temporary character of its duration, i.e. its temporary nature (which distinguishes it from permanent forms of assembly, e.g. association); 2) organisation for the purpose of pursuing certain causes or goals (which distinguishes it from accidental (spontaneous) public assemblies); 3) specific purpose of assemblies is public expression of ideas or opinions in order to achieve certain interests. Some authors, as one feature of the notion of public assembly, state the appropriateness of the space designated for public meetings (Gardašević, 2011: 490-497). However, although the space constitutes an element of the exercise of the freedom of assembly, it is not its essential feature.

International documents guarantee freedom of peaceful assembly (Article 21 of the Covenant on Civil and Political Rights, Article 11 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, Article 15 of the American Convention on Human Rights). However, freedom of assembly is not an absolute right. The European Convention forbids any restrictions on the exercise of this right, except those which are prescribed by law and are necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others. The same act allows the imposition of lawful restrictions on the exercise of the freedom of assembly by members of armed forces, of the police or of the state administration. In order to restrict the freedom of peaceful assembly exercised by these civil categories it is not necessary to meet the requirements of necessity in a democratic society and of proportionality– the only requirement is that the restriction be provided for in the law. If the participants of an assembly start acting in a violent manner, such an assembly ceases to enjoy the protection under the European Convention (Popović, 2012: 363).

The previous case law of the European Court has specified the content of the freedom of assembly. Thus, 'freedom of peaceful assembly covers not only static meetings, but also public processions. It is, moreover, a freedom capable of being exercised not only by the individual participants of such demonstration, but also by those organising it, including a corporate body such as the applicant association'(*Christians against Racism and Fascism v. UK* (1980)).

The state has no discretion with respect to authorising assemblies (Popović, 2012: 358). Prohibition of assemblies on general or unspecified grounds would constitute violation of the freedom of assembly. Restrictions of this freedom can only be imposed within the frameworks of the positive legal regime of the state and the jurisprudence of the European Court. An illustrative example is the decision of the European Court in the case *Rassemblement juraissen* v. *Switzerland* (1979), which states that 'a general ban on demonstrations can only be justified if there is a real danger of their resulting in disorder which cannot be prevented by other less stringent measures. In this connection, the authority must also take into account the effect of a ban on processions which do not by themselves constitute a danger for the public order. Only if the disadvantage of such processions being caught by the ban is clearly outweighed by the security considerations justifying the issue of the ban, and if there is no possibility of avoiding such undesirable side effects of the ban by a narrow circumscription of its scope in terms of territorial application and duration, can the ban be regarded as being necessary within the meaning of Article 11(2) of the Convention'.

The American and British case law, which influenced judicial systems across Europe, developed a legal standard of clear and imminent danger *(clear and present danger test)* with a purpose to enable the assessment of all circumstances under which banning a public assembly would be justified (Smerdel, Sokol, 2007: 145). In this context, freedom of assembly can be banned only if upon the assessment of all circumstances of the case it would be possible to establish the existence of clear and imminent danger for other protected values and interests in the society and its necessity in a democratic society.

The obligation of the state with respect to freedom of assembly is twofold. On the one hand, there is a negative obligation to refrain from any action which would interfere with peaceful assemblies. In this context, another duty of the state is to establish a normative framework which could effectively protect the exercise of this freedom. 'Regulations of this nature should not represent a hidden obstacle to freedom of peaceful assembly, as it is protected by the European Convention' (*Oya Ataman v. Turkey* (2006)). 'States must not only safeguard the right to assemble peacefully, but also refrain from applying unreasonable indirect restrictions upon that right' (*Ibid*.). Moreover, in addition to nominal proclamation of the right to

peaceful assembly, the state must establish an effective mechanism for the protection of this human right. Thus, the European Court, in its judgment in *Baczkowski and Others v. Poland* (2007), concluded that 'in order for a remedy to be deemed effective, it must oblige relevant authority to decide in a way that its final decision is issued before the planned date of the assembly'. On the other hand, there is a positive obligation of the state which means that it has a duty to ensure the exercise of this right, without fear of physical violence by other persons. The realisation of the freedom of assembly must be accompanied by standard measures to maintain public order. According to the Court, 'genuine, effective freedom of peaceful assembly cannot be reduced to a mere duty on the part of the State not to interfere' (*Plattform "Ärzte für das Leben" v. Austria* (1988)). If necessary, the state should provide police protection, and in some instances even ban counter-demonstrations (V. Dimitrijević et al., 2007: 251). Another important viewpoint of the European Court is that establishing positive obligation on the state so that 'such a fear would (not) be liable to deter associations or other groups supporting common ideas or interests from openly expressing their opinions on highly controversial issues affecting the community' (*Plattform "Ärzte für das Leben" v. Austria* (1988)).

Approaches to regulating freedom of peaceful assembly vary across the states. Some states require only the advance notification of the assembly. Freedom of assembly is more restrictively regulated if prior permission is required to hold a peaceful assembly. However, the previous jurisprudence of the European Court has taken the position that subjecting public assemblies to the authorisation system does not in general contravene the guaranteed freedom of assembly, since the authorities have a duty to ensure the peaceful nature of the meeting (*Rassemblement jurassien v. Switzerland* (1979)).

A dilemma as to the state's authority to unconditionally disperse an assembly may arise in instances where positive legal regime provides for the notification obligation, and the citizens gather in a peaceful and spontaneous manner. In the European Court's view, such 'an unlawful situation does not justify an infringement of freedom of assembly' *('Oya Ataman v. Turkey* (2006)). Specifically, 'the Convention Contracting State is not authorised to use inappropriate measures to disperse a meeting, even in the absence of the prior notification of the meeting. The right to peaceful assembly outweighs the state authority to maintain public order. As long as the meeting has a peaceful character it cannot be dispersed by the use of force' (Popović, 2012: 361). Similarly, the constitutional jurisprudence of Germany provides that 'no notification is required in case of spontaneous demonstrations and that the absence of notification does not justify automatic entitlement to impose dispersals or bans' (*BVerfGE 69, 315* (Brokdorf)). 'Bans and dispersals can only be imposed for the protection of legal interests of equal value, with strict observance of the principle of proportionality, and only if it is evident from the circumstances that these legal interests are directly endangered' (*Ibid*.).

CONSTITUTIONAL FRAMEWORK OF THE FREEDOM OF ASSEMBLY IN SERBIA

The Constitution of Serbia of 2006 regulates freedom of assembly in an essentially different manner from that of 1990. Freedom of gathering and of other peaceful assemblies is guaranteed by both current and previous constitution, which means that citizens are free to assemble in public places; thus, public assemblies do not require authorisation - freedom of assembly is exercised directly under the Constitution and can be restricted only by law (on constitutional grounds). Like its predecessor, the current constitution states as forms of freedom of assembly the gatherings and other assemblies, and thus upholds the open nature of the term ('gathering, demonstrations and other forms of assembly', Article 54 (3)), which is generally the correct approach. By contrast, however, this constitution introduces two essential novelties with respect to the right to assemble freely. The first one concerns the advance notification of public assemblies, and the second one concerns modification, that is, the extension of the provisions pertaining to the grounds for restricting the freedom of assembly. Specifically, Article 54 of the Constitution states: Citizens may assemble freely (paragraph 1); Assembly held indoors shall not be subjected to permission or registering (paragraph 2); Gathering, demonstrations and other forms of assembly held outdoors shall be reported to the state body, in accordance with the law (paragraph 3); Freedom of assembly may be restricted by the law only if necessary to protect public health, morals, rights of others or the security of the Republic of Serbia (paragraph 4).

Thus, the notification obligation applies only to public assemblies held outdoors, while under the 1990 Constitution this obligation applied to all public assemblies (Article 43). Another issue that may arise in this respect is the flexibility of the borders of outdoor and indoor spaces, as some spaces can represent both. But these are factual rather than legal issues, which are considered separately in each particular case.

The second novelty concerns the extension of constitutional grounds on which freedom of assembly can be restricted. Specifically, two grounds remained unchanged. Freedom of assembly can thus still be restricted by law only if it is necessary to: 1) protect public health; and 2) protect morals. Two sets of grounds

under the 1990 Constitution which concern the safety of persons and property and the prevention of the obstruction of traffic were replaced by new grounds, since the current constitution provides that freedom of assembly can now be restricted 'for the purpose of protecting the rights of others or the security of the Republic of Serbia'. Thus, in fact, the range of grounds for restricting the freedom of assembly was extended, since the formulation 'rights of others' includes the right (of others) to safety of the person and property, and yet the safety of the person and property includes the safety (obstruction) of public traffic, and other rights which need to be explicitly stated in the law, in accordance with somewhat wider grounds referred to in Article 11 (2) of the European Convention and with the Constitution of Serbia.

LEGISLATIVE FRAMEWORK OF THE FREEDOM OF ASSEMBLY IN SERBIA

The Public Assembly Act of Serbia (*Official Gazette of SRS* Nos. 51/92, 53/93, 67/93, 48/94; *Official Gazette of FRY* No. 21/2001 – Decision of the Constitutional Court of FRY; *Official Gazette of RS* No. 101/2005 – other law) was adopted in 1992 and has not, in the meantime, been aligned with the Constitution. General constitutional deadline for bringing the Act in compliance with the highest legal act expired one year after the adoption of the Constitution, namely in 2007.

The Act in its Article 2 defines that public assembly of citizens refers to 'organising and holding a meeting or other type of gathering in a location adequate for that purpose (henceforth referred to as: public assembly)'. Thus, apart from meeting, assembly is to be understood to mean all other gatherings which can be convened in an appropriate location. In addition, the Act separately determines 'public procession', which, in line with legal provisions (Article 3 and Article 6 (4)), could be defined as a reported, and in the designated location held, uninterrupted motion of the participants of public assembly along a determined route, from its starting point to the point of its termination. The appropriate location is another element of the legal term public assembly (Article 2, paras 2-6). A location is deemed appropriate if it is accessible and suitable for gathering of persons whose number and identity is not established in advance. And, secondly, the location should be accessible and suitable in that it does not cause threat to health, public morals, or obstruction to traffic safety or safety of persons and property (constitutional grounds for restricting freedom of assembly under the 1990 Constitution). According to the Act, locations appropriate for public assemblies are designated by municipal or city regulations. In these locations, public assemblies can be held between 8 a.m. and 2 p.m. and between 6 p.m. and 11 p.m., with the maximum duration of three hours. The exception is the space in the vicinity of the National Parliament building at the time immediately before and during the sessions, where and when public meetings are not allowed.

As can be inferred, it is becoming more difficult for legal provisions concerning appropriate location to correspond with modern constitutional provisions on freedom of assembly. Namely, a number of issues are open in relation to future legal provisions on the location of public assemblies. It seems indisputable that it should remain an element of the legal concept of public assembly, but the forthcoming legal solutions need to strike a balance between the appropriate (suitable) location and the exercise of freedom of assembly. Obviously, rigid provisions concerning the appropriate location cause restriction of the substance of the right to peaceful assembly and avoid constitutional provisions on freedom of assembly. In contrast, overly liberal perception of the appropriate location can cause an unjustified standstill in the daily, 'ordinary life'. The appropriate location, thus, needs to be specified in relation to the rights of others. Additionally, the provision that the appropriate location should be designated by municipal or city regulations seems no longer sustainable, as restrictions of the rights and freedoms can be imposed solely by law, in accordance with the Constitution, and with regard to specific objective criteria, and not by an act of lower legal force (Article 20 of the Constitution). Restrictions pertaining to the space in front of the Parliament and the time before and during the sessions are somewhat in contradiction with the very idea of public gathering and the freedom of expression; however, it seems to be possible to keep them in place, since, by far stretched interpretation, they could be subsumed under the constitutional grounds specified as 'rights of others', or 'the security of the Republic of Serbia'. The new legal provisions on appropriate location could refer only to outdoor spaces, but, understandably, not just any. In this respect, the provisions concerning assemblies held in indoor spaces become superfluous.

The provisions of the Act which concern the reporting of public assemblies contravene the Constitution in that they provide that all forms of public assemblies are subject to notification obligation, while the Constitution provides for this obligation only for assemblies held in outdoor spaces. Since the one-year constitutional deadline for the alignment of the Act with the Constitution expired, it is now the Constitution that should be directly applicable in this area. However, the problem is that the police practice directly enforces the laws, and is thus allowed to rely on outdated legal provisions on the reporting of public assemblies. It

is praiseworthy, though, that, in general, the practice favours constitutional provisions on reporting and refrains from preventing the holding of unregistered public assemblies.

In regard to public assembly of foreigners, that is, the convening, holding and participation of foreigners in such an assembly, mere notification is not sufficient, but it requires prior authorisation by the police. Even in the 2006 Constitution, freedom of assembly is proclaimed in favour of citizens (Article 54(1)). Since the reasons of gathering of foreigners are not always of political nature, the 'Constitution should have, under the specific conditions, proclaimed that the right was to extend to foreigners as well' (Simović, Zekavica, 2012: 306). However, while the freedom of assembly of foreigners is not explicitly proclaimed in the Constitution, with new legal provisions it would be possible to establish a single (equal) legal regime of freedom of assembly, therefore, the system of notification, and not authorisation. This will primarily contribute to reduced administration in the exercise of the right to assemble, then to higher level of democratic freedoms, and the proclaimed freedom can nonetheless be restricted in accordance with the Act, on the occurrence of any of the above stated grounds. Therefore, the permission for a public assembly of foreigners is another superfluous provision.

Whilst the Constitution provides for a mandatory reporting of public assemblies held in outdoor spaces, future legal provisions should be more restrictive regarding this notification obligation –therefore, only some, and not all public assemblies held outdoors, subject to the number of participants and the purpose of gathering.

In regard to prohibition of public assemblies, our legal system recognises two separate regimes, established by the same law (Public Assembly Act) – temporary ban and 'permanent' ban on public assemblies. One regime is decided by the court, and the other by the police.

The provisions of Articles 9 and 10 of the Act regulate instances in which competent authority (police station in the territory where the assembly is held) can only temporarily ban the holding of a public assembly, including where the assembly is directed toward violent change of the constitutional order, violation of territorial integrity and autonomy, breach of human and civil rights and freedoms guaranteed by the Constitution, provoking and inciting national, racial and religious animosity and hatred. The police notify assembly organiser of the temporary ban not later than 12 hours before the scheduled beginning of the assembly. Within the same time period, the police submit a substantiated claim to the competent court to make a decision (final) on banning the assembly, for any of the above reasons. The competent court holds a hearing within 24 hours upon the receipt of the claim, summoning both the claimant and the organiser. The court can decide to deny the claim of the police and annul its decision on temporary ban, or to ban the public assembly. Either party is entitled to lodge an appeal against the first-instance decision within 24 hours of the receipt of the decision. Such appeal is lodged with the Supreme Court of Cassation, and the court's Council decides on the appeal within 24 hours upon its receipt. In this procedure relevant provisions of the Criminal Procedure Code are applied accordingly and subsidiarily.

We conclude that, in this respect, the legislator fully regulated the procedure for the court decision on the ban on public assemblies in that it provides for (by prescribing deadlines) urgency, observance of the principle of contradiction, judicial decision-making in two instances, whereby the appeal against the court's decision is decided by the highest court in Serbia. However, regulated in this manner, the procedure for the restriction of freedom of assembly is applicable only with respect to the above ('incriminating') reasons for temporary ban, which were 'derived (extracted) from the previous constitution', while they are not inconsistent with the existing constitutional reasons for the restriction (they could be subsumed under 'the security of the Republic of Serbia' or 'rights of others').

The same Act, in its Article 11, provides for special regime of banning public assemblies on the grounds of 'preventing obstruction of public transport, threat to health, public morals or safety of persons and property' (grounds incorporated from the 1990 Constitution). In this respect, it is not a temporary ban, nor does the Act prescribe the authority of the court to decide on the ban; instead, public assembly is 'permanently' banned by the competent authority, that is, a regional organisational unit of the police (and the Ministry of Interior, upon a complaint). The police have to notify the organisers of any ban on holding the public assembly at least 12 hours before the beginning of the assembly. The Act is scarce in this respect, containing only the provision that a complaint against the decision to ban an assembly cannot postpone its enforcement (Article 11(3)). This procedure, in which the ban is decided, is a special administrative procedure, and the decision banning public assembly has features of an administrative act. The issuance and the enforcement of the decision give rise to personal administrative-legal relationship (dispute).

However, due to such legislation (Article 11), the Constitutional Court only partially upheld the constitutional appeal of the Association 'Pride Parade Belgrade' *(Parada ponosa Beograd),* by finding that the decision of the MoI (Police station Savski Venac) violated the right to judicial protection under Article 22 (1) and the right to legal remedy under Article 36 (2) of the Constitution of Serbia (*Decision UŽ* 5284/2011 as of 18.4.2013). The Court based its decision to partially uphold the appeal on the reasons which reduce to the absence of effective protection of freedom of assembly, in fact, to the deficiencies in the very Act,

since the competent authority acted in accordance with the law lacking appropriate quality. As stated in the reasoning of the Decision, 'violations of the rights are a consequence of the manner in which the exercise of the freedom of assembly is regulated by the effective law'.

The provisions on termination of public assemblies, as well as those on the ban, should be revised and aligned with the Constitution. On the other side, the provision allowing the police to prevent the holding of a public assembly which was not previously reported (Article 14) should not exist in the future law. Specifically, the conditions for the exercise of this specific freedom, which is realised directly under the Constitution, cannot be determined by law in this way. Even now, not every unreported assembly is prevented by the police, but, instead, the police initiates the sanctioning procedure with the competent court, with respect to assemblies held outdoors.

CONCLUSION

The Public Assembly Act of the Republic of Serbia is inconsistent not only with the Constitution, but also with the achieved level of democratic development. However, its long-continued application and, more importantly, the practically unimpeded exercise of the freedom of assembly in Serbia, evident by the fact that the relevant case-law is almost non-existent, all attest to its significance. Nevertheless, the absence of the case law is hardly surprising, when one observes the fact of ineffectiveness of the envisaged judicial review procedure for decisions banning public assemblies. When the police ban a public assembly, it does so in a manner that is easier for them – on the existence of a legal ground for a ban. In such instances, the review provided under the 'general administrative legal system' is inefficient, due to general and long deadlines.

Undoubtedly, the Public Assembly Act should be innovated in several, important aspects of the enforcement and protection of freedom of assembly. It is necessary, in accordance with constitutional provisions and European legal standards, to modernise the provisions on the types of public assemblies, and on reporting of assemblies by types; to regulate, in a way to reflect modern developments, the appropriate location for holding public assemblies; and, most importantly, to consolidate the two current special regimes (temporary and permanent) of the ban on public assembly into a single regime.

Explicit emphasis should be placed on the necessity to modernise the provisions on reporting the holding of public assemblies. First of all, the Constitution introduced a new provision that public assemblies should be reported only when held in outdoor spaces, which is another issue that should be included in the law and the current obsolete provision on the notification obligation, which relates to all forms of assemblies (even in the indoor spaces), eliminated. Next, the grounds for the restriction of public assemblies, as specified in the Act and in the Constitution, obviously contradict each other. Therefore, the legal grounds for the restriction of freedom of assembly need to be harmonised with those of the Constitution. Finally, a special, and, it can be said, the most serious problem is the fact of the lack of real legal presumptions for the judicial protection against the restriction of freedom of assembly, which can cause reducing of this freedom in practice to *nudum ius*. Specifically, the established judicial review procedure for decisions imposing 'temporary ban' on public assemblies is not disputable in general. Of much greater concern, however, is the omission from the Act of the special provisions on the judicial review of administrative dispute decisions banning the holding of public assemblies, instead of which 'general administrative legal regime' applies. Thus, since the Act fails to provide for a special judicial review procedure, special (shorter) deadlines for lodging the appeal and for acting on the appeal, as well as the deadline for filing a claim initiating the administrative dispute, and to determine the administrative judicial procedure as urgent, then the general deadlines apply from the Act on General Administrative Procedure (GAP) and the Act on Administrative Disputes (AD) (general deadline for lodging an appeal under the GAP is 15 days, and for the delivery of the decision on the appeal another 30 days, that is, 60 days from the date of lodging of the appeal). It is only then that the judicial review of the administrative dispute decision banning public assembly can follow, which is, if general deadlines from the AD apply, rather meaningless, as it comes long after the time planned for the holding of the public assembly. For this reason, it is necessary to establish *de lege ferenda* the effective judicial review system for public assemblies, by setting, under a special legal regime, short deadlines for the judicial review (administrative and court's) of decisions restricting the freedom of assembly, in which the compliance (and appropriateness) of decisions should be assessed before the time scheduled for the assembly.

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CASE-LAW OF THE EUROPEAN COURT OF HUMAN RIGHTS RELATING TO TRAFFICKING IN HUMAN BEINGS

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Abstract: The paper analyzes four judgments of the European Court of Human Rights which, either directly or indirectly, deal with situations that may be qualified as trafficking in human beings. As opposed to the early judgment in *Siliadin v. France* where the Court ignored the applicant's claim that she had been subjected to trafficking and instead took the position that the applicant was held in servitude and subjected to forced labour within the meaning of Article 4 of the European Convention on Human Rights and Fundamental Freedoms, in *Rantsev v. Cyprus and Russia* the Court explicitly concluded that circumstances of the case attributed to human trafficking which fell within the ambit of Article 4. The Court considered that the absence of an express reference to trafficking in the Convention did not constitute an obstacle to qualify it as slavery, servitude or forced or compulsory labour. In addition to criticizing the Court's judgment in *Rantsev v. Cyprus and Russia* for not providing clear legal distinctions between the concepts of slavery and human trafficking, the paper also focuses on the Court's most valuable contribution as regards human trafficking cases – identification of high standards in relation to States' positive obligations. The authors also analyze two recent cases delivered by the Court in 2012 – case of *M. and Others v. Italy and Bulgaria* and case of *C.N. v. The United Kingdom*. Even though the facts of these two cases included the elements of human trafficking, the Court did not qualify these situations as trafficking. It is argued that the Court's case-law does not offer clear guidance for qualifying human trafficking as slavery, nor does it set precise standards as regards the necessary link between the provisions of Article 4 of the Convention with human trafficking and various types of exploitation enumerated in definitions of trafficking in human beings contained in relevant international treaties.

Key words: Human Trafficking, European Court of Human Rights, Slavery, Servitude, Positive Obligations.

INTRODUCTION

The problem of human trafficking has long been present in the international community but it is only recently that an organized action against this detrimental phenomenon has occurred. Several legal instruments aimed at preventing human trafficking were adopted at the universal level. In addition, at regional level, the Convention on Action against Trafficking in Human Beings was adopted within Council of Europe in 2005 and it came into force in 2008. Furthermore, the European Court of Human Rights has had only few cases that dealt with issues which are now recognized as trafficking. This paper analyzes the judgments of the European Court delivered in cases of violation of Article 4 of the European Convention on Human Rights and Fundamental Freedoms.

AN EARLY STAGE - CASE OF SILIAD IN V. FRANCE

A Togo national brought an application against France in 2001 for the alleged violation of Article 4 of the European Convention, claiming that French authorities failed to protect her from being held in slavery and subjected to forced labour. As the Chamber found that the application was admissible, it decided to initiate proceedings on the merits.[3] The applicant came to Paris in the beginning of 1994 when she was 15 years old, accompanied by a woman who was also of Togo nationality. Her arrival was agreed with her

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3 This paper is the result of the research conducted within the project "Identity Transformation of Serbia" ("Identitetski preobražaj Srbije") supported by the University of Belgrade Faculty of Law. ECtHR, Case of Siliadin v. France, Application No. 73316/01, Judgment of 26 July 2005, p. 2.

father and she was supposed to attend school in France. It was arranged that the applicant would provide housework services to her until she paid for air ticket costs and that she would subsequently assist the applicant to find the job. However, she was lent to another French family, forced to stay and work for them without any salary and her passport was taken away from her. The applicant did the housework all day long, prepared meals and looked after the children. In 1998 the police raided the apartment and found that she had been held in slavery and exploited for providing domestic services for three years.

There is a widespread phenomenon of labour exploitation in France, especially women of African origin.[4] Slavery is prohibited by numerous international documents.[5] The same applies to Article 4 of the European Convention on Human Rights.[6] Council of Europe has long worked on the Convention on Action against Trafficking in Human Beings and it was finally signed in 2005 and entered into force in 2008. Today, this Convention has 42 members and it quickly became a generally accepted act in this area. Human trafficking is defined in Article 4 in the following manner: "Trafficking in human beings shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs." Furthermore, all States are required to take measures to prevent human trafficking and to include appropriate criminal offences in their national legal framework.

The *Siliadin* judgment invokes relevant international documents that relate to both slavery and forced labour. The Forced Labour Convention is one of the mentioned documents.[7] Forced labour is referred to as "all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily".[8] Other documents include the Slavery Convention, signed in Geneva on 25 September 1926, which came into force on 9 March 1927, Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery[9] and International Convention on the Rights of the Child, dated 20 November 1989.[10] The latter is particularly important for the case at hand since it guarantees the protection of children from forced labour and any form of slavery and the applicant was a minor during most of the exploitation period. In addition, the Court concluded that exhaustion of local remedies should include not only criminal protection of the victim, but also the ability to achieve full compensation for damages suffered from forced labour through civil law proceedings: "criminal proceedings did not represent the only effective remedy in cases of this kind, but civil proceedings, making it possible to obtain redress for the damage suffered must in principle be open to children who have been subjected to ill treatment".[11] The Court recalled its previous case-law.[12] It also stressed the obligation incumbent upon France, which it has according to the provisions of the Convention on the Prevention of Forced Labour adopted by the International Labour Organization: "The competent authority shall not impose or permit the imposition of forced or compulsory labour for the benefit of private individuals, companies or associations."[13]

In its judgment, the Court further proves the existence of the obligation of France to take all necessary measures in order to prevent any exploitation of children, including labour exploitation. Such an obliga-

4 This is confirmed by the following report: "In France, since its foundation in 1994, the Committee against Modern Slavery (CCEM) has taken up the cases of over 200 domestic slavery victims, mostly originating from West Africa (Ivory Coast, Togo, Benin) but also from Madagascar, Morocco, India, Sri Lanka and the Philippines. The majority of victims were women (95%). One-third arrived in France before they came of age and most of them suffered physical violence or sexual abuse. The employers mostly came from West Africa or the Middle East. 20% are French nationals. 20% enjoyed immunity from prosecution, among them one diplomat from Italy and five French diplomats in post abroad. Victims working for diplomats mainly come from India, Indonesia, the Philippines and Sri Lanka. It has been estimated that there are several thousand victims of domestic slavery in France." Report by the Committee on Equal Opportunities for Women and Men, dated 17 May 2001 (extract).

5 Milisavljević, B., „Aktivnosti Ujedinjenih nacija u pogledu sprečavanja trgovine ljudima", *Pravni život,* 2011, pp. 219-233.

6 Article 4: Prohibition of slavery and forced labour: 1.No one shall be held in slavery or servitude. 2. No one shall be required to perform forced or compulsory labour. 3.For the purpose of this article the term "forced or compulsory labour" shall not include: a. any work required to be done in the ordinary course of detention imposed according to the provisions of Article 5 of this Convention or during conditional release from such detention; b. any service of a military character or, in case of conscientious objectors in countries where they are recognised, service exacted instead of compulsory military service; c. any service exacted in case of an emergency or calamity threatening the life or well-being of the community; d. any work or service which forms part of normal civic obligations.

7 Adopted on 28 June 1930 by the General Conference of the International Labour Organisation (ratified by France on 24 June 1937).

8 Article 2 of the Forced Labour Convention.

9 Adopted on 30 April 1956 and came into force in respect of France on 26 May 1964.

10 Came into force in respect of France on 6 September 1990.

11 ECtHR, Case of Siliadin v. France, Application No. 73316/01, Judgment of 26 July 2005, p. 24.

12 ECtHR, Case of Calvelli and Ciglio v. Italy ([GC], no. 32967/96, ECHR 2002-I), ECtHR, Case of Z and Others v. the United Kingdom ([GC], no. 29392/95, § 109, ECHR 2001-V).

13 Article 4 § 1 of the Forced Labour Convention, adopted by the International Labour Organisation (ILO) on 28 June 1930 and ratified by France on 24 June 1937.

tion arises from a number of conventions which are in force in respect of France.[14] The Convention on the Rights of the Child specifically provides for protection of children from any possible abuse: "States Parties recognise the right of the child to be protected from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral or social development."[15]

In the present case, the problem encountered by the Court related to the fact that Convention on Action against Trafficking in Human Beings was not yet in force. Therefore, certain cases that are now indisputably considered as human trafficking could not have been recognized as such. This refers to the status of slavery, servitude, forced labour, transfer of persons and similar practices. Had the Human Trafficking Convention entered into force, the Court could have been in a position to qualify applicant's situation as human trafficking. The Court concluded that the applicant was held in the position of forced labour against her will since she worked for a longer period of time without receiving money for her work, whereas her documents were seized which made it impossible for her to address any institution for help due to her unregulated residence in the French territory. The Court further stated that her position did not fit into the classic definitions of slavery and servitude since such powers were not performed over her by the persons in whose house she used to be held. It also came to a conclusion that the applicant was held in a position of subordination since she had no freedom of movement, no freedom to receive education, to socialize and she had to work up to fifteen hours every day. In addition, the applicant, who was afraid of being arrested by the police, was not in any event permitted to leave the house, except to take the children to their classes and various activities. Thus, she had no freedom of movement and no free time.[16] The Court also found that the applicant failed to be fully and adequately protected from the position in which she was held and that, therefore, positive obligation of France under Article 4 of the European Convention on Human Rights had been violated. The Court took the position that in those circumstances, "the criminal-law legislation in force at the material time did not afford the applicant, a minor, practical and effective protection against the actions of which she was a victim".[17]

RANTSEV V. CYPRUS AND RUSSIA – THE FIRST HUMAN TRAFFICKING CASE

The applicant filed the Application against Cyprus and Russia in 2004. The applicant complained under Articles 2, 3, 4, 5 and 8 of the Convention about the lack of sufficient investigation into the circumstances of the death of his daughter, the lack of adequate protection of his daughter by the Cypriot police while she was still alive and the failure of the Cypriot authorities to take steps to punish those responsible for his daughter's death and ill-treatment. He also complained under Articles 2 and 4 about the failure of the Russian authorities to investigate his daughter's alleged trafficking and subsequent death and to take steps to protect her from the risk of trafficking. Finally, he complained under Article 6 of the Convention about the inquest proceedings and an alleged lack of access to court in Cyprus.

The applicant's daughter came to Cyprus in 2001 in order to act in a cabaret. Her residence status in Cyprus was unresolved and she was detained by police for questioning. She was soon released and she returned to the cabaret where she worked. After a short period of time, she was found dead near the apartment in which she resided.

The Court recalled certain documents in the context of human trafficking in Cyprus. These included the reports of the Council of Europe's Commissioner for Human Rights and the report of the Cypriot Ombudsman which both highlight the acute nature of the problem in Cyprus, where it is widely acknowledged that trafficking and sexual exploitation of cabaret artistes is of particular concern.[18]

As for Russia's responsibility for failing to prevent actions that are associated with human trafficking, the Court noted that Russia could not have exercised its jurisdiction outside its territory, namely in the territory of Cyprus, because the territorial jurisdiction is limited. In this regard, the Court referred to the case of *Banković and others v. Belgium*.[19] It further questioned "the extent to which Russia could have taken

14 Article 1 of the Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery, adopted on 30 April 1956, which came into force in respect of France on 26 May 1964.
15 Article 32, International Convention on the Rights of the Child of 20 November 1989, which came into force in respect of France on 6 September 1990.
16 ECtHR, Case of Siliadin v. France, Application No. 73316/01, Judgment of 26 July 2005, p. 33, para. 175.
17 *Ibid*., p. 36, para. 148.
18 ECtHR, Case of Rantsev v. Cyprus and Russia, Application No. 25965/04, Judgment of 7 January 2010, p.46.
19 ECtHR, Case of Banković and Others v. Belgium and 16 Other Contracting States (dec.) [GC], no. 52207/99, §§ 59-61, ECHR 2001-XII.

steps within the limits of its own territorial sovereignty to protect the applicant's daughter from trafficking, to investigate allegations of trafficking and to investigate the circumstances leading to her death".[20]

In addition, the Court considered whether both Russia and Cyprus took all the appropriate measures in order to enable the respect of the State's general duty under Article 1 of the Convention to "secure to everyone within [its] jurisdiction the rights and freedoms defined in [the] Convention",[21] and, particularly, Article 2 which refers to the right to life. It closely examined whether the acts of organs of respondent States were in accordance with the Court's case-law relating to lethal consequences.[22]

The *Rantsev* case is interesting due to the fact that the issue of State responsibility was specifically addressed. Of importance here are the standards that apply to attribution which are to be located in the work of the International Law Commission,[23] doctrine[24] and jurisprudence.[25] However, for the purpose of this paper, special attention needs to be accorded to the potential violation of Article 4 of the Convention relating to slavery, servitude and forced or compulsory labour. In the case at hand "there was nothing in the investigation file, nor was there any other evidence, to indicate that Ms Rantseva was held in slavery or servitude or was required to perform forced or compulsory labour."[26]

The Court here correctly concluded that Article 4 of the Convention did not distinguish between several concepts: "The Court recalls that Article 4 makes no mention of trafficking, proscribing 'slavery', 'servitude' and 'forced and compulsory labour'".[27] Therefore, of particular importance is the Court's jurisprudence relating to cases which gave content to the terms listed above. The Court dealt with the meaning of slavery in the case of *Siliadin v. France*.[28] It interpreted the concept of subordination in the case of *Van Droogenbroeck v. Belgium*.[29] It also had the opportunity to discuss the issue of forced labour.[30] In its *Siliadin* judgment, the Court confirmed that Article 4 entailed a specific positive obligation on member States to penalize and prosecute effectively any act aimed at maintaining a person in a situation of slavery, servitude or forced or compulsory labour.[31] The Court observes that the Palermo Protocol and the Anti-Trafficking Convention refer to the need for a comprehensive approach to combat trafficking which includes the measures to prevent trafficking and to protect victims, in addition to the measures to punish traffickers. In the case at hand, the Court concluded that Cyprus adopted relevant legislation regarding the prevention of trafficking in accordance with positive obligations under the Palermo Protocol on the Prevention of Transnational Organized Crime. However, despite the adopted legal acts, the persons who were under suspicion of being victims of human trafficking often entered the territory of Cyprus, which was also pointed out by the High Representative of the Council of Europe for Human Rights in his 2003 report.[32] Based on the findings in the *Rantsev* case, the Court concluded that "the regime of artiste visas in Cyprus did not afford to Ms Rantseva practical and effective protection against trafficking and exploitation" and that there had accordingly been a violation of Article 4 in this regard.[33] The obvious failure of Cypriot authorities related to the victim's careless release from custody despite her illegal residence in Cyprus.[34]

As regards the action undertaken by the Cypriot police, the Court came to the following conclusion: "First, they failed to make immediate further inquiries into whether Ms Rantseva had been trafficked. Sec-

20 ECtHR, Case of Rantsev v. Cyprus and Russia, Application No. 25965/04, Judgment of 7 January 2010, p. 48.
21 *Ibid*., p. 54.
22 ECtHR, Case of McCann and Others v. the United Kingdom, 27 September 1995, § 161, Series A no. 324; ECtHR, Case of Kaya v. Turkey, 19 February 1998, § 86, Reports 1998-I.
23 Draft articles on Responsibility of States for Internationally Wrongful Acts, with commentaries, 2001.
24 Annacker, C., „Part Two of the ILC's Draft Articles on Stare Responsibility", *German Yearbook of International Law*, 37/1994, p. 206; Aust, H.P., "Through the Prism of Diversity: the Articles on State Responsibility in the Light of the ILC Fragmentation Report", *German Yearbook of International Law*, 49/2006, p. 165; Crawford, J., *The lLC Articles on State Responsibility*, Cambridge, 2002, Crawford, J., "Revising the Draft Articles on Stare Responsibility", *European Journal of International Law*, 10/1999, p. 435; Milisavljević, B., "Pripisivost kao uslov odgovornosti države u međunarodnom pravu", *Anali Pravnog fakulteta Univerziteta u Beogradu*, 2/2012, pp. 185 – 207.
25 Phosphates in Morocco, Judgment, 1938, P.C.I.J., Series A/B, No. 74, p. 10, at p. 28. See also S.S. "Wimbledon", 1923, P.C.I.J., Series A, No. 1, p. 15, at p. 30; Factory at Chorzów, Jurisdiction, Judgment No. 8, 1927, P.C.I.J., Series A, No. 9, p. 21; and *ibid*., Merits, Judgment No. 13, 1928, P.C.I.J., Series A, No. 17, p. 29, Corfu Channel, Merits, Judgment, I.C.J. Reports 1949, p. 4, at p. 23, Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America), Merits, Judgment, *I.C.J. Reports* 1986, p. 14, at p. 142, para. 283, and p. 149, para. 292, Gabcíkovo-Nagymaros Project, at p. 38, para. 47, Reparation for Injuries Suffered in the Service of the United Nations, Advisory Opinion, *I.C.J. Reports* 1949, p. 174, at p. 184, Interpretation of Peace Treaties with Bulgaria, Hungary and Romania, Second Phase, Advisory Opinion, *I.C.J. Reports* 1950, p. 221.
26 ECtHR, Case of Rantsev v. Cyprus and Russia, Application No. 25965/04, Judgment of 7 January 2010, p. 62.
27 *Ibid*., p. 66.
28 ECtHR, Case of Siliadin v. France, Application No. 73316/01, Judgment of 26 July 2005, p. 33, para. 122.
29 ECtHR, Case of Van Droogenbroeck v. Belgium, Commission's report of 9 July 1980, paras. 78-80, Series B No. 44.
30 ECtHR, Case of *Van der Mussele v. Belgium*, 23 November 1983, p. 34, Series A no. 70.
31 ECtHR, Case of Rantsev v. Cyprus and Russia, Application No. 25965/04, Judgment of 7 January 2010, p.69.
32 The Commissioner expressed regret that, despite concerns raised in previous reports and the Government's commitment to abolish it, the artiste work permit was still in place.
33 ECtHR, Case of Rantsev v. Cyprus and Russia, Application No. 25965/04, Judgment of 7 January 2010, p.72.
34 The Court emphasized that "Ms Rantseva was taken by her employer to Limassol police station. Upon arrival at the police station, M.A. told the police that Ms Rantseva was a Russian national and was employed as a cabaret artiste. Further, he explained that she had only recently arrived in Cyprus, had left her employment without warning and had also moved out of the accommodation provided to her. He handed to them her passport and other documents." *Ibid*., p. 73.

ond, they did not release her but decided to confide her to the custody of M.A. Third, no attempt was made to comply with the provisions of Law 3(1) of 2000 and to take any of the measures in section 7 of that law to protect her."[35] The Court accordingly concluded that "these deficiencies, in circumstances which gave rise to a credible suspicion that Ms Rantseva might have been trafficked or exploited, resulted in a failure by the Cypriot authorities to take measures to protect her".[36] There had accordingly been a violation of Article 4 in this respect also.

As for Russia's responsibility for the violation of Article 4, the Court noted that the fact that a person was not located in its territory did not automatically mean that Russia could not be held liable. Even though it is known that Russia encounters a problem of young women departing from Russia in order to engage in prostitution, in the case at hand the Court did not consider that "the circumstances of the case were such as to give rise to a positive obligation on the part of the Russian authorities to take operational measures to protect Ms Rantseva."[37]

On the other hand, the Court found that Russia was responsible for not having undertaken any investigation into the death of its national, although such an obligation existed according to international documents that are in force in respect of Russia, i.e. the Palermo Protocol. This conclusion of the Court lays outside the scope of its competence since it has previously established that Russia did not violate Article 4 of the Convention, which, in turn, represented the subject-matter of the proceedings in *Rantsev*. The Court may take into account all relevant international legal acts, especially those that are in force as regards Russia in this particular case. However, it cannot determine its responsibility for any possible violation of provisions of other legal sources which are not within the jurisdiction of the Court.

THE COURT'S RECENT CASE LAW – HUMAN TRAFFICKING OR NOT?

The second part of the paper will focus on two recent judgments delivered by the Court in 2012. Even though certain elements of trafficking were recognized by both the Court and the parties to these cases, the Court did not qualify applicants' situations as such. Of particular interest is the case of *C.N. v. The United Kingdom*[38] *which is, as regards facts, strikingly similar to Siliadin v. France*. Two early judgments in cases *Siliadin v. France* and *Rantsev v. Cyprus and Russia* will thus further be analyzed through their comparison with the conclusions reached and approach used by the Court in *M. and Others v. Italy and Bulgaria*[39] *and C.N. v. The United Kingdom*.

The analysis will focus on two aspects.

The first one seems to be of conceptual nature and may be reduced to current discussions advanced by the legal doctrine. As opposed to writers who define human trafficking as "a modern form of slavery",[40] there are voices that criticize such an approach by claiming that slavery actually represents just one form of exploitation as one of the three elements required by the definition of human trafficking.[41] Does the Court support the first or the second line of reasoning? Is it required to qualify applicant's situation as one of the three forms contained in Article 4 of the European Convention on Human Rights and Fundamental Freedoms? Is there consistency in the Court's understanding of the relationship between human trafficking on the one hand and slavery, servitude and forced labour on the other?

35 *Ibid*. p. 74.
36 *Ibid*.
37 *Ibid*., p. 75.
38 ECtHR, Case of C.N. v. The United Kingdom, Application No. 4239/08, Judgment of 13 November 2012.
39 ECtHR, Case of M. and Others v. Italy and Bulgaria, Application No. 40020/03, Judgment of 31 July 2012.
40 Sun, P., Xie, Y., "Human Trafficking and Sex Slavery in the Modern World", *Albany Government Law Review*, 7/2014, p. 93. See also Sembacher, A., "The Council of Europe Convention on Action Against Trafficking in Human Beings", *Tulane Journal of International and Comparative Law*, 14/2005-2006, p. 436; Pati, R., "States' Positive Obligations with Respect to Human Trafficking: The European Court of Human Rights Breaks New Ground in Rantsev v. Cyprus and Russia", *Boston University International Law Journal*, 29/2011, p. 82; Scarpa, S., *Trafficking in Human Beings: Modern Slavery*, Oxford, Oxford University Press, 2008, p. 7; Konrad, H., "Combating Trafficking in Human Beings", *Refugee Survey Quarterly*, 25/2006, p. 52; Gallagher, A., "Human Rights and Human Trafficking: Quagmire or Firm Ground? A Response to James Hathaway", *Virginia Journal of International Law*, 49(4)/2009, pp. 811-814.
41 Allain, J., "Rantsev v. Cyprus and Russia: The European Court of Human Rights and Trafficking as Slavery", *Human Rights Law Review*, 10(3)/2010, pp. 551-552. Stoyanova offers an explanation for such a line of reasoning by differentiating between criminal and human rights law: Stoyanova, V., "Article 4 of the ECHR and the Obligation of Criminalising Slavery, Servitude, Forced Labour and Human Trafficking", *Cambridge Journal of International and Comparative Law*, 3/2014, p. 415. Butterly is also aware of these conceptual issues that accompany the current international law on human trafficking. Although he seems to interpret human trafficking as the second group of authors does, he believes that the solution is not appropriate and suggests that "trafficking should be seen as an element of exploitation, rather than exploitation as an element of trafficking as is currently the case". Butterly, L., "Trafficking v. Smuggling; Coercion v. Consent: Conceptual Problems with the Transnational Anti-Trafficking Regime", *UK Law Student Review*, 2/2014, p. 47.

The second aspect concerns the Court's interpretation of Article 4 from the perspective of State's positive obligations. Were the high standards established by the Court in *Rantsev v. Cyprus* followed in two recent cases dealing with State's duties within the ambit of Article 4 despite the fact that the Court did not qualify applicants' situations as cases of human trafficking?

CASE OF C.N. V. THE UNITED KINGDOM – SHOULD THE COURT HAVE REASONED DIFFERENTLY AFTER RANTSEV?

The facts of the case of *C.N. v. The United Kingdom* are very similar to those of *Siliadin v. France*.[42] Since the latter judgment was delivered in 2005, which is prior to the entry into force of the Council of Europe Convention on Action against Trafficking in Human Beings,[43] the Court was not criticized for not having considered human trafficking despite the fact that the applicant included the allegations of human trafficking and the opinions expressed by some authors that "it is arguable that the applicant had been trafficked".[44] However, after taking the position in *Rantsev v. Cyprus and Russia* that human trafficking falls within the ambit of Article 4 of the European Convention, one may ask themselves if now there is ground for qualifying situations of Siliadin and C.N. as human trafficking.

It might come as a surprise that in *C.N. v. The United Kingdom* the Court chose to depart from both the approach used in *Rantsev* and the approach taken in *Siliadin*. As opposed to *Siliadin*, in *C.N.,* the Court did not engage in a process of qualification of the applicant's situation as amounting to one of the three forms included in Article 4 of the European Convention. The Court simply stated that applicant's complaints "did give rise to a credible suspicion that she had been held in conditions of domestic servitude",[45] without any consideration of the question whether the applicant was actually held in servitude. Consequently, it is not clear why the Court considered that Siliadin's situation did qualify as both servitude and forced labour, whereas C.N.'s situation amounted to domestic servitude only.[46] On the other hand, the Court's effort in *Rantsev v. Cyprus and Russia* to include human trafficking within Article 4 of the European Convention, obviously did not amount to an automatic qualification of such situations as trafficking in human beings. Even though in *Rantsev* the Court considered that "trafficking in human beings, by its very nature and aim of exploitation, is based on the exercise of powers attaching to the right of ownership",[47] thus implying the often cited link between human trafficking and slavery, in *C.N. v. The United Kingdom* the Court considered domestic servitude as a separate offence thus taking the position which stands closer to those authors that criticized the *Rantsev* decision for having "further muddied the waters of the normative elements of human exploitation" as well as "the jurisprudence of Article 4".[48]

In addition, there is the question if C.N.'s situation could have been qualified as human trafficking for the purposes of domestic servitude and what is the reason of the Court to ignore this possibility and instead

42 The applicant came to the UK from Uganda in order to work and continue her education. Her relative S. assisted her in acquiring false passport and a visa. However, upon arrival to the UK, the passport was taken from her by S. S. introduced the applicant to M. who ran a business of providing carers to elderly people. The applicant started to work for Mr. and Mrs. K, an Iraqi couple. Mr. K. suffered from Parkinson's disease and the applicant was required to feed him, clean him and change his clothes. She was on-call permanently and was allowed to leave Mr. and Mrs. K. for a couple of hours on one Sunday every month. However, on those rare occasions of free time, she was collected by M. and driven to S.'s house. She was constantly reminded by them that it was not safe for her to walk the streets alone and that she should not talk to anyone. The applicant also claimed that the Iraqi couple paid for her services directly to M. and that a part of the money was further transferred to S. The applicant herself received nothing. On one occasion, while she resided in S.'s house since Mr. and Mrs. K. were on a trip to Egypt, the applicant left the house, went to a local bank and asked someone to call the police. Before the police came, she collapsed and was taken to the hospital where she was diagnosed as HIV positive. After being discharged from the hospital, the applicant was accommodated by the local authority and applied for asylum. Her application was refused. Her solicitor asked the police to investigate her case. The investigation was conducted by a division specialized in human trafficking. However, the police found that there was no evidence of trafficking for domestic servitude. The applicant's solicitor then demanded that the police investigated other offences, including slavery and forced labour. The police noted that the case did not meet the requirements of human trafficking as per the UK legislation and that there was no legislation in relation to sole and specific allegations of domestic servitude where trafficking was not a factor.

43 For information relating to the Convention, its entry into force and relevant parts of the accompanying Explanatory Report, see Krstić, I., Čučković, B., *Trgovina ljudima – međunarodni i domaći pravni standardi*, Zajednički program UNHCR, UNODC i IOM za borbu protiv trgovine ljudima u Srbiji, Beograd, 2012, pp. 85-111.

44 Piotrowicz, R., "States' Obligations under Human Rights Law towards Victims of Trafficking in Human Beings: Positive Developments in Positive Obligations", *International Journal of Refugee Law*, 24/2, p. 190. Shaver and Zwaak also qualify *Siliadin* case as an offence of human trafficking: Shaver, D., Zwaak, L., "Rantsev v. Cyprus and Russia: Procedural Obligations of Third Party Countries in Human Trafficking Under Article 4 ECHR", *Inter-American and European Human Rights Journal*, 4/2011, p. 124.

45 ECtHR, Case of C.N. v. The United Kingdom, Application No. 4239/08, Judgment of 13 November 2012, para. 72.

46 In *Siliadin v. France* the Court explained its position on forced labour by noting that the applicant "was an adolescent girl in a foreign land, unlawfully present on French territory and in fear of arrest by the police" and that "as to whether she performed this work of her own will, it is clear from the facts of the case that it cannot seriously be maintained that she did". ECtHR, Case of Siliadin v. France, Application No. 73316/01, Judgment of 26 July 2005, paras. 118-119. Except for the adolescence argument, the rest also applies to the situation of C.N.

47 ECtHR, Case of Rantsev v. Cyprus and Russia, Application No. 25965/04, Judgment of 7 January 2010, para. 281.

48 Allain, J., *op. cit*., p. 557.

focus on domestic servitude outside the context of human trafficking? It appears that there exists solid ground for claiming that C.N.'s situation can be qualified as human trafficking. The fact that investigation was conducted within the UK by the division specialized in human trafficking, offers an indication of the existence of elements of human trafficking. However, the UK police division concluded that C.N.'s situation did not "constitute an offence of trafficking people for the purposes of exploitation contrary to the Asylum and Immigration Act 2004".[49] It is surprising that, after positions taken in *Rantsev v. Cyprus and Russia*, the European Court of Human Rights took this conclusion for granted. Especially if one takes into consideration the reason for which the British police found that there was no human trafficking offence – the specific definition of human trafficking included in the 2004 Asylum and Immigration Act which reduces human trafficking to arranging or facilitating the arrival, travel to or departure from the UK of an individual for the purpose of exploitation.[50] This focus on the external/transnational element is obviously not consistent with the definition of human trafficking contained in both the Palermo Protocol and the Council of Europe Anti-Trafficking Convention. The Court seems to be forgetting that it held in *Rantsev v. Cyprus and Russia* that, for the purposes of Article 4 of the European Convention, human trafficking should be understood with reference to Article 3(a) of the Palermo Protocol and Article 4(a) of the Anti-Trafficking Convention.[51] In fact, it can be argued that all of the three elements required by the two international treaties were present as regards C.N. Her vulnerable position was taken advantage of by her relative S. who, surprisingly, had not been interviewed by the police. This, along with the fact that her passport had been taken from her upon arrival to the UK, that S. had not kept her wages for her as agreed and that she was threatened with denunciation to immigration authorities, was emphasized by the Court itself. However, the Court did not even consider the possibility of qualifying her situation as human trafficking and instead chose to focus on domestic servitude.

One of the potential explanations would consist in the position that differentiation between particular conducts proscribed in Article 4 is not relevant as long as it entails positive obligations for States. The Court's approach in *C.N. v. The United Kingdom* seems to suggest it. The Court emphasized the importance of "credible suspicion" that a conduct falls within the ambit of Article 4, not the requirement to qualify and assess in details to which of the proscribed conducts a particular situation amounts.

As regards State's positive obligations emanating from Article 4, the Court seems to further develop the approach used in *Siliadin v. France* by taking into account its significant achievements reached in *Rantsev v. Cyprus and Russia*. However, it may be argued that its failure to qualify C.N.'s situation as human trafficking is not without consequence as regards State's positive duties. Primary significance of the Court's finding in *Siliadin v. France* related to its recognition that States have to penalize at national level offences included within Article 4. *Rantsev* judgment went several steps further and found that Article 4 included not only positive obligation to put in place an appropriate legislative and administrative framework, but also positive obligation to take protective measures and procedural obligation to investigate trafficking. The latter obligation, as emphasized by some writers, includes both an international and domestic aspect. Shaver and Zwaak thus take the position that "a State may still be found in violation of either, regardless of how extensive and thorough its domestic measures are, if it has not undertaken measures which sufficiently complied with its interstate obligations".[52] However, judging by the Court's conclusion in *C.N. v. The United Kingdom*, the Court only partly followed the approach taken in *Rantsev*. It concluded that "the authorities were limited to investigating and penalizing criminal offences which often – but do not necessarily – accompany the offences of slavery, servitude and forced or compulsory labour. The victims of such treatment who were not also the victims of one of these related offences were left without any remedy".[53] Consequently, the Court considered that "criminal law in force at the material time did not afford practical and effective protection against treatment falling within the scope of Article 4 of the Convention"[54] and that "the investigation into the applicant's complaints of domestic servitude was ineffective".[55] It may be observed that, had the Court found broader violation, i.e. violation of human trafficking for purposes of domestic servitude, it could have demanded for a wider set of measures to be implemented by the State. These measures would include an investigation of persons providing and arranging domestic servitude and not just those who are users of domestic services, as well as an investigation into its external dimension.

49 ECtHR, Case of C.N. v. The United Kingdom, Application No. 4239/08, Judgment of 13 November 2012, para. 30.
50 *Ibid*., para. 32.
51 ECtHR, Case of Rantsev v. Cyprus and Russia, Application No. 25965/04, Judgment of 7 January 2010, para. 282.
52 Shaver, D., Zwaak, L., *op. cit*., p. 131.
53 ECtHR, Case of C.N. v. The United Kingdom, Application No. 4239/08, Judgment of 13 November 2012, para. 76.
54 *Ibid*., para. 77.
55 *Ibid*., para. 81.

CASE OF M. AND OTHERS V. ITALY AND BULGARIA – THE PROBLEM OF 'CREDIBLE SUSPICION'

Case of *M. and Others v. Italy and Bulgaria* will be presented briefly since the Court found that, as regards Article 4 of the Convention, applicant's complaint against both Italy and Bulgaria is inadmissible as being manifestly ill-founded. However, the Court's considerations offer some valuable insights as regards certain aspects of the issues discussed above.

The basic problem encountered by the Court seems to be the fact that the parties to the case had presented diverging factual background,[56] which, together with the lack of investigation by the Italian authorities, led to "little evidence being available to determine the case".[57] Applicants contended that their situation amounted to human trafficking whereas both Italy and Bulgaria refused such allegations. Italy considered that the Convention against Trafficking in Human Beings "could not come to play in the circumstances of the case as established by the domestic courts" and that "the Italian State had not signed or ratified the Trafficking Convention at the time of the events of the case and therefore it was not applicable to them".[58] The Bulgarian Government claimed that the case did not concern human trafficking, "as the facts did not fall under the definition of trafficking according to Article 4 of the Trafficking Convention".[59]

Even though the Court held that "the circumstances as alleged by the applicants could have amounted to human trafficking", it considered that the evidence did not offer "sufficient ground to establish the veracity of the applicants' version of events".[60] After simply reproducing definition of human trafficking as contained in the Anti-Trafficking Convention, the Court concluded that "applicants' allegation that there had been an instance of actual human trafficking has not been proved and therefore cannot be accepted by the Court".[61] Although it is regrettable that the Court did not endeavour to demonstrate which of the three elements of human trafficking was not proved in the case at hand, its position seems to confirm its previous practice of finding it necessary to establish credible suspicion of either of the conduct proscribed in Article 4 in order to further entail State's responsibility for violating positive obligations. What seems to be the problem as regards the standard of credible suspicion is the fact that the Court's case-law offers no insight as to which requirements need to be met in order for this standard to be applied. Particularities that accompany the cases of slavery, servitude, forced labour and human trafficking will often result in an impossibility to prove the veracity of the victim's allegations.

As opposed to the problems of conceptual nature that appear in this case as well, in *M. and Others v. Italy and Bulgaria* the Court seems to suggest that, as far as positive obligations within Article 4 are concerned, situation is clear enough. It considered that "the obligations under Article 4 to penalize and prosecute trafficking in the ambit of a proper legal or regulatory framework cannot come to play in the instant case"[62] since it had not been established that the first applicant was a victim of human trafficking. However, the Court's reasoning as regards other positive obligations stemming from Article 4 should be praised since it obviously used the same approach as in *Rantsev v. Cyprus and Russia*. Namely, the Court considered that the obligation to take appropriate measures to remove the individual from the situation or risk represents an "Article 4 obligation".[63] The same applies to the procedural obligation to investigate situations of potential trafficking.[64] As regards Bulgaria, the Court again confirmed the above mentioned obligation to conduct investigation at both domestic and international levels, as well as to cooperate. According to the Court, these obligations undoubtedly represent Article 4 obligations.[65]

56 The first, second and third applicants arrived in Milan from Bulgaria, since they were promised to work for X. After a while, X declared that his nephew Y wanted to marry the first applicant. As her mother and father, the second and third applicants refused, X threatened them with a gun. According to the applicants, they were beaten, forced to leave the first applicant in Italy and go back to Bulgaria. The applicants also claim that the first applicant was beaten, threatened, raped and forced to steal. The third applicant returned to Italy and submitted a complaint to Italian police. Eighteen days after lodging the complaint, the police raided the house in which the first applicant had been kept. She was taken to a police station and questioned. Allegedly, she was forced to declare that she did not intend to prosecute X and Y. All applicants travelled back to Bulgaria but they claimed that no criminal proceedings were instituted in Italy.

57 ECtHR, Case of M. and Others v. Italy and Bulgaria, Application No. 40020/03, Judgment of 31 July 2012, para. 152.

58 *Ibid.*, para. 134.

59 *Ibid.*, para. 136.

60 *Ibid.*, para. 154.

61 *Ibid.*

62 *Ibid.*, para. 155.

63 *Ibid.*, para. 156.

64 *Ibid.*, para. 157.

65 The Court noted that "had any alleged trafficking commenced in Bulgaria it would not be outside the Court's competence to examine whether Bulgaria complied with any obligation it may have had to take measures within the limits of its own jurisdiction and powers to protect the first applicant from trafficking and to investigate the possibility that she had been trafficked". *Ibid.*, para. 167.

CONCLUSION

As regards positive obligations included in Article 4 there seems to be a significant level of coherence. The only objection concerns the Court's differentiation which relates to their broadness. In cases qualified by the Court as human trafficking, obligations included in Article 4 are considered to be wider, whereas in cases determined as slavery, servitude or forced labour they appear to be narrow in the sense that they are restricted to the legal framework and the level of protection offered, but do not include duty to investigate persons who provide and arrange slavery, servitude or forced labour, as well as an investigation into its external dimension.

At the conceptual level, matters are more problematic. After initial confusion caused by the Court's labelling of trafficking as slavery, it seems to have confirmed in its recent case-law that trafficking, although it falls within the ambit of Article 4, should be understood as a separate conduct. However, the Court does not offer clear guidance as to which situations amount to human trafficking and which do not. The only thing that seems to be undisputed is that the Court has no intention to go into detailed analysis in order to qualify a situation as slavery, servitude, forced labour or human trafficking. It thus abandoned the approach taken in its first judgment and instead focused on simply labelling the situation as one of the conducts proscribed in Article 4, if it is satisfied that there is credible suspicion. However, it remains unclear on which evidence and on what ground this suspicion needs to rest. Such an approach demonstrates clear weaknesses, shows intellectual incoherence in the Court's reasoning, runs counter to legal certainty and it does not help to protect the victims' rights.

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THE LEGAL STATUS OF THE INJURED PARTY AND VICTIM OF CRIME

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Abstract: The author presents the most important characteristics of the legal status of the injured party and victim of crime (pointing out the differences between these two notions) in the criminal proceedings in light of "new" Serbian criminal procedure rules. The emphasis is on the recommendations and requirements of international organizations and compliance of national (criminal procedure) legislation with them, especially given the recent directives of the European Union. The author points out the existing gaps in national legislation and in practice, and provides suggestions for overcoming them. The rights with respect to information, assistance and protection, participation in criminal proceedings and compensation for damage are in focus. The author concludes that the latest amendments to the criminal procedure legislation have not significantly improved the position of the victim, as officials claimed, and that victims of crime do not enjoy the necessary protection. The protection of victims of crime is more declarative in nature, while in practice, the greatest burden of protecting and fighting for the rights of these persons is on non-governmental organizations.

Keywords: injured party, victim of crime, victims' rights, criminal proceedings, Directive 2012/29/EU

INTRODUCTION

The position of the victim of crime has been improving by the development of victimology and its recommendations and requests. As victimology gained its momentum in the seventies of the last century (in Serbia much later), it is clear why the position of victims of crime in Serbia has received greater attention only recently (due to the need for harmonization with the European standards).The international recommendations and requirements relevant to the topic of this paper use the term victim, not injured party, and at the beginning it is important to point out the differences between these concepts and their interpretation. In fact, it is quite reasonable to use the term victim in international law, taking into account differences in national legislations in terms of the participation of victims in criminal proceedings and their rights[1]. The term victim is broader than the concept of the injured party[2], because the latter appears only in criminal proceedings, or in connection with it. Specifically, the injured party is a person (natural or legal) whose personal or property right has been violated or jeopardized by a criminal offence. However, there is no doubt that the primary or direct victim of crime is in focus, and that the injured party is inextricably linked to the process, with precisely defined rights and duties established in the interest of the procedure (although he/she may act as a subsidiary or private prosecutor). An indirect crime victim may be in position of the injured party (in case of murder, a spouse or a close relative of the murdered would be in the position of injured party). If, for some reason, the criminal proceedings cannot be initiated or cannot develop further, there is no injured party and the state will not provide further support and protection for the victim of crime. However, the victim, with his/her human rights exists in this case. And very often he/she needs the support and protection.

INTERNATIONAL LAW OF CRIME VICTIMS

According to the international victims' rights instruments, "victim" means a natural person affected by the criminal offence, which does not necessarily need to participate in the criminal proceedings in order to enjoy certain rights and protection. According to the first document adopted at the international level, dedicated to the victims and their rights - the United Nations Declaration of Basic Principles of Justice for

1 About these differences, see: L. Wolhuter, N. Olley, D. Denham, *Victimology: Victimization and Victims' Rights*, Routledge-Cavendish, London and New York, 2009, pp. 186-195.
2 For a different opinion, see: J. Ćirić, *Prosecutors and Victims*, Institute of Comparative Law, Young Lawyers of Serbia, Belgrade, 2009, p. 15. If we talk about the victim and his/her rights, especially about rights to assistance and protection, we think of natural person, while the injured party may also be a legal entity.

Victims of Crime and Abuse of Power[3] of 1985, victims are "persons who individually or collectively, have suffered harm, including physical or mental injury, emotional suffering, economic loss or substantial violation of their fundamental rights through acts or omissions that constitute a violation of the criminal laws of a Member State". A person may be considered a victim regardless of whether the perpetrator is identified, apprehended, prosecuted or convicted and regardless of the familiar relationship between the perpetrator and the victim. The term "victim" also includes, where appropriate, the immediate family or dependants of the direct victim and persons who have suffered harm in intervening to assist victims in distress or to prevent victimization (Annex, A.2). The most recent document in establishing crime victims' rights, with legally binding nature is Directive 2012/29 / EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220 / JHA[4].

The victims and their protection are main topics in documents of the Council of Europe, such as the Committee of Ministers Recommendation No. R (85) 11 on the position of the victim in the framework of criminal law and procedure[5], Recommendation Rec (2006) 8 of the Committee of Ministers to member states on assistance to crime victims[6]. Crime victims and their rights are in focus of international law documents devoted to certain, particularly vulnerable categories of victims, or victims of certain types of crime (women, children, victims of violent crime, victims of acts of terrorism, trafficking victims) or to witness protection[7]. The mentioned documents indicate that it has become obvious that there is no effective prosecution of perpetrators of (certain) offences without effective protection of victims. It is important to emphasize the fact that some of them are legally binding, and that they set before the member states certain requirements whose fulfillment will be controlled. Thus, the European Union adopted Directive 2011/36 / EU on preventing and combating trafficking in human beings and protecting its victims[8], while the Council of Europe adopted two important conventions that Serbia has ratified recently, and which also pay special attention to vulnerable categories of victims (the Convention on action against trafficking in human beings[9] and the Convention on preventing and combating violence against women and domestic violence[10]). Particularly vulnerable victims' right - the right to compensation for damages arising from a criminal offence is in focus of two legally binding documents: Directive 2004/80/ EC of April 2004relating to compensation for crime victims[11]and the Council of Europe Convention on the compensation of victims of violent crimes of 1983[12].The importance of the European Convention for the Protection of Human Rights and Fundamental Freedoms, and the European Court of Human Rights for the protection of victims' rights is undoubted, but due to the limits set for this paper, these will not be elaborated[13].

According to the abovementioned international law documents, the basic principles of justice for the victims[14] are related to: 1) respect and compassion; 2) information; 3) the right of access to court and the right to be heard; 4) legal advice; 5) protection of privacy and security; 6) the possibility of informal conflict resolution; 7) help and support (medical, psychological, material); 8) restitution/compensation by the offender; 9) compensation for damages from the state; 10) empowerment and cooperation. Listed categories will be, for the purposes of this study, summarized as follows: 1) respect for the dignity of victims, information on rights and proceedings, 2) participation in criminal proceedings, victim assistance and protection, 3) compensation, and will be analyzed according to the Directive 2012 / 29 / EU and European legally binding documents on compensation of victims of (violent) crime.

Respect for the dignity of the victim, careful, professional and non-discriminatory treatment are requirements that have primacy in terms of the state-victim relation and they apply to all its segments, from the first contact with the victim, regardless of whether he/she has filed a complaint, and is willing or able to participate in the proceedings. Such behavior is expected of all who participate in providing assistance to vic-

3 United Nations Declaration of basic principles of justice for victims of crime and abuse of power, A / RES / 40/34, http://www.un.org/documents/ga/res/40/a40r034.htm

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13 See: G. P. Ilić, "The Injured Party and Human Rights Standards in the Criminal Proceedings", *Annals of the Faculty of Law in Belgrade*, No. 2/2012, p. 135-161.

14 J. Van Dijk, "Victim's Rights and International Criminal Law", International Conference on Crime Victims, Rome, 19-21 January 2006.

tims. Thus, education and training of employees in the police, prosecution office, courts, support services for victims, and other relevant agencies are of paramount importance in recognizing victims' vulnerability and specific needs. *Information and advice* provided to the victims by competent authorities and other relevant agencies should be given in simple and accessible language. Victims' knowledge of the language, age, intellectual and emotional capacity, literacy, mental/physical impairment, vulnerability, should be taken into account. In the process of information transfer, victim may be supported by the chosen person (*person of trust*). Information has to be provided to victims without delay, at the first contact, referring to: 1) support services (information on medical assistance, psychological support, alternative housing); 2) the role in the proceedings (sufficient detail should be given in order to enable victims to make informed decisions about their participation in the proceedings); 3) the possibility of obtaining protection, legal aid, counseling; 4) the possibility of exercising the right to compensation; 5) the complaint about inadequate treatment by the competent authority; 6) contacts through which the details of the case could be communicated; 6) availability of restorative justice; 7) reimbursement of the expenses arising from participation in the proceedings. Other relevant information should be given to the victim at the first contact, or in the later stages of the procedure, depending on the specifics of the case and the victim's needs. The victim has the right to be notified about the dismissal of a criminal complaint, or abandonment of criminal prosecution (and about the current status of any proceedings), as well as about the time and place of evidence examination, and the trial. In connection with the above-mentioned rights, related to the notification of victims, is also the right to an interpreter or translator who should be appointed by the competent authority, provided that a victim has the right to appeal against a negative decision. The information that is of particular importance for a victim is information about the release or the escape of the offender, at least in cases where there might be a danger or an identified risk of harm to the victim.

Participation of victims in the criminal procedure includes the right to be heard, to present the facts and propose the evidence of importance for proving the claim. A victim has the right to object to the public prosecutor's decision not to conduct criminal prosecution or to abandon criminal prosecution. In terms of achieving the goals of restorative justice, the authorities must have in mind the protection of victims against secondary and repeated victimization, intimidation and retaliation, his/her interests, as well as free and informed consent to participate in the process (e.g. mediation). Access to legal assistance provided to victims who have the status of a party to the proceedings, and the right to reimbursement of (necessary) expenses belongs to victims who are actively involved in the process (at the request of the competent authority). *Support and protection* must be provided through referral of victims to the appropriate support services, free of charge and unnecessary formalities, which will act in the interests of victims before, during, and the appropriate time after the completion of the criminal proceedings. The right to assistance and support belongs to family members of the victim, in accordance with needs and the extent of damage and injuries. Victim support services and specialist services can be organized as public or non-governmental ones, but they should be evenly distributed all over the country. The referral services or access to them must not be conditional upon submission of a complaint by the victim to the competent authorities. The aforementioned services must provide the minimum of assistance in the form of: 1) information, counseling and support in relation to the rights of victims, including access to national programs of compensation and participation in criminal proceedings, including adequate preparation for it; 2) information about existing specialized services to help and support or direct reference to them; 3) emotional and psychological assistance and support; 4) advising on financial and other practical issues related to victimization; 5) counseling regarding risks and prevention of secondary and repeat victimization, intimidation and retaliation. It is necessary to provide (within the specialized service assistance): 1) shelters or other types of temporary accommodation, for the protection against secondary or repeat victimization, intimidation or retaliation; 2) targeted and integrated assistance for victims with specific needs, such as victims of sexual violence, gender-based violence, violence in close relationships.

States must ensure *the protection of victims against secondary victimization, repeat victimization, intimidation and retaliation.* If necessary, they should provide physical protection to victims and family members. It is necessary to take measures to prevent contact of the victim and the defendant in the premises in which the proceedings are conducted, by providing even separate waiting rooms for them, for this purpose. In the framework of the investigation, it is necessary to carry out questioning of the victim as soon as possible; number of questionings should be minimized, justified by the needs of the proceedings. During the examination, a victim could be accompanied by his/her legal representative, as well as by the person of his/her own choice (person of trust). A victim has the right to privacy, as well as to implementation of special measures for protection against secondary and repeat victimization, intimidation and retaliation. When assessing whether to implement these measures, one must consider: the personal characteristics of the victim, the type and nature of the offence, and the circumstances under which it was committed. Special attention must be paid to the gravity of the offence, its consequences, the offender's motives, especially those that are related to discrimination and victims who are, due to the relationship with the defendant, especially vulnerable (victims of terrorism, organized crime, human trafficking, gender-based violence, in close relationships, sexual abuse, exploitation or offences committed out of hatred, victims with disabilities

and children). In the course of the proceedings, the following measures may apply to victims who are particularly vulnerable and have special need for protection (provided that their application is possible and that the reasons of urgency for victim questioning does not preclude their use): examination in separate rooms, examination by or with the assistance of professionals (psychologist, social worker, etc.), examination by the same persons, examination of victims of sexual violence, gender-based violence, violence in close relationships by a person of the same gender as the victim, if the victim so wishes (unless examination is conducted by a prosecutor or a judge). During the proceedings before the court, it is possible to take the following measures: measures to avoid visual contact between the victim and the defendant; measures to ensure that the victim is heard although not present in the courtroom (by using technical devices for transmitting images and sound); measures to avoid unnecessary questions concerning the private life of the victim which are not related to the subject of the evidentiary action, and the exclusion of the public. Special attention must be paid to child victims and their protection, and in addition with the aforementioned measures the following also apply: in the phase of investigation, examination of the child can be audio-visually recorded, and the footage can be used as evidence; legal representation is obligatory; if the age of the person cannot be determined, and there is a reasonable suspicion that he/she is a child, the person is to be regarded as a child and as such enjoys certain rights.

The right to compensation is one of the most important victims' rights. A victim has the right to submit the claim for restitution in criminal proceedings, which should be adjudicated within a reasonable time. States must take measures to provide compensation to a victim by the defendant. However, it is well known that this is very complicated, almost impossible for a victim to get the compensation from the defendant, because the procedure takes a long time, and then raises the question of (in)ability of the offender to compensate for the damage. Thus, establishing state funds for compensation to victims of (violent) crime is a better solution which tackles the issue more effectively: victims get compensation regardless of the outcome of criminal proceedings, even if the offender is not identified[15].The provisions of the Directive 2004/80 / EC show clearly how important this right is by requiring the efficient compensation for victims who were victimized in the member state in which they are non-residents.

INJURED PARTY IN THE NATIONAL LEGISLATION

The Criminal Procedure Code[16] does not introduce the concept of a crime victim, while the Croatian legislator did it in 2008. A victim has been considered as a person who has suffered physical, mental harm, economic loss or substantial violation of fundamental rights and freedoms which were caused by a criminal offence, while the injured party is a victim but also another person whose personal or property rights have been violated or jeopardized by a criminal offence, and who participate in the capacity of injured person in the criminal proceedings (Article 202 paragraph 2, subparagraph 10 and 11 of the CPC)[17]. In Serbian criminal procedure law, the notion "injured party" is dominant, and he/she participates in criminal proceedings as a secondary or main subject (subsidiary or private prosecutor) with certain rights and duties.

The rights of the injured party are enlisted in Article 50 of the Criminal Procedure Code. The public prosecutor and the court will inform the injured party of these rights. However, in Article 300 of the CPC on attending certain evidentiary actions, there are some omissions. Specifically, paragraph 3 of this Article stipulates that the injured party may be present at the examination, but has not provided the obligation of informing the victim. The paragraph 6 does not even mention injured party, so he/she might miss the examination of witnesses and experts. Thus, his/her right to be informed about the time and place of taking certain evidentiary actions has been violated, as well as the opportunity to actively participate in the proceedings, which might have negative impact on the quality of the evidence.

The victim/injured party is not provided with the information about the organizations offering psychological or other assistance. Such information is of great importance for victims, and it would be the best solution if they receive this information at the first contact with the competent authority (it is usually the police). According to recently conducted research[18], the victims consider service information about the proceedings and its progress as the most important information, as well as the information related to

15 The establishment of a special state fund has been envisaged by the Statute of the International Criminal Court (Article 79). See: The Ratification of the Rome Statute of the International Criminal Court Act, "Official Gazette of the Federal Republic of Yugoslavia – International Agreements", No. 5/2001.

16 "Official Gazette of the Republic of Serbia", No. 72/2011, 101/2011, 121/2012, 32/2013, 45/2013, 55/2014.

17 On the relationship between these two concepts and more about victims' rights in Croatia, see: "Subjects in the Criminal Procedure: the Legal Position of Victim and Injured Person in the New Croatian Criminal Procedure", *Croation Annual of Criminal Law and Practice*, vol. 15, 2/2008, pp. 839-845. Victims' rights are presented in Chapter 5, art. 43-46 of the CPC, "Official Gazette of the Republic of Croatia", No. 152/2008.

18 Results were presented at the conference *Rights of victims of sexual and intimate partner violence* (organized by the Autonomous Women's Center from Belgrade, supported by the Norwegian Ministry of Foreign Affairs, 31 October 2011, Belgrade).

the support they can expect[19]. Directive 2012/29/ EU has suggested that the police officers should provide information to victims (e.g. by handing leaflets). It is proved that the best are those systems in which police officers have a legal obligation to provide specified general information to a victim (at the first contact), and to compile a report (e.g. Netherlands and Belgium[20]). According to the survey, conducted by the Autonomous Women's Center from Belgrade about the experiences of women victims of sexual and partner violence, over 60% of victims were dissatisfied with the information given by the police. The information that the victims find important were related to: their rights and the proceedings - 79%; assistance and protection - 79%; compensation - 60%. The victims got no useful information by the public prosecutors in 56% cases. Furthermore, the victims were not satisfied with the attitude of officials towards them (58% when it comes to the police, and 48% when it comes to the public prosecution office). It should be noted that representatives of the police and the public prosecution office admit that they do not have sufficient knowledge about techniques for interviewing victims, and that they need training in this regard. Besides, representatives of the state authorities do not have leaflets for victims to learn about existing programs of assistance and protection, and most of them are not aware of the existence of NGOs or other agencies providing support. The victims do not receive information on the release or escape of the offender.

There is no possibility for a victim to be accompanied (during questioning) by the person of trust whose presence would alleviate discomfort and stress for the victim (Slovenian law allows such possibility for victims of violence[21]). Agency for assistance and support to witnesses and injured parties, established at the High Court in Belgrade, provides some sort of information and support[22] which is a good example that should be followed and developed[23] . The inequality of treatment of the accused and the injured party in relation to the exclusion of the public from the trial should also be noted. At the request of the defendant, persons close to him/her (e.g. spouse, close relatives) could be exempted from the exclusion of the public (Article 364, paragraph 2). Such possibility is not provided for the injured party.

A special section of the explanatory notes for the CPC Draft is devoted to the injured person and his/her "improved"status and expanded rights. Special praise has been given to the obligation of deciding on a restitution claim in the procedure for imposing the security measure of compulsory psychiatric treatment[24]. However, the achievement of the right to restitution in the proceedings pending against a mentally incompetent person is "illusory"[25], because this person cannot be responsible for damages, due to the lack of guilt. According to the Law of Obligations[26] (Article 164 paragraph 1) this claim can be directed to a person who is on the basis of law, or a court decision, or the contract, obliged to keep control of mentally incompetent person, so it is clear that this demand can only be achieved in a lawsuit. The main flaw in the national legislation is the lack of possibilities of compensation from the state fund, at least for some victims, as it is the solution set out in Slovenia[27]and Croatia[28].

The explanatory notes for the CPC praise the right of an injured person as a subsidiary prosecutor to request appointment of a proxy when criminal proceedings are being conducted in connection with a criminal offence punishable by law by a term of imprisonment of over five years. The "additional protection of the injured party" is emphasized, even though the condition for appointment of the proxy is "the best interest of the proceedings"![29] So much praise over the improved status of the injured party is not understandable when the same solution related to the appointment of a proxy existed in previous CPC. (Article 66, paragraph 2 of the CPC/200[30]). The new provision is related to the possibility of appointment of a professional consultant to a subsidiary prosecutor, but the inextricable condition is the same – the best interest of the proceedings. The appointment of a proxy or professional consultant would be useful not only to the injured party as a subsidiary prosecutor, but in general to the injured party (in certain cases, like those of "especially vulnerable witnesses"), in order to help him/her to achieve the rights and to avoid the secondary victimization.

19 D. Ajduković, M. Mrčela, K. Turković, *Support to Victims and Witnesses of Crime in the Republic of Croatia,* UNDP, Zagreb, 2007, p. 20.
20 These countries are highly positioned on the list of those who show exceptional care for victims. See: M. E. I. Brienen, E. H. Hoegen, *Victims of Crime in 22 European Criminal Justice Systems: the Implementation of Recommendation (85)11 of the Council of Europe on the Position of the Victims in the Framework of Criminal Law and Procedure,* Wolf Legal Productions, Nijmegen, 2000, p. 1159.
21 K. Filipčič, "The Position of Crime Victims in Legislation of the Republic of Slovenia", *Temida*, No. 1/2008, p. 51.
22 About the services: http://www.bg.vi.sud.rs/lt/articles/o-visem-sudu/uredjenje/sluzba-za-pomoc-i-podrsku-svedocima-i-ostecenima/
23 Act on Courts demands it (art. 23. par. 3), "Official Gazette of the Republic of Serbia", No. 116/2008, 104/2009, 101/2010, 31/2011, 78/2011, 101/2011, 101/2013.
24 Draft Criminal Procedure Code, 2011, p. 208.
25 M. Grubač, op. cit., p.113.
26 "Official Gazette of the Socialist Federal Republic of Yugoslavia", No. 29/78, 39/85, 45/89, 57/89, "Official Gazette of the Federal Republic of Yugoslavia", No. 31/93, and "Official Gazette of Serbia and Montenegro", No. 1/2003.
27 See: K. Filipčič, op. cit., pp. 55-57.
28 See: G. Tomašević, M. Pajčić, op. cit., pp. 846-852.
29 Draft Criminal Procedure Code, 2011, p. 209.
30 "Official Gazette of the Federal Republic of Yugoslavia", No. 70/200, 68/2002, "Official Gazette of the Republic of Serbia", No. 58/2004, 85/2005, 115/2005, 85/2005, 49/2007, 20/2009, 72/2009, 76/2010

Regarding the right to a review of a decision not to prosecute or to abandon the prosecution, the CPC has changed existing provisions, but not in favor of a victim. Again, the interest of the proceedings, its acceleration and strengthening the position of the prosecution are in focus. Namely, the injured party cannot replace a public prosecutor (as a subsidiary one) if a public prosecutor decides to dismiss a criminal complaint or abandon prosecution before the confirmation of indictment (Article 51), or if a public prosecutor desists from criminal prosecution until the scheduling of a trial or a hearing for pronouncing a criminal sanction in summary proceedings (Article 497, paragraph 1). The injured party has the right to submit an objection to the immediately higher public prosecutor, which is a solution that has been criticized because it is neither in the interests of the injured party, nor in the public interest. It is believed that this solution provides a prosecutor with absolute and uncontrolled monopoly on initiating criminal proceedings[31].

The fact that the CPC does not acknowledge a victim is not such a problem, as it is the absence of any other regulation on the rights of victims of crime, regardless of the criminal proceedings, and in particular the right to compensation from the state fund. In Germany, whose legislation is a model for Serbia, the Act on the Protection of Victims *(Opferschutzgesetz)* was enacted in 1986, ten years before the Act on the Compensation of Victims of Crime *(Opferentschadigungsgesetz)*[32]. In the UK, a national organization that provides assistance to the victims and witnesses of crimes *(Victim Support),* which has branches all over the country, was established in 1974 (and there are other organizations)[33].

However, one cannot say that victims have no support and protection in Serbia. The NGOs are most active in this field, especially those dealing with certain types of victimization[34]. The most advanced is a mechanism developed to protect victims of human trafficking whose important characteristic is good cooperation between the state and civil society[35]. A victim of human trafficking is introduced to the system of protection by the state agency – the Center for the protection of victims of trafficking[36]. More attention has been paid to the victims of domestic violence, especially women and children, but the NGOs play the most important role in providing support to the victims[37]. The Social Protection Act[38] recognizes certain categories of victims as the beneficiaries of social care services (victims of abuse, neglect, violence and exploitation ... and trafficking in human beings (Article 41)). There are special protocols regulating the procedures and mutual cooperation among relevant actors (state agencies and NGOs) which are very important for the protection of especially vulnerable categories of victims (e.g. protocols for the protection of children from abuse and neglect[39], Special protocol on acting of the judicial bodies in protection of victims of human trafficking in the Republic of Serbia[40], Special protocol on acting of the judicial bodies in cases of violence against women in the family and intimate partner relationships[41]), but there is still an open question of their implementation and effective protection of victims.

CONCLUDING REMARKS

New Serbian criminal procedural legislation has made certain changes in the sphere of a victim status as an injured party in criminal proceedings, but it could not be said that they are as important as the creator of the new code claimed, at least not in the sense that injured party has gained some real and useful benefits. The position of an injured party has been improved more on the level of declarations, not for real (in some spheres his/her rights are deteriorated). So far, the greatest contribution to the protection of victims has been given by non-governmental organizations, especially those providing support and assistance to the most vulnerable groups (women, children) linked to certain types of crime (domestic violence, sexual violence, trafficking in persons). On the other hand, we should not forget the nature of the criminal procedure and its objectives, and we cannot expect that all the necessary assistance and protection could be provided to a victim in criminal proceedings. In this regard, the state must develop and support other mechanisms that will act before, and during criminal proceedings, and upon its completion, as in the case where the process is not initiated or its development ends, victim exists and needs protection. Guidelines for creating good mechanisms are set out in international and comparative law, and Serbia should consider them having in mind obligations with regard to the respect of rights of victims imposed by the EU accession process and ratified documents.

31 M. Grubač, op. cit., p. 111.
32 On the position of the victim in German law, see: M. Löffelmann, "The Victim in Criminal Proceedings: a Systematic Portrayal of Victim Protection under German Criminal Procedure Law", *Resource Material Series No. 70*, UNAFEI, Tokyo, 2006, pp. 31-40.
33 See: P. Dunn, "Victim Support in UK: its History and Current Work", *Resource Material Series No. 63*, UNAFEI, Tokyo, 2004, pp. 93-100.
34 See: Ignjatović, Đ., Simeunović-Patić, B., *Victimology*, University of Belgrade Faculty of Law, Belgrade, 2011, p. 143-159.
35 See: A. Galonja, S. Jovanović, "Protection of Victims and Prevention of Human Trafficking in Serbia", Joint Programme of UNHCR, UNODC and IOM to Combat Human Trafficking in Serbia, Belgrade, 2011.
36 About the Center for the Protection of Victims of Human Trafficking: http://www.centarzztlj.rs/
37 See: http://www.womenngo.org.rs/
38 "Official Gazette of the Republic of Serbia", No. 24/2011.
39 http://www.unicef.org/serbia/resources_14632.html
40 http://arhiva.mpravde.gov.rs/images/POSEBNI_PROTOKOL_eng.pdf
41 Ministry of Justice and Public Administration, No. 119-01-00130 / 2013-05, 14. 1. 2014.

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DEVELOPMENT OF THE LAW OF WAR IN THE LEGISLATION OF THE PRINCIPALITY OF SERBIA IN THE PERIOD 1864-1878[1*]

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Abstract: The paper is focused on the analysis of the legal impact of the emerging international standards on the early legislation of the Principality of Serbia in the field of law of war and treatment of protected groups, such as wounded persons, civilians and prisoners of war. The authors relied on the Serbian archives in order to assess key pieces of legislation and bylaws that regulated certain types of conduct in warfare and fostered the respect of the First Geneva Convention (1864) in a crucial period of Serbian and European political and military history.

The authors conducted their research within the project "Political identity of Serbia in regional and global context" financed by the Ministry of Education, Science and Technological Development and would like to present their findings that shed more light on the dynamic period of Serbian state-building.

Keywords: First Geneva Convention, Serbian Society of the Red Cross, law of war, protection of wounded and sick.

Looking from the perspective of contemporary international law doctrine, the legal position of 19th century Serbia might seem ambiguous. There is no doubt that until 1878 Serbia was not recognized as a sovereign state, but, similarly, there is no doubt that it was possible to discern certain elements of sovereignty among the rights and obligations that were afforded to Serbia by international legal instruments binding at that time. Serbia's growing internal independence, provided and guaranteed by international legal instruments, paved the way for more explicit contact with public international law. The decisive point was the adherence to the Convention for the Amelioration of the Conditions of the Wounded in the Armies in the Field adopted in 1864 (further on: Geneva Convention).

In the first part of the paper we are going to sketch the most prominent features of the Serbian status vis-à-vis the Ottoman Empire and its capacity in public international law during 19th century. The second part is dedicated to the context of Serbian accession to the Geneva Convention, followed by the presentation of the measures for its implementation within the internal legal order.

Serbia stepped in the 19th century as a province of the Ottoman Empire and in a way it shared the fate of its sovereign. Notwithstanding the fact that the Ottoman Empire had maintained diplomatic relations with European states for many centuries, much more often than not, it was not recognized as a full member of the "family of civilized nations". On the contrary, Turkey was perceived as the archetype of "barbarous" state situated between "civilized" states and "savage" peoples.[4] As a consequence, its membership in the international community was denied and the rule of international law – European international law – did not apply to its relations with the other European states.[5] It was only in 1856 by the Paris Treaty that Turkey was brought into the family of States that defined and cultivated international law as European concept, and made it for the first time a subject of the international law.[6] Ever-increasing reception of "European law", both municipal and international, has been one more sign of declining power of the Ottoman Empire. The question of how to deal with the power vacuum in Eastern Europe, the Balkans and Middle East caused by the disintegration of Turkey but without endangering fragile balance in Europe – the so called Eastern Question – was one of the questions that dominated the agenda of European politics throughout the whole

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4 Cf. e.g. James Lorimer, The Institutes of the Law of Nations: A Treaties of the Jural Relations of Separate Political Communities, W Blackwood and Sons, Edinburgh 1883, pp. 123, 464.
5 For the 19th century policy of exclusion/inclusion see e.g. Marty Koskenniemi The Gentle Civilizer of Nations, The Rise and Fall of International Law 1870-1960, Cambridge University Press, 2004, pp. 127 to 131.
6 Cf. e.g. Hugh McKinnon Wood, The Treaty of Paris and Turkey's Status in International Law, American Journal of International Law, Vol. 37, No. 2, April 1943, p. 262.

century. It was also a continuous source of military threat. The Eastern Question also became general term to cover a number of other issues, including political unrests and insurrections all over the Ottoman Empire, including the prominent "Serbian Question".[7]

Serbian national awakening, on one side, and the Turkish repression in Belgrade Pashaluk, on the other, led to insurrections against the Ottoman government in 1804 lasting to 1813 and 1814. Terrible tales of torture and massacre, as well as glorious tales of heroism and bravery, soon reached European great powers. Imperial Russia, that imposed itself as the protector of all orthodox people in Ottoman Empire, felt moved to declare the war to Sublime Porte that was successfully ended by the Treaty of Bucharest signed in 1812. Among the other stipulations, it provided that the Sublime Porte "will leave the Serbs alone to take care of their internal administration and will directly collect from them the moderate amount of tributes."[8] Independence in internal matters, which has been achieved on the battlefield, received international, and specifically Russian, guarantees. Serbia managed to internationalize its legal status, but the price that had to be paid was dual dependence and dual loyalty: toward Sublime Porte and Imperial Russia.

As it was to be expected, there was no hurry on the part of Sublime Porte to fulfill the obligation undertaken by Bucharest Treaty. Two more agreements between Russia and the Ottoman Empire – Akkerman Convention singed in 1826 and Treaty of Edirne signed in 1829 – were needed to persuade Sultan to issue the *fermans* that substantially advanced the legal status of Serbia. Rather than being a province of the Ottoman Empire, Serbia became its vassal. Serbia was bound to make certain payments to the Sublime Porte and to render to it military and some other services, with the obligation to pursue foreign policy as it is defined by Sublime Porte. In return, Sublime Porte pledged itself not to interfere in internal affairs of Serbia.[9]

Next decisive step for the state-building process was the adoption of the Treaty of Paris in 1865 which terminated the Crimean War.[10] According to the article 7 Turkey, Serbia's suzerain, was accepted as a member state of the Concert of Europe and allowed to enjoy the advantages of public law. As for Serbia, the explicit provisions had been stipulated by articles 28 and 29. Serbia gained the principality status and its autonomy was confirmed. As novelty, its "rights and advantages" were not to be guaranteed by Russia alone, but by the all signatory states, i.e. beside Russia and the Ottoman Empire, Austria, Great Britain, France, Sardinia. The Sublime Porte retained the right to keep already existing garrisons on the territory of Serbia, but it was not allowed to use them without prior approval of all signatory states. One more solution stipulated by the Paris Treaty might be of some interest in the context of international legal status of Serbia. Under the article 17 the Danube was subjected to an international regime which applied the principles of river law embodied in the Final Act of the Congress of Vienna in 1815. Two Commissions were established: a permanent riparian Commission, and a European Commission as a temporary technical body. Serbia, as a riparian country, was entitled to appoint its representative subject the approval of Porte. According to some opinions, it was the very first time that the right of representation was provided for Serbia.[11] For the good or bad, the Commission of riparian state has never been operative.

Nevertheless, the ultimate position of the Sublime Porte proved to be more formal than substantial. One of the manifestations of such a decline was development of the Serbian army under Prince Mihailo Obrenovic.[12] On 17 August 1861 the Assembly proclaimed "The Regulation of the Peoples' Army."[13] This act defined the purpose of the Serbian Army (defense of the Principality and its dynasty) and established general conscription for all the male citizens between 20 and 50 years of age. The Army consisted of infantry, cavalry, artillery and pioneers, while there was no mention of the ambulance. The Sublime Porte was strongly against such military reform and claimed that it was against the Porte's edict and the Treaty of Paris. In spite of the pressure by Austria and England, Serbia maintained the military reform.[14] In 1862 the Ministry of Armed Forces was established and one of the departments was designated for military ambulance. New military reform took place in 1864 through the very detailed Law on Army Organization (105 articles),

7 Despite huge amount of literature, there are significant controversies among historians as to when the Eastern Question emerged and as to the final date of its resolution. See e.g. Gabor Agaston, Bruce Masters, Encyclopedia of the Ottoman Empire, Fact on File, 2009, p. 191.

8 Article 6 of the Bucharest agreement, quoted according to the B. Lj. Popovic, Diplomatska istorija Srbije, Zavod za udzbenike, Beograd, 2010, p. 86.

9 As for the concept of vassal and suzerain states see e.g. John Westlake, International Law, Part I, Peace, 2000 p. 24. The Serbs were granted the freedom of religion and the right to elect Metropolitan and the bishops inaugurated by the Patriarch of Constantinople. The prince of Serbia was confirmed as prince with hereditary right. Prince had earned the right to keep detachment of soldiers to maintain law and order in the country. The right to open post offices, hospitals, schools, printing etc. had been granted too. Serbian traders were free to act on the territory of the whole Empire. Serbian government was entitled to dispatch its representative to Porte. Vassality of Serbia was modified by the fact that it was in the same time under the protectorate of Russia.

10 For a brief overview of the facts about Crimean War see e.g. Eric Goldstein, Wars & Peace Treaties 1816-1991, Rutledge, 1992, pp 25-27.

11 Popovic, *op. cit.,* p. 283.

12 See: Jovan Milicevic, *Srbija 1839-1868*, in Vladimir Stojancevic (ed.) Istorija Srpskog naroda, knjiga V, tom I, Srpska knjizevna zadruga, Beograd, 1994, pp.294-295.

13 Collection of Laws and Decrees of the Principality of Serbia in 1861, Vol. 30, p. 439

14 Compare: Zivota Djordjevic, *Srpska narodna vojska 1861-64*, Narodna knjiga, Beograd, 1984, pp. 27-28.

regulating both Permanent and Peoples' army.[15] The primary duties of the armed forces are defense of the state and legality. The armed forces consisted of the Permanent Army and People's Army (still consisting of all the capable male Serbs between 20 and 50 years of age). Military hospitals were regulated in detail (§§ 28-38). Under § 95, discipline of the soldiers of the People's Army during the State of Emergency is regulated by the Law on Organization and Procedures of the Military Courts.[16] The Second Part of the Law is dedicated to penal law. According to the § 75 there are seven sanctions on disposal of the Military Court: 1) capital punishment; 2) imprisonment between 2 and 20 years for soldiers and non-commissioned officers; 3) imprisonment between 2 and 20 year accompanied by degradation for officers; 4) detention between 1 month and 5 years; 5) corporal punishment of minimum 30 strikes and maximum 50 strikes; 6) degradation of the military rank and dignity; 7) deprivation of rank. The Law incriminates the following acts: 1) treason; 2) desertion and avoidance of military service; 3) a set of crimes related to violation of the subordination duties; 4) *abuse of the military force during the State of Emergency*; 5) violation of duties towards military equipment, weapons or uniform; 6) submission of false reports; 7) abuse of the official position; 8) violation of the custodial duties; 9) violation of military order and discipline; 9) insult of an officer; 10) embezzlement of military food or salaries; 11) violation of duty to act with military honor (thefts and frauds).

From the perspective of the future implementation of the Geneva Convention within the Serbian legal order, the most relevant were crimes generically entitled "abuse of the military force during the State of Emergency". According to the § 157 " a person will be sanctioned with 2 to 5 years of imprisonment for plundering of the wounded person; the capital punishment should be rendered if a person rendered additional wounds to a victim". The same sanction is foreseen for plundering of the prisoners of war or committing extortion against them (§160). Other relevant incriminated acts were: dispossession of property (§ 163), destruction of property (§ 164), and extortion by abuse of prerogatives (§166-168). However, it should be noted that at that point Serbia was not a signatory party to the Convention.

Internal independence paved the way for the emancipation of Serbia in external matters as well. Serbia managed to develop direct relationships on permanent basis. Contact with consuls accredited with Porte but residing in Belgrade was one of the most important channels of communication with third states. Consuls in Belgrade were in charge of traditionally broad area of competence, including quasi-judicial jurisdiction, but they acted as political representatives of their states as well.[17] Until 1870-es great European powers gradually altered their policy toward application of capitulation in the territory of Serbia. First tentative step was undertaken by Russia. In 1868 the Serbian government was informed that Russia "abandons in advance the exercise of rights provided by the agreements with Turkey, and subjects their nationals residing in Serbia to the laws of Principality both in civil and in criminal matters."[18]

Another way of external promotion was Serbian capacity to conclude international treaties. Both 19th century international law doctrine and treaty making practice were very tolerant in term of entities allowed to conclude international treaties.[19] There was no doubt that principalities were among them. But there was no doubt that their treaty-making capacity, including Serbia's capacity, was rather limited comparing to the states' right to conclude the treaties. But in absence of definite list of acceptable issues and other contracting parties, both doctrine and practice were very liberal.

Beside the treaties concluded between Serbian insurgents, on the one side, and Turkish military leaders, on the other, during the armed conflict 1804-1815, it seems that the first international convention was concluded between Serbia and Russia in 1807.[20] In 1810 Serbia and Austria concluded agreement on extradition of particular person.[21] But it seems that it was rather exceptional practice until 1860's.[22] In 1863 Serbia concluded the Treaty on Extradition of Criminals and Deserters and the Treaty on Telegraph Service with Romania,[23] the Telegraph Convention with Austria in 1865,[24] the Consular Convention with Bavaria

15 Collection of Laws and Decrees of the Principality of Serbia in 1864, Vol. XVII, Belgrade, 1865, p. 65

16 *Ibid,* pp. 140-166.

17 Cf. e.g. Communication relative á la Promotion du Consulat Anglais en Serbie au Grade de Consulat General, Belgrad, le 21 janvier 1838, Serbian Newspaper, 1838, no. 3; Deux Firmans de la Sublime-Porte relatifs á la Confirmation de la Promotion de lÁgent temporaire de la Cour Impériale russe en Serbie, monisieur Guérassime Vachtchenko, á la Dignité de Consul général, le 3 septembre 1839, Serbian Newspaper, 1839, no. 40.

18 Quoted from Popovic, *op. cit.,* p. 361. See also: L'Exchange de lettres entre le Consul général impérial russe Chichkine et le Ministre des Affaires Étrangés de la Serbie M. Petronijevic concernant la Suspension de la Juridiction consulaire en Serbie, Beograd, le 15 et 29 avril et le 2, 15 et 27 mai 1868, Serbian Newspapers, 1868, no. 154. It was only during World War I the Young Turkish regime unilaterally dismissed capitulations, but the European powers did not accept the termination of capitulation regimes. It was only in 1923 when the Turkish Republic was established that western states accepted to abolish them. See e.g. Agoston & Masters, *op. cit.*, p. 119.

19 It has been well established rule of customary law that international law entities other than states may have the international personality necessary to allow them to conclude treaties. See e.g. D J Harris, Cases and Materials on International Law, sixth ed. Sweet and Maxwell, 2004, 791.

20 See The Review of the development of international legal relations of Yugoslav countries from 1800 until now, Vol. I, The review of international treaties and other act of international law relevance for Serbia from 1800 to 1918, p. 41.

21 *Ibid*, p. 42.

22 In 1850 the postal agreement was concluded with Vlahia and Moldova. *Ibid.* p. 54.

23 *Ibid*, p. 66.

24 *Ibid*, p. 68. In 1871 Serbia concluded the Telegraph convention with Austro-Hungary, *Ibid*, p. 74.

in 1870,[25] and the Postal Convention with Romania in 1871. The listed agreements, as it is obvious, were of bilateral nature and their subject matters were limited to the issues under the exclusive competence of Serbia. The treaty concluded with France, Austria, Hungary, Switzerland and Turkey on establishing direct telegraphic line between London and Constantinople in 1868 was rather proof to, than exemption of the rule.[26] That conclusion can hardly be sustained in case of the Treaty on Alliance with Montenegro signed in 1866 and 1876,[27] the Treaty on Alliance and Friendship signed with Greece in 1867, the Treaty between Prince of Serbia with Prince of Vlahia and Moldova agreement in 1868.[28] Nevertheless, the main challenge to the treaty-making capacity of Serbia emerged in 1876 when Serbia acceded to the Geneva Convention.

The significance of the so called First Geneva Convention for the development of the law of armed conflict, branch of public international law since 1970s known under the name international humanitarian law, as for the public international law in general, can be hardly overestimated. It is not only that the convention is considered to be the very first multilateral treaty of law-making character (normative treaties).[29] The Convention, containing no more than ten articles, set the foundation for the protection of the wounded and the sick in armed conflicts that has never been challenged until now. Three basic principles provided by the Convention remained unshaken until our days: the wounded must be protected and cared for without discrimination but for the medical reasons; neutrality of medical personnel and medical establishments and units; unified protective emblem for the medical service, a red cross on a white background.

But the Convention was not born in vacuum. It was part of a brilliant plan inspired and proposed by a young Swiss, Henry Dunant. Beside the international treaty, in every country, during the peace time, a voluntary relief society should be established, trained and prepared in other respect in order to be able to assist military medical services in their mission to provide relief to wounded and sick soldiers. The five-member committee formed by the Geneva Public Welfare Society, that changed its name to the International Committee for the Relief of Wounded in the Event of War in its first meeting that was going to become the International Committee of the Red Cross, accepted Dunant's proposals and brought a coherent plan of action. The Committee devoted all its efforts to convene the international conference in Geneva and it managed to assemble thirty-six people, including eighteen sent by fourteen governments, a number of military commanders, physicians and philanthropists, from 26 to 29 October 1863. The discussion centered on the organization of the national committees and, in particular, on the feasibility of sending volunteer nurses to help military medical personnel during the wars. Deciding correctly that the issues of international law should be left for the diplomats, the Conference recommended that each country should establish voluntary society as it was proposed by Dunant and Committee. The Resolutions also provide that the national committees of belligerent countries in the time of war "may call for assistance upon the Committees of neutral countries".[30]

The merit of Geneva Convention was recognized in Serbia as early as in 1867. Doctor Karlo Beloni, proposed Serbia's accession to the Geneva Convention, but this proposal had been refused as "unacceptable in our current political circumstances".[31] The dramatic alternation of regional context in 1875 radically changed the attitude of Serbian Government. In order to resist the Ottoman rule, violent collection of severe taxes, the orthodox population in the Nevesinje district fled into the mountains. Soon after, a similar insurrection occurred in the northern part of Bosnia. The Turkish response was brutal: hundreds of villages were burned down and at least 5000 people were executed.[32] Floods of refugees spilled across the borders looking for the safe haven in Montenegro, Serbia.[33] Weak as they were, Montenegro and Serbia were willing, but were not able to provide for the proper response on humanitarian crises. It seemed natural for their government, Montenegrins being the first, to address to Geneva Committee, to apply for the membership of Red Cross societies and to ask for the help.[34] Geneva responded that in order to recognize Montenegrin charitable committee established to give the relief to the refugees as Red Cross society, additional guarantee was needed: Montenegro had to accede to the Geneva Convention. Prince Nicholas I of Montenegro war

25 *Ibid*, p. 73.
26 *Ibid*, p. 72.
27 *Ibid*, p. 69 and p. 77 respectively.
28 *Ibid*, p. 71.
29 For the most extensive overview of the process that led to conclusion of the Geneva Convention and development of the International Committee of the Red Cross see: Pierre Boissier, *History of the International Committee of Red Cross – from Solferino to Tsushima,* Henry Dunant Institute, Geneva, 1985.
30 Quoted according to F Bugnion, The International Committee of the Red Cross and the Protection of War Victims, ICRC Macmillan, 2003, p. 17.
31 See: Vladimir Stanojevic, *Istorija Srpskog vojnog saniteta*, Beograd, 1925, p. 53; Mile Ignjatovic, Osnivanje vojne sanitetske službe u Srbiji sredinom XIX veka, Vojno-sanitetski pregled no. 4, 2003, p. 514.
32 See e.g. Agoston & Masters, *op. cit.*, p. 93. According to other sources, the following massacres of Turkish regular as well as irregulars (basibozluks) resulted with over 30, 000 victims. Cf. e.g. Boissier, *op. cit.* p. 298.
33 Some of them fled to Austria, but the Viennese Central Committee of the Red Cross refused to help them. See *Boissier, op. cit*. p. 298.
34 In 1875 Cetinje, the capital city of Montenegro was a community of 600 inhabitants. At the same time the number of refugees coming mostly from Herzegovina was 40,000 to 50,000. See for details William Stillman, *Hercegovacki ustanak i crnogorsko-turski rat 1876-1878,* Beograd, 1997.

eager to fulfill the suggestion and on 29 November 1876 Montenegro acceded to the Convention. Following the example of Montenegro, Serbia applied for the accession to the Geneva Convention, too, with a reserve to the Article 9 on 24 March 1876.[35] The reaction of the Ottoman Empire, which had already been a signatory party, was to protest against the acceptance of Serbia. Its declaration was refused by the Geneva Committee.[36]

In the atmosphere of the preparations for war against Turkey, the Serbian Society of the Red Cross was founded. Vladimir Stanojevic provided detailed description of the developments that led to establishment of this significant organization.[37] The initiative came from the superintendant of the ambulance in the Ministry of Armed Forces, Vladan Djordjevic. The implementation of the idea started with two Djordjevic's lectures in "Gradjanska Casina" in Belgrade on 2 and 8 January 1876. The title of the lectures was "Red Cross on the white flag", while attendance and reception were excellent. The lecturer provided an overview of the Geneva rules and stressed the necessity for improvement of the situation for the wounded and the sick in armed conflicts. One of the focal points in the lectures was establishment of the association for private assistance to wounded and sick during a war. The audience was soon invited to the Founding assembly that took place on 18 January 1876. Djordjevic presented the project of establishing the Society. The Statute of the Society, entitled "Rules of the main Serbian society for private assistance to wounded and sick persons during the war" was adopted afterwards.

On the eve of the war against Turkey (1876) Serbia was not prepared enough either military or politically and economically. The Serbian army was inferior to the Turkish army in weapons, military training and number of officers.[38] However, there was solid evidence about the efforts to improve military organization, discipline and medical assistance.

On 18 June 1876 Prince Milan Obrenovic, acting on advice of the Council of Ministers, declared the State of Emergency and Belligerency, followed by the promulgation of the Law on Court-Martial.[39]

Serbia had to implement its international obligations related to the law of war. The Order of the Minister of Armed Forces of the Principality of Serbia from 1 December 1877 has a high historical significance for the development and respect of law of armed conflicts, i.e. the international humanitarian law in Serbia. Minister Sava Grujic addressed all officers and soldiers belonging both to the regular (permanent) and so called "peoples' army", normatively introducing warfare legislation directed to special protection of the sick and wounded, and amelioration of their otherwise extremely hard situation and status. The special protection was to be afforded also to the establishments and personnel designated to foster the sick and wounded in a time of war. The Minister actually utilized the Order to transpose the obligations vested in the Geneva Convention into the internal legal order of the Principality of Serbia, but also outlined the customary law of warfare considered valid at that time by the majority of civilized nations. Serbia acceded to the Convention on March 24th 1876.[40]

The first issue tackled by the Order was affording protection to all types of ambulances and hospitals, no matter who established them, private associations or individuals (§ 1). No hostilities towards these establishments were allowed (e.g. shooting at them, burning them to the ground, etc.), respecting the principle of neutrality. All the warring parties have to protect the sick and wounded irrespective of whom they belong to, so there is no need for the armed forces to protect them. However, due to obvious existence of marauders in the wartime, the hospitals should have guards for the sake of protection of the sick and wounded. The intention of the Minister was to transpose Article 1 of the Geneva Convention that granted neutrality to certain subjects and establishments.

As to the personnel serving at the ambulances and military or civilian hospitals (physicians, pharmacists, quarter-masters[41], chaplains, carriers of hospital stretchers, orderlies, etc.) the Order granted them inviolability (§ 2).[42] They cannot be offended, captured, violated or held as hostages. Furthermore, the medical equipment and other property serving to the military hospitals cannot be considered as loot.[43]

The Serbian army also pledged to respect the rights of the inhabitants of an enemy country who come as an aid to the wounded. A house that hosts the wounded person(s) has also to be protected, irrespectively

35 Bulletin International des Societies de Secours aux Militaires Blesses, Volume 7, Issue 27, July 1876, pp. 117-118.
36 See: Boissier, *op. cit.*,p. 305.
37 See: Stanojevic, *op. cit.,* pp. 72-75.
38 Cf.: Slobodan Jovanovic, *Vlada Milana Obrenovica I,* Prosveta, Beograd, 2005, pp. 430-518; Slavica Ratkovic-Kostic, *Evropeizacija Srpske vojske 1878-1903,* Vojnoistorijski institut, Beograd, 2007, pp. 30-31.
39 Collection of Laws and Decrees of the Principality of Serbia in 1876, Vol. 29, pp. 632-634. The Executive had the legislative authority due to the fact that the State of Emergency and Belligerency had already been declared.
40 Collection of Laws and Decrees of the Principality of Serbia in 1877, Vol. 32, pp. 183-186.
41 The commissars were actually not medical personal *stricto sensu*, but served as administrators of the ambulances and hospitals, taking care of the discipline and economic issues. See, for example, Article 4 of the Rules for the Permanent Military Hospitals, Collection of Laws and Decrees of the Principality of Serbia in 1877, Vol. 32, pp. 685-710
42 Article 2 of the Geneva Convention provides that "Hospital and ambulance personnel, including the quarter-master's staff, the medial, administrative and transport services, and the chaplains, shall have the benefit of the same neutrality when on duty, and while there remain any wounded to be brought in or assisted."
43 This provision transposed Article 3 of the Geneva Convention.

of the belligerent side the wounded person belongs to. However, this rule should not be applied in case of concealing and sheltering spies or deserters.[44]

During the battle and immediately after it is finished all the wounded and sick soldiers should be gathered. The ones belonging to the opposite side should be delivered to their authorities for further medical care. Otherwise, they should receive the same treatment and food as Serbian soldiers. The only action allowed against the wounded enemy soldier that regains health is to make him prisoner of war.[45]

Another brand new obligation to be respected by the Serbian army was related to the Red Cross emblem. It was brought to the attention of all the officers of the Serbian army that the Christian states adopted a red cross on the white flag as a marker for buildings and personnel providing the care about sick and wounded.[46] Due to the religious reasons Turkey requested to use a red crescent as an emblem in place of the red cross.

Serbia declared its acceptance of mutual recognition of two emblems on 17 May 1877, so all the buildings, tents and medical personnel marked with the Red Crescent emblem enjoy the same status as the Red Cross would have had if the opposition was a Christian state. The hostility against the protected targets would be allowed only in the case of abuse, such as enemy's usage of an emblem to mask powder magazine, arsenal etc. That would not be considered to be in violation of the laws of war, while the party responsible for violation would be the one that abused the emblem.

The dissemination of the flags and other items with the "red cross" emblem had to be under strong control, competence reserved for the military authorities.

Finally, Minister Grujic ordered that each officer of the Serbian army should verify that he had read the Order by signing it.

In addition to the version of the Order of 1 December 1877 that can be found in the Archive of Serbia, there is another, more extensive one, published in the International Review of the Red Cross in April 1974 as Instructions to all officers, which differs from the previously analyzed Order.[47] In the § 6 the subject matter of the laws of war is defined as "everything that lies within the field of military operations" The belligerents are authorized to annihilate each other, but the laws of war prohibit brutality such as torturing an enemy to the death. The general principle of the law of war is that the amount of suffering and the extent of the losses inflicted upon the enemy should not exceed what is necessary to overpower the enemy. [48] The army is requested to abstain from cruel and inhuman actions. The exception to these rules is possible in extreme cases or in the case that enemy has already violated these rules. However, even the exception is preconditioned by the existence of the direct relation between the problematic action and the victory in war and the requirement that the action is not in contradiction with the basic humanitarian principles.[49]

Minister of Armed Forces also defined prohibited methods and means of warfare (§ 10). While it is legal and legitimate to kill or disable an enemy, the use of excessive violence is not permitted. It is also prohibited to employ the means which are obviously useless or directed towards bringing dishonor to the enemy. The law of war also prohibits brutal killing of an enemy or killing by utilizing the trickery (e.g. abuse of a flag of truce, killing an enemy who laid down his arms and has no means of defense). The life of an enemy who does not defend himself must be spared, unless he had committed many acts of brutality (§ 14). It is not clear enough whether that means that any soldier can execute him without due process. There is also an element of subtle reciprocity in this provision. The Instruction suggests that the one who does not spare an enemy cannot expect better treatment and mercy if he is at disposal of an enemy.[50]

The use of poison against an enemy is strictly prohibited (e.g. use of poisonous weapons, poisoning water supplies or food). The same applies to spreading epidemics and contagious diseases (§ 12). Apart from representing dishonorable means of combat, these kinds of endeavors can turn against those who utilize them.

The Instruction also enumerates examples of legal methods of warfare (§ 15): 1) operations that would cause injury to an enemy; 2) destruction or seizure of objects or equipment indispensible to the enemy; 3) employment of the ruses of war, excluding breaking promises to an enemy or abuse of the emblem of the Red Cross; 4) obtaining information about the enemy, but without torturing the prisoners.

According to § 19 of the Instructions, towns and localities that were not defended by the army or their inhabitants were not legitimate targets and should not be targeted objects of sieges or bombardments.

44 Compare Article 5 of the Geneva Convention.
45 Compare with the Article 6 of the Geneva Convention.
46 This part of § 6 transposed the Article 7 of the Geneva Convention.
47 The Law of War in Serbia in 1877 (ICRC's translation from the Serbian of the "Instructions issued by the Minister of War of the Principality of Serbia concerning the Application of the Geneva Convention of August 22, 1864, and the Rules of War", International Review of the Red Cross, No. 157, April 1974, pp. 171-178.
48 *Ibid*, p. 173. See, also the Preamble of the Saint Petersburg Declaration Renouncing the Use, in Time of War, of Explosive Projectiles Under 400 Grammes Weight, 29 November 1868.
49 *Ibid*, p. 173.
50 *Ibid,* pp. 174-175

The Serbian law of war also included the definitions of enemy combatants and non-combatants (§ 57). As an enemy combatant was considered any person who fought with weapons under his government's order. Everybody else should not be considered as active enemy, while this status was also denied to pirates, marauders and other persons who wage war on their own account. The enemy combatants were entitled to certain protection, unlike marauders or pirates, in a sense that they could not be punished by a court-martial, but only held as the prisoners of war. The court-martial was also designated for deserters and spies (§ 62)

In § 58 the Instructions set the conditions for the members of the people's army to be considered combatants: 1) they had to be organized in military groups with the authorization of the lawful government, under command of recognized leaders; 2) to abide to the civilized law of warfare. The fact that they may not possess the uniform does not disqualify them as combatants.[51]

As to the so called "passive enemies", i.e. the inhabitants of an enemy country who do not engage in the conflict, they must not be treated as enemy combatants and killed, led away in captivity or deprived of their property. Furthermore, they should not be compelled to serve in the enemy's army, unless they volunteer for that (§ 61).

Finally, besides the strong moral ground, sentiments of justice and humanity and the consciousness of the mutual advantages from the application of these rules, there is one more pragmatic impetus for respecting the law of war, namely certain types of retaliation called "reprisals" (§ 83). Reprisals are the acts of retaliation against an enemy that previously violated rules of war. The party that makes the reprisal is not violating the law of war, because the responsibility is on the other side that provoked these counter-measures.

During its wars against the army of Serbia and the army of Montenegro, the Turkish army violated the Geneva Convention on a regular basis, particularly as regards respect of the Red Cross emblem. It should be noted that the Turkish government passed the laws necessary for the proper implementation of the international agreement within its internal legal order, under heavy pressure by the International Committee of Red Cross and the Great Powers. However, the frequent violations of the emblem were probably not a consequence of ignorance, but deliberate targeting of the "Cross" due its offensive nature for any Muslim soldier.[52] It was a very sound explanation and the "Red Crescent" was temporarily utilized for the duration of this conflict. The officers of the Serbian army were duly informed about these developments in the order by the Serbian Minister of Armed Forces of 1 December 1877.

According to Boissier, "Montenegro and Serbia were determined to do their best to protect the Red Cross and respect the Geneva Convention, and they were to prove it. But Turkey was a rather different matter."[53] The Turkish army totally disregarded the Convention. The fate of the wounded enemy was to be stripped, mutilated or massacred. Medical units were regularly targeted despite the Red Cross emblem.[54]

Minister of Foreign Affairs of the Principality of Serbia, Jovan Ristic, was very dedicated in collecting the information and evidence about the Turkish atrocities, but also in notifying the delegates of the Great powers situated in Vienna and Bucharest.[55] A very good example of his approach was the letter of 30 July 1876 addressed to General Michail Chernjajev, Head of Timocko-Moravska Army, in which he asked for detailed reports about the violence of the Turkish Army.[56]

One of such detailed reports was submitted to General Chernjajev on 10 August 1876 by Colonel Djura Horvatovic, testifying about the war crimes committed by the Turkish Army in the City of Knazevac.[57] Very similar was the fate of the City of Aleksinac and its inhabitants.[58]

In the Note No. 3614 of 28 July 1876 related to the Turkish war crimes in Serbia, addressed to the diplomatic representatives of foreign states in Serbia, Ristic describes in details Turkish violence against the local population.[59] According to Ristic, the Turkish army pillaged, burned and destroyed villages even in the areas where there was no resistance. Ristic claimed that the atrocities, including bombardment of the churches, had not been done by the irregular Turkish troops, but under command of the regular Turkish officers.

Ristic's efforts were, without any doubt, very effective. The European states exercised significant pressure on Turkish government to respect the Geneva Convention and other laws of war recognized by the civ-

51 The first military uniforms in the Principality of Serbia were introduced by the Prince Milos Obrenovic in 1827. See: Pavle Vasic, *Uniforme srpske vojske 1808-1918*, Beograd, 1980, pp. 19-20.
52 Compare: James Cockayne, *Islam and International humanitarian law: From a clash to a conversation between civilizations*, International Review of Red Cross No. 847, September 2002, pp. 605-606. To prove this point Cockayne refers to the *Message from the Sublime Porte to the Federal Council,* 16. November 1876.
53 Boissier, *op. cit.* p. 303.
54 *Ibid,* p. 304.
55 See: Velimir Ivetic, Ratni zlocini Turske vojske u Istocnoj Srbiji 1876, Vojnoistorijski glasnik, br. ½, 1996, p. 234.
56 See: Document No. 3, *ibid,* p. 240.
57 See: Document No. 5, *ibid,* p. 242-243. Colonel Horvatovic reported that the whole city of Knazevac was burned to the ground, including the church and iconostasis. The wells were polluted with dead corpses, while there were many mutilated bodies. Turks frequently used iron sticks to impale the citizens.
58 See: Documents No. 7 and No. 12, *ibid,* pp. 245-246 and p. 252 respectively.
59 See: "Srpske novine", Beograd, br. 197, September 1876, pp. 875-876.

ilized nations. Victor Hugo published in France an article in newspapers condemning the Turkish crimes, while William Gladstone acted in similar fashion in Great Britain.[60]

One of the examples of the impact of the Geneva Convention on the belligerents in the wars in the Balkans 1876-1878 was Section 10 of the Truce Conditions between the Imperial Russian Army and its allies and the Ottoman Empire Army signed on 19 January 1878. This section regulates the status of sick and wounded Turkish soldiers captured by the Russian, Serbian, Romanian or Montenegrin troops. These persons had to be under protection of the Allies' military authorities and monitored by the Ottoman medical personnel, if any of them were present.[61]

Minister Ristic was very pragmatic and utilized the gathered evidence of Turkish war crimes in Serbia, as well as the great attention across the Europe, to support the "Serbian Question" – the quest for independence. He did so at the Conference in Constantinople 1876/77 and during the Congress of Berlin in 1878.[62]

Development of the Serbian law of war took place in a very specific ambient of state-building and liberation from the Turkish authority. The process was parallel to the process of *ab initio* building of Serbian military organization in terms of personnel, legislation and material resources. The Principality of Serbia early became a signatory party to the Geneva Convention and continuously invoked violations of its provisions by the Turkish army during the war 1876-1878. Even before its accession to the Geneva Convention, Serbia incorporated some of the customary international rules dealing with the protection of wounded enemies and the prisoners of war within the Law on Organization and Procedures of the Military Courts. Some of these provisions will be later codified at the international level at the Hague Peace Conference in 1899 and 1907. Accession to the Geneva Convention was significant incentive for further development of the law of war in Serbia. Following the obligation to implement and to provide for implementation, the Minister of Armed Forces issued an order that elaborated rather general provisions of the Geneva Convention, and accommodated it to the context of the ongoing war against Turks. Readiness of the Serbian side to respect the red crescent was inspired by desire to make the provisions related to the protected emblem effective.

The Serbian civil and military authorities invested a lot of effort to disseminate the information on the content of the Geneva's rules among the Serbian armed forces. In the same time they managed to develop a channel of communication with the Geneva Committee that served further for communication with other national Red Cross Committees. This model of communication was a seed for the future mechanism of monitoring the respect of the Geneva Convention. It seems that Serbia directly benefited from behaving as a civilized European nation in the field of law of war. Due respect given to the Geneva Convention additionally legitimized Serbian position in the process of achieving independence under auspices of the Congress of Berlin.

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60 *Ivetic,* pp. 234-235.
61 Collection of Laws and Decrees of the Principality of Serbia in 1878, Vol. 1, p. 276.
62 See: Jovan Ristic, *Diplomatska istorija Srbije za vreme srpskih ratova za oslobodjenje i nezavisnost 1875-78,* Prosveta, Beograd, 1998, Vol. 1, pp. 225-227.

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THE INTERNATIONAL CRIMINAL TRIBUNAL FOR THE FORMER YUGOSLAVIA AND THE REPUBLIC OF SERBIA – COOPERATION IN CRIMINAL PROSECUTION OF WAR CRIMES[1]

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Abstract: The paper deals with the important topic of the establishment of the International Criminal Tribunal for the former Yugoslavia (ICTY) and cooperation with the Republic of Serbia in the prosecution of war crimes. The introductory section points to the ambient and other factors that preceded the establishment of the ICTY and the cessation of civil war in the former Yugoslavia. The next section of the paper deals with the establishment of the ICTY, its legal positions and the critical review of the court from formal legal, materially legal and other objections. The third part of the paper deals with the cooperation of the Republic of Serbia and the ICTY to prosecute war crimes, and in this context it lists periodization in their relations, legal bases and mechanisms of cooperation and especially the role of the Ministry of Internal Affairs of the Republic of Serbia. At the end is the final part instead of a conclusion.

Keywords: The International Criminal Tribunal for the former Yugoslavia (ICTY) - establishment, legal opinion and criticism, Republic of Serbia, war crimes, cooperation between the ICTY and the Serbian MI.

INTRODUCTION

In the period after the Second World War there were a number of armed conflicts, wars and the military interventions in which there were many casualties and serious indications of committed war crimes, crimes against humanity and other international crimes. Among the most famous were the cases of military involvement in Vietnam in the seventies of the last century, then the military conflicts in Iraq, Afghanistan and other countries. The same applies to the former Soviet Union military intervention in Afghanistan and a few other cases.

However, despite the serious indications of executed international crimes there has been no effective investigation, nor were there any legal proceedings initiated in order to prosecute offenses. The main reason is the ideological division of the world at that time, based on the existence of a balance of power (fear) and all judicial initiatives are blocked. Law and justice were pushed into the background, and political reasons again prevailed over legal and humanistic reasons.

After the fall of the Berlin Wall, there was a rearrangement of the former Soviet Union and Eastern bloc, transition of ex-socialist countries and reform in the countries behind the 'Iron Curtain'. On the new political map of the world the US (NATO) took over the leadership position, as expressed by the phrase "new world order". The newly created states implemented a process of transition with more or less success and continued economic development, while some of them even managed to become equal members of the EU (Slovenia, the Czech Republic, Slovakia, Hungary, etc.).

In the late 80s and early 90s a wave of social change arrived to the common state of the SFR Yugoslavia. Changes in the former Yugoslavia were not adequately legally and politically articulated, and soon nationalism erupted in a multinational community into armed conflict. In the situation in former Yugoslavia representatives of the international community were involved, especially the EU and other subjects, but they

1 This paper is the result of the research on project: "Management of police organization in preventing and mitigating threats to security in the Republic of Serbia", which is financed and carried out by the Academy of Criminalistic and Police Studies, Belgrade - the cycle of scientific projects 2015-2019.

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failed to reach sustainable political agreement with the leaders of the former republics and preserve peace. The impact of foreign intelligence services in the region and the different interests of the great powers was evident, all of which contributed to a further escalation of the conflict and the disintegration of the former Yugoslav federation. Instead of peaceful and democratic change, an armed conflict has led to massive human casualties, material losses and exile of nearly one million citizens of the former Yugoslavia.

After the signing of the Dayton-Paris peace agreement in 1995, whose anniversary (19 years) was marked recently, peace in this region was established. However, the crisis in the former Yugoslavia was still smoldering in the territory of Macedonia and Serbia (Kosovo and Metohija), which escalated with NATO aggression against the Federal Republic of Yugoslavia (1999). During the conflict in the former Yugoslavia, there were serious indications that in some military operations and at certain locations serious crimes was committed, including war and other crimes in the corpus of international crimes. This was the reason that in 1993 the UN Security Council responded on the matter and adopted several resolutions, which points to the danger of war on the peace in the world and other values that are protected by the UN Charter (Chapter VII).

ESTABLISHMENT OF THE INTERNATIONAL CRIMINAL TRIBUNAL FOR THE FORMER YUGOSLAVIA (ICTY)

The International Criminal Tribunal for the former Yugoslavia (ICTY) is an ad hoc criminal tribunal that was created on the occasion of the serious allegations of war crimes carried out in the conflicts in the former Yugoslavia. Formally, the ICTY had established with special UN Security Council Resolution No. 817/93 of 25/05/1993 and in the spirit of earlier adopted decisions of this body, more precisely Resolution No. 780/92 (06/ 10/1992) and No. 808/93 (22/02/1993). In legal terms, the ICTY is responsible for situations of serious violations of the Geneva Conventions, violations of the laws or customs of war, genocide and crimes against humanity in the former Yugoslavia since 01/01/1991. The jurisdiction of the ICTY legally relies on the previously adopted principles of the Nuremberg Tribunal and the Code of Crimes against the Peace and Security of Mankind. The main task of the ICTY is to determine individual criminal responsibility for specific crimes on the basis of properly conducted procedure.

The establishment of the ICTY understandably caused enormous worldwide attention, especially in the professional circles. Several scientific meetings, conferences and round tables were organized on which participants discussed the legal basis for the establishment and functioning of the ICTY in the present circumstances. The Fund for Humanitarian Society has organized an expert round table devoted to the "Hague Tribunal" - the establishment, competencies and other relevant issues. During this and a n umber of other conferences focusing on the ICTY, experts expressed opposing views regarding the establishment and functioning of the tribunal.

Among the critics of the establishment and operation of the ICTY there is a prevailing opinion that the Hague Tribunal has no legitimacy because it was established by SC as a body within the UN system that has no legal capacity (S. Djordjevic, Z. Stojanovic, R. Bulajic, B. Kosutic). Supporters of this opinion have further stated that this decision of SC seriously departed from the fundamental principles of the UN Charter, reminding that the practice in the previous cases of severe violations no special tribunal was ever formed (Korea, Cambodia, Vietnam, Laos, Panama, Afghanistan). For these reasons, many war crimes have remained unsolved to this day, and criminals were not adequately punished. As an example, the United States had for more than three decades avoided the extradition of Yugoslav war criminal Artukovic Andrija, who was accused of the most serious crimes committed during World War II in the territory of the so-called Independent State of Croatia.

Another group of authors (V. Dimitrijevic, K. Obradovic, V. Vasilijevic et al.) has taken the completely opposite stance and expressed opinion that the ICTY is fully legitimate. In support of this the authors stated that the Security Council is the most important organ of the UN, so that according to the UN Charter it has this kind of jurisdiction. They reminded that the ICTY is conceived as a corrective to the national courts, which is especially important in cases of bias, evading the law, obstruction of justice and abuse of rights. All signatories of the Dayton-Paris peace treaty admitted jurisdiction of the ICTY. Accordingly, they are obliged to respect the legal norms and the application of Article 29 of the ICTY Statute which provides for mandatory extradition of a person, at the request of the court, regardless of the Constitution and other restrictions.[3]

We think that the arguments of both viewpoints are legally reasonable and it can be debated, which is one of the objectives of the paper. However, the ICTY was established by the Security Council as the most important organ in the UN system and works de facto for two decades. True, it is undisputed that the ICTY was created for political reasons as well as international courts before him, and today operates in identical circumstances. For these reasons, right and justice are often in the background, which is our critical review of current work of the ICTY.

3 Vasilijević V, Chapter VII of the UN Charter and international criminal law, "International Politics" No .1018 - 1022, Belgrade 1993, str.23-25.

LEGAL STANDPOINTS OF THE ICTY

In the doctrine of international criminal law there were no unique, unified and generally accepted norms and institutions. Almost identical situation existed with regard to legal rules of criminal procedure before international criminal courts. In one such an environment ICTY tried to find a legal basis in earlier stances, the principles of the Statute of the Nuremberg Tribunal, the judgment of this Court and the decisions of the General Assembly of the United Nations which confirmed the principles of international criminal law.

A particular problem for the startup and operation of the ICTY further was the fact that in the hierarchy of the UN no more judicial authority in the international system. In the internal legislation of countries such judicial instances exist, act upon legal remedies and take legal positions that are binding on the lower levels and build unique jurisprudence. ICTY, therefore, by the Anglo-Saxon model resorted functional interpretation of existing norms, took legal positions on certain issues and joined the "creation of law" in specific cases. Of course, from the standpoint of civil law it is unknown and incomprehensible, primarily for the professional public from the area of the former Yugoslavia.

In many matters ICTY is legally determined by taking individual attitudes. This was the case with regard to objections of the accused, defense counsel, experts on particular issues, institutions and NGOs. The practice of "authentic interpretation" of norms was justified by the absence of a higher judicial body within the UN system, then the process needs and requirements to rectify the legal dilemmas in some matters.

From important legal positions that ICTY took, we remind: a) legal positions on status issues, b) defense issues, v) matters trials in absentia and others.

Status issues are the first in a series that have been the subject of attention the ICTY. These questions were driven by the accused and the defense lawyers who challenged the legitimacy the ICTY, its establishment and operation. In the absence of material provisions ICTY is engaged in the discussion of these de jure previous issues, but as a rule, rejected all objections of status. ICTY stated functional understanding of the concept of competencies that make up the temporal, loci, personae et materiae and "legal power" as the authority of the court to definitively make decisions about "what is right" and in each case. In addition to that referred to ICTY and works as an independent legal body in the international legal order, then it has "inherent" powers, acts in the spirit of the rule of law and provides legal guarantees to all the accused.[4]

Questions of Defence of the accused were driven by the accused and their defense counsels, who pointed out the numerous difficulties in preparing his defense. It is particularly pointed out in the real weaker position of defense in relation to the Prosecution, especially in terms of evidence, their execution and amendments. The big problem for the defense was the calling of witnesses, because there are significant disturbances and even threats to witnesses. In this section there is a problem regarding the status of protected witness whose identity was not communicated to the start of the trial, and communication with them is only possible after the start of the trial. The big problem for defenders of the continental legal field is the fact that the Tribunal's prevailing Anglo-Saxon procedures and rules. In addition to the language that was another obstacle for a large number of defense counsel, and what is objectively disrupt the defense and its preparation.[5]

In our opinion, the biggest problem for the defense was represented at that time the media demonization of Serbia and our people, because in the ether went ugly picture of Serbia and participation in past events. Certain defendants have even systematically stigmatized because the media portrayed them solely as war criminals, and in that way they was foredoomed.

However, the ICTY rejected a number of argumented complaints of this type and in their explanations referred to the normative-legal acts, such as the ICTY Statute and Rules of Procedure and Evidence.

Questions of trials in absentia and the other relating to the proceedings before the ICTY have also been the subject of attention of professional and general public. According to Article 61 of the Statute the ICTY it is possible to initiate proceedings before the court when the defendant is currently unavailable. The condition is that against certain persons was indicted and launched evidence. This solution is provided in cases where the accused is long time hiding, avoiding participation in the process and in the opinion of the court abused procedural rights directly through defense and in other ways.

In these situations, ICTY may commence proceedings in absentia, review and confirm the indictment (reconfirm), issue an international arrest warrant and oblige all countries to cooperate. The position of the accused is exacerbated by the fact that at this stage the participation of his counsel is not possible, because everything is conditioned by the first appearance of the accused before the Tribunal. By the rules of procedure and evidence the accused and the defense until the moment of occurrence have legal observer status, but without being able to familiarize themselves with the subject matter of guilt and to participate in the proceedings.

4 Milinkovic B, Past practice of the ICTY. "International Affairs", No. 1048, Belgrade 1996, page 12-15.
5 *Ibid.*

For such solutions, which are also the achievements of the common law defendant and counsel have filed numerous complaints, but the ICTY rejected them all, with arguments about the "inherent" powers and by reference to the normative acts governing the procedure.[6]

CRITIQUE OF THE ICTY

Today, after two decades of the formal establishment of the Tribunal and slightly less from the beginning of his work, we believe that based on the undisputed facts can provide a critical review of the work of this body. In this sense, we left aside the political and similar reasons, we provided review of the ICTY from the standpoint of profession and in keeping legal arguments. This particularly refers to the facts that are related to the establishment of normative-legal acts (Statute, Rules procedure and evidence), the current practice in the works and other circumstances.

For ease of presentation, we systematize the objections to the legal nature and other reasons to formal, substantive and others. Objections are based on professional attitudes and somewhat civic public, with the territory of the former Yugoslavia, and experts from the international community.

a) ***Formal legal remarks*** refer primarily to the procedure of establishing the ICTY, which was established by a decision of the UN Security Council. The legal basis for the decision SB was the UN Charter as the supreme law of the United Nations system. The special emphasis was on Chapter VII, which is dedicated to the preservation of world peace and security, on the basis that the SB is authorized to take action in the event of threats and dangers to peace and security in the world.[7]

The main objection of the majority of experts refers to the capacity of the Security Council to establish ICTY, as a judicial body which should be independent and impartial. De facto ICTY was established as a subsidiary body of SB as an executive body, in what way is already at the beginning of the work questioned the principle independence of the court.[8] However, the court rejected this and related objections with the argument in which points out the reasons for the establishment ("reports on the situation in Yugoslavia, especially Bosnia and Herzegovina, then ethnic cleansing, a threat to world peace and security"),[9] which is then spread reasons stated in the decision of the Appeals Chamber of the Tribunal in the Tadic case.[10]

We think that it is evident that SC did not possess the necessary legal capacity and inherent jurisdiction to decide on the establishment of the court Resolution SC was based on political reasons and without sufficient legal basis in the order of UN and international law, and for these reasons, SC took extensive attitude in the interpretation of Title VII of the UN Charter. Certainly, this ad hoc and selective approach SC is not in the spirit of the UN Charter, especially not to the nature and purpose of an international criminal court.[11]

In terms of the content SC decisions are based on the idea of establishing peace in the former Yugoslavia as a UN member state, where, according to the understanding SC armed conflict endanger world peace and security. Most authors agree with the starting arguments, but it should be reminded that peace is established in Yugoslavia by signing the Dayton-Paris Peace Arrangement (1995), and therefore part of the argument ("establishing a disturbed peace") does not stand. Attitude of several authorities (A.Kaseze) which stated that the objection about the impact of politics is argumented is for respect, but after they prevailed functional approach and believe that the creation of ad hoc tribunals is useful in the absence of an international criminal court of universal jurisdiction.[12]

b) **Legal remarks** we will consider in the context of the Constitution, certain legal terms, institutes and principles of criminal law and others.

The Statute of the ICTY is the most important legal document of the court for its organization and operation. Legally and technically, it is an act that has a smaller number of provisions (34) systematized in several chapters: the court's jurisdiction (actual, territorial, time), individual criminal responsibility, organization, investigation and preliminary procedure, trial and post-trial procedures, cooperation and legal assistance and general provisions.[13]

At first glance, it is evident that the statute as a legal act somewhat flawed particularly in terms of substantive criminal law, because of the smaller volume contains legal solutions in the general part of criminal law and relevant international conventions. It is further undisputed that the ICTY in previous work mainly

6 More info: Group of authors, Guide to the Hague Tribunal, OSCE Mission to Serbia, Belgrade 2008.
7 UNSC Resolution br.817 / 93 dated 25.05.1993.
8 Nikač Ž, The transnational cooperation in fighting against crime, Interpol and Europol, The Institute for textbooks and teaching aids, Belgrade, 2003, p. 96-101.
9 Op.cit. in footnote 5. Operative paragraph no.2. Rez.UN
10 Op.cit. in footnote 1.
11 Stojanović Z, Ad Hoc Tribunal for the Former Yugoslavia and the International Criminal Law, Right Theory and Practice no. 1, N. Sad, 1999, p. 8-14.
12 Op.cit. in footnote 1.
13 Kreća M, Šurlan T, Practicum in International Public Law, KPA, Belgrade 2011, p.318-320.

guided with elements and principles of the common law (procedure), which is incomprehensible in relation to the national law of the former Yugoslavia where armed conflict occurred and for which the court was established. ICTY is largely practiced norms of customary international humanitarian law, which causes the present legal ambiguity and many unknowns for lawyers from continental legal areas. Also, it is contrary to the principle of legality and universal guarantees on accused persons, especially in a fair, lawful and procedure within a reasonable time.

Certain terms and provisions of criminal law are not clearly defined in the current provisions of the Constitution, and it further disrupts the work of and the immediate application in practice. Thus, for example, there are no precise stipulations regarding certain important issues such as the age of the accused, grounds for excluding criminal responsibility, attempted criminal offenses, concurrence of offenses and the other legal institutions and concepts.

Objections may be made to the disruption of some basic principles of criminal law, which are generally accepted in doctrine and the practice. Thus, the well-known legal principle *nullum crimen, nulla poena sine lege* (no crime and the punishment if it is not required by law) injured a lack of general and specific provisions of criminal law and the procedure of determining violations of criminal sanctions. Complementary principle of criminal law *nullum crimen sine culpa* (no crime without guilt) was disrupted also, due to the absence of general conditions related to criminal responsibility.[14]

Procedural remarks apply to the proceedings before the court which is regulated by the provisions of the Statute of the Tribunal, and even more by the Rules of Procedure and Evidence, which is now much more widely used in the daily work of the court.

Rules of Procedure and Evidence constitute a legal act that is from the standpoint of legal technique significantly higher than the Constitution, due to the volume and the number of provisions. The document contains several sections: general provisions, priority Court (requirements, jurisdiction, *ne bis in idem*), the organization of the court, the investigation and the rights of suspects, pre-trial proceedings, before a trial panel, the appeals procedure, audit procedure, forgiveness and the pardon.

Preliminary analysis of the document and past experiences suggest that the act provides significant opportunities for prosecutor and the court, but it is unacceptable as it is to the detriment of the accused persons. Thus, we first mention secret indictments that dominate in some cases, which we consider that can be accepted partially in the investigation phase as the initial part of the process. Another example is the principle of rotation according to which the almost the same judges was in the first act in the first instance, and then in the second stage of the appeal. We think that is a valid objection and the defense (accused) on the application of the principle of flexibility prosecution, on the basis of which the prosecutor has the discretion that does not prosecute the offender if he agreed to testify against another person.[15]

From the standpoint of basic procedure remark refers to the primacy of the common law and the rules of procedure, because most of the accused and the defense do not know the postulates of this law. It has been said that the war on the territory in the former Yugoslavia and that it is natural to apply the then current law, both substantive and procedural. Thus, in the stage of gathering facts and evidence of potential adversarial principle prevails in relation of the investigation, i.e. the complete domination of the adversary principle and the how it is known in the common law system.[16]

Especially significant are the remarks made on the procedure of proof and evidence gathering, because the experiences so far in some cases ICTY did not have sufficient material evidence. First of all, there is a lack of relevant documentary evidence and as a result has been disabled objective and comprehensive approach of the Tribunal, particularly in sensitive and the complex cases. It is known that the Tribunal at Nuremberg possessed quite good factual material, but it was not only result of the famous German meticulousness, but also due to the good investigative activities. However, in the case of the court in The Hague there prevails personal evidence such as the questioning of the suspects (defendants accused), examination of witnesses, hearing damaged, etc.[17]

The hearing of the protected witness is of extraordinary significance as a procedural action of the hearing the person whose identity is not revealed, to the accused and the public. On the one hand, bearing in mind the current practice and the state of relations in the former Yugoslavia, the procedure indicates a non-legal influence on witnesses and witnesses whose credibility has not been checked.[18] Consequently, there are

14 Stojanović Z, *International Criminal Court - Utopia or Reality? The Tribunal for the former Yugoslavia.* XIV Congress of IADL, Capetown, 1996

15 Vujin M, International Tribunal for the Former Yugoslavia: the relationship between law and lawlessness, "JRKK" No.3 / 98, Belgrade 1988, p.87-101.

16 Rakic-Vodinelić V, Review of Rules of Procedure and Evidence of the International Tribunal for the Prosecution of Persons that are supposed to be responsible for serious violations of IHL committed in the territory of the former Yugosslavia since 1991, the International Criminal Tribunal for the Former Yugoslavia: characteristics and procedures, Proceedings documents, Belgrade 1996, p.103-152.

17 Op.cit. in footnote 7, p.98-100.

18 *Ibid.*

serious doubts about the credibility of witnesses and thus undermines the essential right of the accused to defense. On the other hand, there are good reasons why this process has introduced that possibility, because some evidence could not be obtained otherwise and the witnesses could not be protected. In any case, the application of this institute in practice will show its evidentiary strength and sustainability in the practice of the ICTY.

c) **Other remarks** that are mentioned in the literature on account of ICTY mainly related to the practice of the ICTY, which is in many ways quite controversial and strange in terms of certain court decisions.

Thus, the Hague tribunal, which is normally responsible for crimes in the former Yugoslavia from 1991 until today, did not respond to crimes of members of the alliance during the NATO aggression against Yugoslavia in 1999. In doing so, the authors have pointed out that this powerful argument did not enter in the question of responsibility for aggression, because this offense is not the subject matter jurisdiction of the ICTY.[19] The fact is that during the NATO attack on Yugoslavia was significant (incidental) civilian casualties, which are conceptually defined as "collateral damage".[20] We believe that the meaning of the term is to minorize mentioned crimes, escape responsibility for non-legal acts and thwart the right of victims for compensation of damage. And beyond that, in the case of aggression against Yugoslavia crimes were committed prohibited means and methods of warfare. Finally, peace was established after the signing of the Military Technical Agreement in Kumanovo and the adoption of UNSC Resolution 1244, according to which the territory of Kosovo and Metohija was placed under temporary UN administration.[21]

Next questionable thing in the practice of the Tribunal is different penalties for the same offenses. It is known that the ICTY acted differently in a number of cases with identical factual material and legal qualification, but it is justified court freely, different personnel composition and higher other arguments. We think that the differences that are the result of different legal positions of individual panels of judges are not acceptable, but it should occupy identical legal positions and make identical decisions in the cases of the same legal qualification of the offense and factual material.[22]

A serious remark refers to the mysterious deaths that occurred in detention in a few cases, which is very seriously shaken the credibility of the court. As a rule, the victims were almost all Serbs, which further strengthened the so called anti-Hague lobby and further amplified doubt in impartial work of the ICTY.[23] Of course, one should be careful and show respect for the victims that are not recorded by ethnicity, but in terms of facts.

An important remark concerns the violation of the rights of the accused that has happened in several cases in the practice the ICTY, as well as violent apprehension of persons, inadequate legal treatment, mistaken identity and others. And beyond that, people who are on these grounds had been damaged were unable to obtain reparation, both material and the immaterial. It is particularly illustrative case of the accused Dr V. Seselj, who had previously voluntarily surrendered to the Tribunal (23.02.2003), but was in custody until recently (12.11.2014) and the judicial process is not yet complete. In this case, there were several breaches of the rights of the accused, but also and emotional and maladaptive defense reaction to the decision of the ICTY (disrespect, insult). In any case, the right to trial within a reasonable time is violated, which is defined as a universal standard under Article 14/3 "c" of the ICCPR (1966), and according to Article 6 of the ECHR (1950).[24]

COOPERATION BETWEEN THE REPUBLIC OF SERBIA AND THE ICTY

The ICTY, which was established by the UN Security Council in 1993 received the "right of citizenship" in the former Yugoslavia two years later. In 1995 the Dayton-Paris peace agreement was signed , ending the war in Bosnia and Herzegovina and the peace agreement signed by the authorized representatives of interested parties (Serbia, Croatia, Bosnia and Herzegovina), with the mediation of the great powers (the United States). The Parties welcomed more international obligations, including the jurisdiction of the Tribunal in The Hague and is committed to full and unconditional cooperation with the Tribunal.[25] Cooperation with

19 Krivokapić B, War crimes committed by NATO during the aggression on Yugoslavia, "Foreign legal life" No.1-3 / 00, Belgrade, 2000, p.5-33.

20 Lat. *collateralis*- flank, side, delinquent. In military terminology of some countries this term is used to denote incidental civilian casualties and destruction of civilian objects, which is taunting to us and conceals the true nature of the crime and damage.

21 UN Doc No.5/RES/1244, 4011 session SC UN 10.06.1999.

22 More information: Petronijević G, lack of principles in the application of legal standards in the work of the ICTY, "Hague tribunal between law and politics," Proceedings of the Institute of Comparative Law, Belgrade, 2013, p.138-150.

23 The death of the former President of the FRY and RS S. Milosevic, then the death of the late former president of the RSK. M. Babic and others in the detention unit in Scheveningen.

24 Paunovic M, Krivokapic B, Krstić I, International Human Rights, Belgrade 2010, p.197-199.

25 *The General Framework Agreement for Peace in Bosnia and Herzegovina with 11 annexes, supporting letters and the Final Declaration,* International Politics no. 1041, Belgrade 1996 .; Bonn Conference on the Implementation of the Peace, Bon 09-10.12.1997,

the ICTY was overlooked as mandatory to the previously adopted UN resolutions, conventions, agreements and other documents.

Cooperation between the ICTY and the Parties, and therefore the Republic of Serbia, had an evolutionary path and has undergone various stages from initial distrust and ignorance, through rapprochement, communication and partnerships and, finally, now almost complete cooperation depending on the phase of individual judicial process.

a) In the initial period (1993-2000) cooperation between the ICTY and the Parties is almost entirely absent, and the reason is the high initial mistrust and switching for accountability to each other for the last civil war and tragic consequences. It is evident that none of the participants was ready to accept part of the responsibility of their own, while the question of individual criminal responsibility did not arise. The initial period of the Tribunal's work was marked by disorientation of the Tribunal to the Court and the Prosecutor's Office because they did not properly comprehend the environmental and other relevant factors in which cooperation should be established. Thus, already in the first prosecutions by the ICTY started already great mistrust of the participants in the conflict, and on the other hand mutual distrust previously warring parties and distrust of the tribunal. Cooperation in this period is almost absent and was more declarative, without any significant results.

Cooperation between The Hague and Belgrade was modest and more declarative. In addition, cooperation has been plagued with poor international relations between the leadership of the then Federal Republic of Yugoslavia (RS) and the international community, especially with the United States and leading Western countries. It is greatly hampered the already weak position of our country in the world and international relations. Significant political differences and mistrust still led to a sharp exchange rate and the policy of conditionality towards our country and imposing sanctions FRY because of the war in the former Yugoslavia. The antagonism between the leadership of the former Federal Republic of Yugoslavia (RS) and the US and their allies increased, which led to the fact that relations with the ICTY and other international subjects are very weak. And beyond that, the FRY is accused of contempt of the Dayton Agreement and was followed by threats of re-introduction of international sanctions. In early 1999, on the situation in Kosovo and Metohija and the failed negotiations in Rambouillet, the US and NATO are committed aggression against Yugoslavia and bombed our country without a UN Security Council decision. After the signing of the Kumanovo Agreement the war actions are ended, there was a withdrawal of our forces and the entry of NATO forces (KFOR) in Kosovo. All this is done in the accordance with the later taken by UN Security Council resolution 1244.[26]

b) In the period after 2000 has been a well-known social change in the Federal Republic of Yugoslavia (Serbia) and shift of previous government, following the presidential and parliamentary elections. The internal changes have affected the position of the Federal Republic of Yugoslavia (RS) at the international level, and our country has promoted a new political platform in the field of foreign policy. The more moderate stance is occupied and promoted policy of cooperation with the international community, especially with the leading countries of the world. It was further pointed out that the FRY (Serbia) wants to become a factor of peace and stability in the region, then to establish good neighborly relations and that in the foreseeable future apply for admission to the EU. Amended approach was met with the support of the most important subject of international politics and in this period the Federal Republic of Yugoslavia (Serbia) had significant assistance from the international community, especially the EU Member States. They re-established and built to a higher level of international relations with numerous countries and international organizations, which was of importance for the general position of our country in the international community.

The return of FRY (RS) in the international community is actualized many political and international legal issues, including the question of previously signed international treaties and earlier international commitments. Of course, there is the question of the obligations that each country has on the basis of membership in the UN, other international organizations and on the basis of previous international agreements. Such a dilemma arose and in terms of our obligations relating to cooperation with the ICTY, on the basis of membership in the UN and signed the Dayton-Paris peace agreement.

Position FRY (RS) was an indisputable from the standpoint of international law and all previous commitments under international agreements are accepted. Consequently there was no question about the obligations relating to cooperation with the ICTY because there was undisputed international legal basis. From the standpoint of internal law was a dilemma in relation to the current Constitution of the Federal Republic of Yugoslavia (Serbia)[27] which did not allow the extradition of our citizens, as well as due to the lack of specific legislation in this area, other legal and political reasons. Legal dilemmas on constitutional constraints and other issues have led to different interpretations and disputes, making it difficult to decide

International Politics no. 1063-1064, Belgrade 1997, p.29-30.

26 UN SC, Doc. S/RES/1244, 10.06.1999.

27 Constitution of the Federal Republic of Yugoslavia, "Official Gazette of RS" no. 01/92.

Constitution of the Federal Republic of Yugoslavia, "Official Gazette of RS" no. 01/90.

the competent authority and led to delays in cooperation with the ICTY. The federal government has tried to avoid a legal vacuum and find a modus for cooperation with the ICTY in order to protect national interests, because they are threatened new sanctions and isolation of the FRY.

The federal government has adopted a by-law on cooperation with the tribunal called the Regulation on cooperation with the ICTY.[28] According to the same sub-legal act established the powers of the ICTY to undertake investigative activities in our country, then the transfer of criminal proceedings pending before the national courts, legal aid, the execution of the judgment the ICTY in Yugoslavia. However, at the initiative of several proposers Federal Court issued a decision according to which the Regulation on cooperation with the ICTY does not agree with the FRY Constitution and the Law on Criminal Procedure.[29] The Court took the opposite legal position in relation to the decision of the act and gave priority to the provisions of national law in relation to international and pleaded against the direct application of the Statute of the ICTY in our legal system.

There have been repeated delays in cooperation with the ICTY and threat of new sanctions to our country, and the government of the Republic of Serbia adopted a similar bylaw entitled Regulation on cooperation with the ICTY.[30] The adoption of this regulation is eliminated the problem of cooperation with the ICTY, while on internal level disagreements and lack of consensus on the most important issues stayed.

Then FRY adopted the Law on Cooperation with the ICTY for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991.[31] From the standpoint of legal technique in question is a regulation that is relatively short, succinct and contains VII sections with a total of 41 provisions. In addition to the introductory (general) provisions in systematics important place have provisions relating to the following matters: powers of the ICTY to conduct any investigation in Yugoslavia, the transfer of domestic criminal cases to the Tribunal, the procedure of extradition of the accused, legal aid, the execution of the judgment the ICTY in Yugoslavia and others.

On the material and legal point at issue is lex specialis rule in a very sensitive area, already in introductory provisions emphasize the principle of priority of international obligations accepted by the FRY and the respect of the Statute (Article 2). He further highlighted the principle of respect for the sovereignty of the FRY in case of conflict with the requirements of the ICTY, but in practice extensively interpreted in terms of the primacy of the Tribunal in relation to national jurisdiction (Article 4).[32] It is envisaged the establishment of a special body - the National Council for Cooperation with the ICTY (Article 7), which is still functioning.[33]

On the procedural legal point of law is quite precisely regulated legal procedure and the procedure of cooperation between our bodies with the ICTY. Estimated number of specific powers the ICTY to undertake investigative activities on our territory: the collection notice, hearing persons (suspects, defendants, victims, witnesses, experts), autopsy and exhumation of bodies, collecting material evidence, inspection and copying of files and others. (Articles 9 -11). It was established to limit cooperation with the ICTY in the case of endanger national sovereignty, security and public order (Article 10, paragraph 3). The next section (Section III) is regulated by the transfer of criminal proceedings pending before the national court (Article 12-17), which is in accordance with the forms of international judicial cooperation (legal aid).[34]

The procedure of transferring face has a central place in the Act, and is regulated within section IV (Article 18-31). Surrender relates to the accused persons and are not intended exemptions, privileges, and immunities, even for heads of state. According to the Act the decision on the extradition of persons is taken by the competent authorities of FRY. The Republic of Serbia as the successor state took over the international obligations, and such legal position has in terms of cooperation with the ICTY. The request for the surrender of persons submitted to the Ministry of Justice to the competent court with the necessary documentation, confirmed the indictment, and an order for detention. Further competent judges determine mandatory detention person sought for surrender, and on that occasion the defendant must have an attorney. In particularly urgent and justified cases (hide, escape) detention can be immediately determined before the formal submission of the request for surrender of the person. If the court fails to submit the request with a confirmed indictment within 48 hours, the accused shall be released.[35]

The police have a very important role in this part of the procedure and powers of the deprivation of liberty of the accused persons (Art. 23).[36] This also applies to persons for whom formally and legally not

28 "Official Gazette of FRY" no. 30/01.
29 "Official Gazette of FRY" no.70/01.
30 "Official Gazette of RS" no. 14/02.
31 "Official Gazette of FRY" no.18/02 , no.16/03.
32 Op.cit. in footnote 1, p.410-426.
33 Op.cit. in footnote 31.
34 *Ibid.*
35 *Ibid.*
36 *Ibid.*

yet been issued a court order, it is sufficient that at the moment there is warrant of domestic authority or the ICTY. In any case, the duty of the police is to immediately hand over arrested person to court, which continues to act in accordance with the provisions of this Act. This refers to the procedure of determining custody, the appeals process, and a final decision on the extradition of persons.

In the MUP RS inherent jurisdiction in the area of cooperation with the ICTY has service for the detection of war crimes, which is part of the Police Directorate. Service cooperates with other bodies and agencies such as the BIA, the prosecution of war crimes, then lines of work in the Ministry of Interior (pr.UMOPS - Directorate of International Police Cooperation NCB Interpol Belgrade, special units), and others. Of course, the National Council for Cooperation with the ICTY has a major role as an organ of coordination and representation of RS.

The Ministry of Justice also plays an important role, and in particular its Department for International Legal Assistance - Group for Cooperation with the ICTY.[37]

In the final sections of V-VI in the provisions of Article 32 to Article 35 specifies the forms of international criminal law cooperation, which are regulated by the Law on international legal assistance in criminal matters.[38] Voluntary surrender of persons (Article 36) is a legal term which is foreseen in the last section (VII), as well as guarantees of local authorities regarding the request for bail. We add that perhaps the only serious objection regarding the Tribunal's decision referred to in Article 39, which provides that the Act applies only to the charges being made and confirmed before the entry into force (12.04.2004).[39] It is somewhat understandable attitude of the legislature to limit the deadline to provide basic legal certainty for potential defendants, because in practice there have been cases of politicization of raising some of the indictments, and proceedings before the Tribunal. Of course, this does not exclude the liability of the accused.[40]

INSTEAD OF A CONCLUSION

It is indisputable that the ICTY was established by the decision of the UN Security Council as a body that has no legislative competence objectively, but whose legal and factual capacity indicates that the ICTY has authority under a special legal regime, and special status. Objections to the process of establishment and other facts in this regard are clearly reasonable, but on the other hand it is clear that, like many times before, the politics was above the law.

The ICTY has always worked under the strong political influence of the great powers and interested parties. Of course, law and justice cannot successfully cope with these and other non-legal influences, but there was always the hope that the ICTY will be able to resist pressures and to work for the benefit of the entire international community.

The dilemma whether genuine ethnic reconciliation in the former Yugoslavia will be achieved after the ICTY does not exist for the authors,[41] because no court can lead to that, especially not if the practice is very different and if the procedures are not always equal for all; especially in relation to national, religious, and other affiliations. Reconciliation between nations in the region will come not only if law and justice are available for the victims, but if the political factors in the international community and the newly formed states genuinely want so, and if the environmental factors change in the long run. This includes not only the manners to ask for forgiveness in the name of the country from which they are coming for to a visit, but to all emerging countries in this area. Furthermore, all member states of the former Yugoslavia should prosecute all potential defendants for war and related crimes, "bookkeeping death" according to the national origin of the victims. This applies equally to the victims in the conflict that occurred in Kosovo and Metohija, especially after the NATO aggression and the withdrawal of Serbian forces from the territory of the Province.

Finally, we believe that the ICTY is to complete its work in due time and to improve its practice and thus contribute to real affirmation of the idea of international law and international criminal justice. It would be a strong message to all potential perpetrators in future wars and similar conflicts in the world that regardless of their ethnic, racial, religious and other differences they will be prosecuted, without exception, for every crime of this kind.

37 www.mpravde.gov.rs/.../odeljenje-za-medjunarodnu-pravnu-pomoc.php (17.01.2015)
38 "Official Gazette of RS" no.20/09.
39 Op.cit. in footnote 31.
40 More information: Kreća M, International Public Law, PF, Belgrade 2014, p.664-683

In addition to the war crimes author cites a wider range of international crimes, such as aggression, crimes against humanity, genocide, etc.
41 More information: Ciric J, *Will after "The Hague" to achieve genuine reconciliation in the former Yugoslavia*, "ICTY between law and politics," Proceedings of the Institute of Comparative Law, Belgrade, 2013, p.171-192

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VIOLENCE AGAINST LGBT[1] PERSONS[2]

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Abstract: Violence against LGBT persons in Serbia, like everywhere, is mostly caused by homophobia, irrational fear, hatred and hostility towards persons of different sexual orientation other than heterosexual, including those that are just so perceived. LGBT persons have been exposed to violence of various kinds, shapes and intensities occurring at various places of execution. It is violence committed in public places (streets, parks, bars, gyms, concerts, workplaces, etc.), private homes (parental and partners' families), and institutional environment (schools, hospitals, prisons, social institutions, sports clubs, religious institutions, etc.). As regards the type of violence, there are psychological / emotional violence, hate speech as verbal violence, physical violence, economic / existential violence and sexual violence. Certain differences should be perceived in relation to gender, age and type of female / male members of the LGBT population. Thus, violence against lesbians is different from violence against gay men and transgender persons, violence against children and young LGBT persons is different from violence against the adult LGBT persons. One person might frequently suffer more than one of these types of violence, committed at several places of significance.

Keywords: LGBT persons, homophobia, kind of homophobic violence, places the commission the acts of violence, young LGBT persons, the role of the police, the role of the educational system, the role of legislation

INTRODUCTION

Every second citizen in Serbia believes that homosexuality is a disease, and every tenth believes that the "wrong" sexual orientation is to be cured by beatings[4]. It is still a greater shame that somebody's child is a gay, than a criminal, even a murderer[5]. The violent attack on a twenty-eight old German citizen - who arrived in Belgrade to support local gay population in struggle for their civil rights – beaten in the centre of Belgrade, in the night between the 12th and 13th September, is thus the event in accordance with the norms of behaviour by those who "OK" fags beating, lesbians knife stabbing, trans persons trampling[6].

However, most of persons in fact are not aware of these cases of violence, discrimination, insults, and belittling that occur against the LGBT persons, mostly because this information usually remains reported by the media, while the victims themselves rarely speak out[7]. But in spite of the public silence, there are enough evidences indicating that the LGBT community in Serbia lives in a society where homophobia, violence and discrimination are widespread. In such circumstances, the LGBT community lives in fear, uncertainty and invisibility, both in private and public spheres, being one of the most marginalized social groups in Serbia. National statistics on cases of discrimination and violence based on sexual orientation and gender identity does not exist, what means that the non-governmental reports are practically the only source of such information. Also, there are no polls and surveys conducted by the state authorities, but only by the NGOs[8]. But in spite of this lack of official data, it should be borne in mind that any, even the smallest act of violence against an individual because of hers/his difference, is the scary, threatening message sent to the whole group that it is undesirable and that its diversity is to be punished[9].

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1 The LGBT acronym refers to lesbians, gay men, bisexuals and transgender / transsexual (recently labeled just as trans * persons).

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9 Mentalno zdravlje i naša četiri zida http://labris.org.rs/mentalno-zdravlje-i-nasa-cetiri-zida/

CAUSES, TYPES AND TIME OF OCCURRENCE OF VIOLENT ACTS AGAINST THE LGBT PERSONS

Violence against LGBT persons is also called the violence because of their sexual orientation other than heterosexual and gender identity outside of the strictly binary division between women and men. Sexual orientation is physical, sexual, emotional, spiritual, and other attraction to persons of different (when it is called, a heterosexual orientation), or of the same sex (when it is called, a homosexual orientation or same-sex). It is innate, and not the result of errors in education, previously experienced violence, gay propaganda, the influence of peers, fashion, not to mention that the cause might be the fact that a young person or child only sees a person of same-sex orientation.

Violence against others because of their actual or just perceived sexual orientation is based on homophobia (homo same, just as + *phobos,* fear). Homophobia is an irrational fear, hatred, bigotry, violence towards persons of different sexual orientation other than heterosexual, including those that are only so perceived. Violence against LGBT persons is of various kinds, shapes and intensities.

Possible division is also in accordance by place of execution, and there is violence committed in public places (streets, parks, bars, gyms, concerts, workplaces, etc.), private (parents'[10] and partners' families), and institutional (schools, hospitals, prisons, social institutions, sports clubs, religious institutions, etc.). By type of violence, there is psychological / emotional violence, hate speech as verbal violence, physical violence, economic/existential violence and sexual violence. Violence can also be differentiated by gender, age and type of female/male members of the LGBT population. There is difference between violence against lesbians of violence against gay men and transgender persons. Violence against children and young LGBT persons is different of violence against adult LGBT persons. It is possible, and practically frequently happen, that one person suffers more of these types of violence mentioned, also committed at several previously mentioned places.

Violence against LGBT persons falls into the category of so-called hate crimes because such acts are the result of mechanisms of homophobia. Such acts are regularly followed by the elevated rate of underreporting, invisibility and even denial of the existence or at least attempts to reduce its frequency, severity and consequences[11].

Violence against LGBT persons has been documented as such mainly in the records of the group for the protection of the rights of LGBT persons. For example, research on violence, which LABRIS did for the period 2006/2010 indicates that 90% of respondents were informed of such cases against persons of different sexual orientation other than heterosexual, and 60% of the respondents had personally experienced violence because of a sexual orientation other than heterosexual. In two out of ten families in Serbia a homosexual child suffers violence, with the threat of eviction (even murder), "not to shame the family," in six out of ten relatives try to convince them that they are not normal and should be treated, only one out of ten families accepts such a child, or at least, ignores the child's sexual orientation (which can take a lifetime)[12].

Almost all respondents indicate that they are victims of long-term emotional violence as the most common form of violence against the LGBT persons. Psychological violence consists in stigmatizing, avoiding, jeers, stereotyping, condemnation, provocation, rejection, devaluation, ignoring, denial, threats, intimidation, blackmailing, feigned courtship and provocation at school, in the workplace, sports clubs, humiliation, open accusations that they are all promiscuous, sick and sexual deviants.

Physical violence against LGBT persons includes pushing, slapping, hitting, kicking, beating, group attacks, obstructing work of clubs and cafes in which members of the LGBT community gather, attacking the offices of the group for LGBT rights, attacking LGBT cultural events such as art exhibitions, panel discussions, film screenings, etc.

Existential violence is very prevalent form of violence especially against young LGBT persons. It includes full/partial denial of the usual parental support and rejection by family, denial of funds, expulsion from homes, death threats, job loss, confiscation of valuable property especially housing, disinheritance, forced medical treatment, in and out of metal disorder institutions, and the like[13].

Sexual violence against LGBT persons includes rape and attempted rape by an individual or group of rapists, incitement to prostitution, trafficking, exploitation of sexuality in pornography, sexual harassment

10 Kakva deca nam rastu? 26. 12. 2012 http://www.gay-serbia.com/kakva-deca-nam-rastu-5511/ (Pristupljeno 1 septembra 2013)
11 Vlada Fepublike Srbije, Kancelarija za ljudska i manjinska prava. (2013). *Strategija borbe protiv diskriminacije, za period od 2013. do 2018. godine*, str. 42-52.
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involving physical contact, sexual harassment that does not involve physical contact, indecent assault, exhibitionism, voyeurism.

Peer violence or bullying LGBT persons because of their actual or perceived LGBT orientation is a particular problem: 65% feel unsafe at school, 58% suffer forced dispossession of personal belongings in schools, they are five times more absent from school, 28% drop out of school[14].

Due to all said, as well as because of the lack of support, psychosocial assistance, adequate reaction of institutions, LGBT persons in the adolescent age are three times more prone to suicide than their heterosexual peers. Actually, they belong to the group that is the most exposed to the risk of suicide, such as persons suffering from depression or incurable diseases[15]. Only 10% of respondents reported the experienced acts of violence to the police. As the reason for their reluctance to report, they regularly mention their lack of trust in institutions, fear of continued torture and fear of disclosing their sexual orientation to family, school and workplace colleagues.

The period of announcements and organization of pride parades is the very special moment in escalation of all forms of violence against the LGBT persons, practically occurred at all of the mentioned places. At that time of heightened social tensions when announcement of the Pride Parade in Belgrade is issued, armies of children and parents in the eyes of the public become immoral, anti-clerical and anti-state gays[16]. According to the Constitution of the Republic of Serbia, citizens may assemble freely, and assemblies held indoors shall not be subject to permission or registering. The Law on Citizens' Assembly determines a procedure for exercising the right to peaceful assembly outdoors that is subject to the registration principle. Also, the Law stipulates that "…the competent authority may ban a public meeting to prevent interference... with the safety of persons and property…" which has usually been the basis for the prohibition of holding the "Pride Parade", as the competent authority could not control violence against participants expressed by fan and extremist groups.[17] Safety, particularly with regard to the exercise of the right to peaceful assembly is the most important priority in terms of LGBT persons. Without achieving complete safety, there can be no progress in the improvement of their legal and social status. The obligation of the state to protect all citizens from violence without discrimination should be met fully, and this requires more efficient operation of the police, judiciary and prosecution. The Government of the Republic of Serbia is showing willingness to ensure the right to freedom of assembly for citizens with different sexual orientation and gender identity. Practice has also shown professional progress of members of the police in protecting LGBT persons from violence.

These parades are nor a provocation, neither the promotion of homosexuality, but represent a celebration of the day that is internationally accepted June 27th, as the Pride Day of the same sex oriented persons. Events titled as pride parades are in fact the LGBT protest which indicate a violation of rights, discrimination and marginalization of this group within the society. There are also some other similar internationally adopted days, for example, Women's Day, Day of Persons with Disabilities, Human Rights Day, etc[18]. The Pride Parade of 30/06/2001 in Serbia was the mass violence without adequate response of the state. On September 20th, 2009 there was a ban the parade. On October 20th, 2010 the Pride Parade happened in Belgrade but followed by the massive violence and vandalizing of the city and personal property, although with strict protection of the participants' safety. Thus, the pride parades and the pride events occurred in some moments in Serbia as factual denial of the right to free assembly and homophobic manipulation of facts, shifting responsibility from the perpetrators to the victims. It is also an opportunity for mass and public use of hate speech, as a form of verbal violence. For example, "If it should come to the gay parade, persons would break it. It will be a "parade over their noses." We know from the Bible what they did to Sodom and Gomorrah because of pederasty and similar illnesses: they were burned with fire."[19]

Attacks on LGBT rights activists are specific forms of violence against LGBT persons. Under this term are included attacks on official premises the LGBT groups, attacks on LGBT cultural manifestations of creativity, such was the attack on "Queer Beograd" festival, in September 2008, acts of violence and life threats against activists in places of their private residence etc.

14 Puača, M. (2009). Obrazovanje: Učenici i učenice gejevi i lezbejke; Razvijanje jednakih mogućnosti, in M. Savić (ed.), *Čitanka, Od A do Š o lezbejskim i gej ljudskim pravima,* Beograd: Labris - organizacija za lezbejska ljudska prava: pp 247-242.

15 Vučaj, S. (2009), Treći glas, coming out i lezbejke u Srbiji. Beograd:.Labris - organizacija za lezbejska ljudska prava.

16 Kišjuhas A., 2014, Podmazivanje ponosa, *Danas,* 03. 10. http://www.danas.rs/danasrs/kolumnisti/podmazivanje_ponosa.889.html?news_id=290090

17 Cf. Constitution of the Republic of Serbia, "Official Gazette of RS", no. 98/06, Art. 54, the Law on Citizens' Assembly, "Official Gazette of RS", nos. 51/92, 53/93, 67/93 and 48/94, Official Journal of FRY, no. 21/2001 – decision of the Federal Constitutional Court, Art. 11

18 Zaštitnik građana. (2011). *Poseban izveštaj Zaštitnika građana o stanju ljudskih prava i društvenoj situaciji LGBT populacije u Srbiji (2009, 2010 do maja 2011)* Retrieved from http://www.ombudsman.rs/index.php/lang-sr/izvestaji/posebnii-izvestaji/2107-2012-01-12-14-02-53 (pristupljeno 2 juna 2013)

19 Vacić M, 1389 SNP Naši, Kurir, 1. 09. 2009. Verbal violence, hate speech and public statements, "If homosexuals have no shame, they will be prevented as in 2001. By St. Sava' cannon regulation, homosexuality was punishable by the death penalty, because of the spiritual health of the nation. "- Obradovic M, Face, 01.09.2007. Press. "Belgrade Blood will flow, there will be a parade of shame" graffiti written on the eve of the Belgrade streets before the Parade in 2010, and widely disseminated on social networks, and as responsible were identified members of the right wing organization Obraz.

Young LGBT suffer multiple discrimination: because of their sexual orientation/gender identity (when they usually share the fate of the entire LGBT groups[20], further combined with increased denial of the right to self-determination), if they are lesbians as women (when exposed to typical forms of discrimination against women, misogyny and male violence, further combined by their mother's rejection and female violence and rejection)[21], but also because of their youth (when they suffer all forms of marginalization typical for young persons, further combined with the interruption of studies, the aggravated conditions in the labour market and finding a job).

DOMESTIC AND SCHOOL VIOLENCE AGINST LGBT PERSONS

Today, Fukuyama's question of whether we are poor because the economic situation is bad or because we have a "dysfunctional social habits" is topical more than ever. These are the deeply ingrained habits that would function even when the economic improvements exist, and continue to, instead to the progress, run in the opposite direction[22]. These dysfunctional social habits certainly include intolerance, acceptance of discriminatory behaviour as normal, the rejection of LGBT youngsters by their parental families, and their exposure to multiple risks of violence, homelessness and extreme poverty[23].

Security is the top priority for all lesbians and LGBT populations of all generations and without it there cannot be any movement forward in the improvement of their status[24]. The fundamental right of all citizens is to protect the personal safety and the basic duty of every state is that they provide that protection[25]. That the family is not always serving the interests of women, and children, also some men, many authors suggest[26], primarily taking as evidence of the prevalence of domestic violence, among who the most numerous victims are the LGBT children and young persons whose existence was strongly affected by misogyny and homophobic environment[27].

During the Initial Seminar of the Office for Human and Minority Rights and the Council of Europe, held in mid-December 2012, it was pointed out that the family situation of LGBT persons is complex. It has increasingly become common that young LGBT persons, when their parents and family members learn about their sexual orientation, are ostracised and thrown out of their home and family. These are most often juveniles and young adults, many of whom did not finish their education and/or are unemployed, and therefore they usually end up as homeless persons. At this time, there are no preventive measures to prevent this problem or measures to ensure non-discriminatory housing conditions.[28] Safe houses still do not exist as a form of temporary housing of LGBT persons in the Republic of Serbia.

What for children and young persons is dangerous is preventing their development of their normal, innate sexuality, rejection, harassment, violence and discrimination, ejection from family, peers and school, which significantly complicates their maturation and causes psychological crisis, despair, depression and suicidal moods. As identity is inherited nature (nature) and education (nurture), a pair of scissors in between "nature" and "nurture", comes to the development of an interior homophobia that leads to hatred and contempt of her/him[29]. Because of this attitude of the family, increasingly points to the problem of the increased risk of homelessness young LGBT rejected by their families, which is all the more dramatic in times of high unemployment and a general crisis.

To domestic violence against LGBT members, traditional social welfare institutions do not yet have an adequate answer, but neither activism also did not find adequate resources for organizing regular shelters, nor yet defined the basic principles of operation. Lesbian movement in addition, still loath to transgender women, perceived as to possess "the equivalent of male identity"[30].

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20 Živanović, Ž. (2013). Mladi opravdavaju nasilje nad LGBT populacijom, *Danas,* 16 april, društvo, 4

21 Mother of transgender daughter (who incline towards the male gender) do not accept them because they want daughters and therefore lead the family battles, that occasionally daughters solved by finding protection of grandmothers, sisters and aunts. Devor, H. (1997). *FTM: Female-to-Male, Transsexuals in Society.* Bloomington: Indiana University press.

22 Fukujama, F. (1997). Sudar kultura, Poverenje,društvene vrline i stvaranje prosperiteta. Beograd: Zavod za udžbenike i nastavna sredstva. Str 20.

23 One of the poster inscriptions on all regular rallies of lesbians is "They expelled me out of the house." Tanjug i B92, Protest za jednaka prava svih, 11 decembar 2012, vesti

24 Strategija prevencije i zaštite od diskriminacije. Pp. 46. http://www.ljudskaprava.gov.rs/images/pdf/Strategija_jul_2013.pdf

25 Pleck, E. (1987). Domestic Tyranny, The making of social policy against family violence from colonial times to the present. New York, Oxford: Oxford University Press. Pp. 3.

26 Stacey, J. (1996). In the name of the family, Rethinking family values in the postmodern age. Boston: Beacon Press. Pp. 51.

27 Califia, P. (1997). Sex changes: the politics of transgenderism. San Francisco: Cleis Press. Pp5.

28 At the Initial Seminar of the Council of Europe and Office for Human and Minority Rights of the Government of the Republic of Serbia held on 13 December 2012, several participants indicated an increased risk of homelessness of LGBT persons rejected by their families.

29 Gelles, R. (1995). Contemporary Families, a sociological view. London: Sage Publication.. pp. 34

30 Califia, P. Pp. 3.

In education, there is a large degree of misunderstanding of he LGBT persons, causing reproduction of negative attitudes in educational institutions. School is a place of otherwise sharp gender differentiation, where the process of imposing social norms do not allow gender bias and is particularly rigid just the girls[31]. Each new generation completing their education in Serbia are ready for violence against different minority groups, particularly the LGBT persons. That way, suspended is the chance to open the door to new era of a better society. Measures are still not yet taken to raise awareness and improve level of information of persons, institutions, youth, media, public figures, political decision-makers. None level of the education system does provide information that homosexuality is not a contagious disease, but a minority variety of normal human sexuality, and that there is no risk of spreading of homosexuality by the way of open public speaking on that topic without prejudice. There is not any risk that gay pride parades and the same-sex unions if/when obtained legal recognition will cause the end of heterosexual families[32].

The attitude of society towards others and different is to be best illustrated by their attitude towards the LGBT population: 80 percent of high school students believe discrimination against the LGBT persons is justified, while 38 percent of boys supports violence against the population. Permanent public negative reaction to the justified demands for increasing the protection of the rights of sexual minorities are still present in the dominant public discourse Serbia. This continuingly justify violence as an acceptable means of combating these undesirable "others". Homophobic discourse is still dominant in which same-sex love is still within the domain of prohibition and various societal taboos. Some political peoples' deputies are therefore free to animate their electorate by homophobic hate speech misusing the fact that they are legally protected by parliamentary immunity[33]. "Eligibility" of that type of violence is thus a clear political message, sent for years, either at meetings and conferences of differently coloured right winged political parties and movements, or at sporting events that are ideal for public (loudly) booth to express such views. Homophobic graffiti for many months contaminate public communication space of cities, and are to be found unfortunately especially and mostly around schools and colleges[34]. The education system has not to the moment found out the right answers and system solutions.

The root of the problem is that the very existence of the LGBT persons is perceived by the public as a threat to "healthy" or "natural" family, and that way to very heart of society as a whole. The wrong notion is almost common place in the public discourse of hatred toward the LGBT persons. Measures are needed to combat these negative and erroneous perceptions of the alleged "threat" to families that supposedly the LGBT are by their very existence. Necessary measures are effective against hate speech, especially those aimed at the efficient identification, prosecution and sanctioning the offender provoking, distributing, promoting and inciting of hatred and intolerance toward the LGBT persons, whether they are made at the public meetings, or by the media and the Internet, street arts or hate graffiti. It is very important to encouraging state officials and politically prominent personalities to publicly advocate for the respect of human rights of the LGBT persons and general societal tolerance. Inflammatory speech of public figures has the effect of cancellation of many years of efforts of institutions and civil society towards minimizing negative social perceptions of the LGBT population, contributing to the creation and maintenance of a negative atmosphere in the public towards the LGBT persons in Serbia may in the international context support a very negative image of Serbia in general.

Popular psychology adds its own, no smaller contribution to increasing prejudices, promoting the term "child of the wrong sex" as if homosexuality and trans-sexuality resulted from errors and omissions of parents in the upbringing of children. According to them, the problem arises when parents make certain gender stereotyped behaviour and attitude as a condition for accepting a child. Psychologists refer to situations in which a child of "the wrong sex" faces the obstacles in acceptance of her/his identity in the parental family a "ban to be her/his sex"[35].

STATE POLICY DOCUMENTS[36]

One of the recommendations of the Commissioner for Equality sent to the Ministry of Education and Science of the Republic of Serbia, the National Education Council and the Department for improving the quality of education refers to taking the necessary measures to ensure the implementation of affirmative

31 Rapoport, T. (1989). Gender Differential Patterns of Socialization in Three Agencies: Family, School, Youth Movement, 221- 230 in H., Bertram, R. Borrmann, (ed), *Blicpunkt Jugend und Familie,* Weinheim und Muenchen: DJI Deutsches Jugendinstitut, Juventa Verlag. Pp.223.

32 EurActiv (2013). *Propisi ne vrede bez promene svesti o LGBT*. Retrieved from http://www.euractiv.rs/ljudska-prava/5140-propisi-ne-vrede-bez-promene-svesti-o-lgbt- (Pristupljeno 1 septembra 2013)

33 Lider JS Dragan Marković Palma je najviše od svih poslanika davao izjave o LGBT populaciji, 41 put.

34 Mršević Z., (2014), Zločin mržnje, govor mržnje i grafiti mržnje - razumevanje povezanosti, odgovori na pretnje. Kancelarija za ljudska i manjinska prava, Beograd. pp 32-34.

35 Milivojević Zoran, (2013). Dete pogrešnog pola, *Politika,* 12 juni (June 12).

36 Commissioner's Recommendation and the state's Strategy of prevention and protection against discrimination

and accurate display of same-sex sexual and emotional orientation, transgender, trans sexual and inter sexuality in all textbooks (of both natural and social sciences), including examples of the distinguish LGBT individuals, and individuals as part of history, history of arts, and modern democratic societies. The position that nor child neither young persons should be afraid for own physical safety in their own family, or in an attended educational institution, has since long time adopted but to the moment it's like not as applicable to the LGBT pupils. Disposal of education reforms, especially indefinitely, is not the solution of the present situation. Non-discriminatory education obviously is one of the strong points of development and improvements, because the present education is dominated by unscientific, discriminatory attitudes towards the "others", including the LGBT persons. It is therefore important to examine the possibilities of non-discriminatory education as the instruments against intolerance, discrimination and readiness for violence towards those who are perceived as "other" or "different", which are more clearly manifested attitudes of young persons, acquired and supported in the educational system[37].

The right to education must be effectively enjoyed without discrimination on the grounds of sexual orientation or gender identity. A certain amount of misunderstanding in terms of LGBT persons still exists in this field. This is visible in specific analyses of textbooks for primary and secondary schools produced during the last ten years in Serbia.[38] Also, one of the recommendations of the Commissioner for Protection of Equality sent to the Ministry of Education and Science of the Republic of Serbia, National Council and Institute for Improving the Quality of Education referred to taking necessary measures to ensure implementation of affirmative and correct representations of same-sex sexual and emotional orientation, transgenderness, transsexuality and intersexuality in all textbooks (of both natural and social sciences).[39] Lately, such practice has been increasingly changing through the work of specific public authorities.

In one of the listed Specific Objectives (4.4.5.4.), the Strategy of prevention and protection against discrimination ensures that the right to education is to be effectively enjoyed without discrimination on the grounds of sexual orientation, assumed sexual orientation or gender identity. Specifically is to be ensured protection of the right of children and youth to education in a safe environment, without violence, harassment, social exclusion or other forms of discriminatory or degrading treatment based on sexual orientation or gender identity. There should be raised awareness through the educational system about the fact that all persons are equal and that LGBT persons are also included in the circle of equal persons. There is a need to promote mutual tolerance and respect regardless of sexual orientation, perceived sexual orientation or gender identity. Provided should be objective information about sexual orientation and gender identity in school curricula and textbook material. Provided should be support and assistance in classes to LGBT pupils and students, as well as protection of teaching staff against discrimination, harassment, dismissal, due to actual or perceived sexual orientation and gender identity. It is necessary also to continue with ongoing monitoring of contents of textbooks and other teaching supplementary materials for primary and secondary schools and universities for the purposes of eliminating possible discriminatory contents related to sexual orientation and gender identity[40].

CONCLUSION

The main answer to question of what can be done is primarily in the consistent and strict obedience of current laws[41] including their enforcement, stipulated prosecution and punishment of offenders. Education is also necessary, as well as refraining from the use of hate speech, affirmative statements of the most responsible, and continuously changing curricula in primary secondary schools and colleges[42].

The legislation in Serbia is relatively good, but the implementation in practice is another story. The State should give attention to the maintenance of the already existing services of NGOs by properly trained and qualified person. No institution can do it all alone; there must be cooperation between institutions,

37 Mršević, Z. (2013), Homophobia in Serbia and LGBT Rights, *Southeastern Europe,* 37: 60–87.

38 Towards a Non-homophobic Secondary School. An Analysis of a Portion of Secondary School Textbooks in Relation to the Treatment of Homosexuality. Editor: Dušan Maljković. Belgrade, 2008. This collection contains a qualitative and quantitative analysis of textbooks in Sociology, Art History, Philosophy, Biology, Psychology and Constitution and Rights of Citizens, listing numerous examples illustrating the existing situation in education.

39 Recommendation that the Commissioner for Protection of Equality sent to the Ministry of Education and Science of the Republic of Serbia, National Assembly, National Council of Education and Institute for Improving the Quality of Education, no. 649/211 of 10 June 2011 on elimination of discriminatory contents from teaching materials and teaching practice, and promotion of tolerance, respect for diversity and human rights, p. 2, 10-11

40 Strategija, o. Cit. Pp 48.

41 Laws which explicitly stipulate sexual orientation and / or gender identity as a generally protected ground against discrimination are the Labor Law, the Law on Higher Education, the Law on Public Information, the Broadcasting Law, the Youth Law, amendments to the Law on Health Insurance Law on Social Protection and the Law on Amendments and Supplements to the Criminal Law. However, these laws are not applied nor regularly neither properly.

42 Seksualno obrazovanje, tabu tema?, *RTS,* 2.februar 2013.
http://www.rts.rs/page/stories/sr/story/125/Dru%C5%A1tvo/1259242/Seksualno+obrazovanje,+tabu+tema%3F.html (pristupljeno 2. juna 2013)

independent bodies, non-governmental sector, education and media, as well as the necessary institutional synergy against extremism. There must be monitored and adequately documented cases of violence and discrimination. It is necessary to educate the staff working in institutions. Institutional procedures are underused due to the high level of distrust of LGBT persons in their work, their effectiveness, insufficient readiness to act and try to understand the specifics of LGBT existence and discretion[43]. Changes in the educational system should be monitored (and caused, initiated) and changes in family perception of LGBT youth. Families must work together to find a way to deal with discrimination and prejudice.

Serbia still does not answer the question of how to facilitate the parents' (lacking) acceptance of minority sexual orientation of their children and how their relationship is to become more tolerant and honest[44]. Dealing with the fact that their children are LGBT is a difficult and stressful process in which it is necessary to jointly break the silence. Parents are the only ones who can devote themselves unreservedly to the care, love and understanding of their LGBT children, while the educational system should offer methods and solutions. It takes time and support to come to an understanding that silence hides instead to connect persons, and it does not encourage self-confidence and self-esteem. The aim is that the different persons stop perceiving their difference in Serbia as bad destiny, and no longer choose isolation and loneliness but rather to accept their uniqueness as a connecting point with infinite varieties and richness of the world in which they live.

Violence, hate speech and intolerance as forms of publicly expressed homophobia have not yet been met by a timely, efficient and adequate institutional response. It should be noted that when talking about discrimination, it is often the discrimination of such intensity that it literally involves a threat to life. The state must denounce the negative effects of discrimination, violence and intolerance towards the others and the different instead of ignoring or even supporting them. It should not miss a chance to open the door to new generations of significantly better society. Any discriminatory policy is dangerous. The only reasonable goal, the only honourable goal is to fight for each and every citizen to be treated as citizens with full rights, regardless of their origin[45]. Basic human rights cannot be denied to any citizen under the pretext that we want to maintain a belief, a tradition, a custom. We also know that the driving force behind some of the possible ways and directions of changes may not be exclusively motivated by material well-being. Thus, we are all, and each of us, and not just the state authorities and/or politicians, obliged to take responsibility for our future[46].

It is necessary to permanently analyse all possible moments of discrimination of the present system of education, since the school system still openly expresses intolerance, and proposals for changes still sound even utopian. There is a recommendation[47] that the teaching materials, teachers and their teaching practices and ways of working with male / female pupils foster awareness about diversity, promote non-violent culture, equality and non-discriminatory practices, as truly and necessary postulates of a democratic society based on respect for human rights; raising awareness of diversity, intercultural relations and common values through the presentation of famous persons of different ethnic and religious groups and cultures, etc; teaching contents and teaching materials should present different family models in contemporary society (single parents, foster families, families without children, same-sex partners family, etc.); elimination of stereotyping of gender roles / profession and encouraging varieties; insist on the multiplicity and complexity of human identity, value individuality, creativity and solidarity, regardless of gender.

As last, but not the least, it should be pointed out that the new concepts of gender and gender identity clearly indicate damages resulting from the rigid division of gender roles if strictly and forcibly applied. The rigid binary division of gender roles prevents LGBT girls and boys, women and men, to develop their full potentials and individuality if and when they expose them to rigid and violent forms of "normalization". There is even a movement to enable children to have acceptable interim period of gender neutrality, in the development of their own gender identity (which increasingly gained popularity during the nineteen-eighties and nineties)[48]. Perhaps it is one of the possible ways to mitigate rejection of the LGBT youth in Serbia.

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43 Završna razmatranja Inicijalnog seminara za borbu protiv diskriminacije na osnovu seksualne orijentacije i rodnog identiteta u Srbiji.

44 Fetoski, I. (2012). Ćutanje nije zlato, iskustva roditelja gej dece,. Beograd: Siguran put mladih

45 Maluf, A. (2003). Ubilački identitet, Beograd: Paideia. Pp. 116.

46 Kamps, V. (2007). Javne vrline. Beograd: Filip Višnjić. Pp.6.

47 Poverenica za zaštitu ravnopravnosti. (2013). *Redovan godišnji izveštaj za 2012. godinu.* Retrieved from http://www.ravnopravnost.gov.rs/ (pristupljeno 2 juna 2013)
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(pristupljeno 3 septembra 2013)

48 Coltrane, S. (1997). Gender and Families. Thousand Oaks, London, New Delhi: Pine Forge Press, a Sage Publication Family. Pp. 109.

There is a requirement for awareness-raising training of police, as the recently implemented courses, aiming to improve the relation of police officers towards LGBT community and providing guidance as to how to exercise full cooperation with the community in order to ensure safety. These training courses aim primarily to reduce violence and homophobia, but also to provide the conditions in which police services are to become a place of trust in which LGBT persons feel protected from violence, abuse and discrimination[49].

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Abstract: This paper discusses the basic meanings, conceptual origin and understanding of the idea of the rule of law in contemporary theory of state and law. The paper points out the importance of the rule of law in a modern democratic society, as well as the role of the police in a democracy. The attitude of the police towards the rule of law and democracy is analyzed in terms of the phenomenon of police subculture and its basic characteristics. Special attention is devoted to the analysis of the two characteristics of police subculture. These are: the requirement for effective police work in fighting crime and adopted social, especially racial, prejudice of the police officers. In this context, the author points out the problem of racially motivated police conduct in the United States of America. This suggests that in highly democratic societies there is a strong discrimination in policing, which results in a distortion of the fundamental principles of the rule of law.

Keywords: rule of law, police, subculture, law, discrimination, racial prejudice

INTRODUCTION

Establishing the rule of law is a long and complex process. Its ultimate goal should be legally limiting state power and protecting human rights, freedom and justice. These are basic principles and values of the rule of law. The rule of law can be challenged in various ways. One of them is illegitimate and illegal use of police. The key question, that scientific analysis of the relationship between police and principles of the rule of law should respond, *is why the police violate the law*? It is our intention in this paper to try to answer that important question and point out the complex relationship between the role of the police in a democratic society and the rule of law. We will first analyze the essence of the idea of the rule of law, as a generally accepted (at least nominally) legal concept of a desirable relationship between law and power of the state, followed by the analysis of the police subculture, as a social phenomenon. It will provide a more complete picture of the reasons and causes of law violations by the police.

THE RULE OF LAW – THE CONCEPTUAL ORIGIN AND MAIN FEATURES

The rule of law has indubitable legitimacy in the modern world. Of course, it is the case, above all, in west-European society where the concept of the rule of law was created and evolved. The rule of law is a primary goal of the development of post-conflict and transitional societies. The transition process has been guided by the principles of the rule of law and democracy for a few decades. However, the concepts of democracy and the rule of law are often used with different meanings. Therefore, any attempt to analyze the rule of law (in any context), requires a precise definition of its meaning. The usefulness of scientific concepts, as objects of scientific analysis, is possible only if their meaning is accurately determined. This is not always an easy task, especially not in those cases when talking about concepts with contradictory meanings. Such a concept is the rule of law.

The modern concept of the rule of law was first formulated by an English legal writer Albert Ven Dicey. In his opinion, the rule of law includes: the absence of arbitrary and discretionary power, particularly in the use of coercion and decisions on the rights of citizens; the principle of legal equality; and legal security, as a feature which is derived from the specific, precedent law of the English legal system.[3] These characteristics Dicey saw as the essence of the legal system named the rule of law. According to Dicey the first characteristic implied the absence of any arbitrary actions of state governments, particularly those of its representatives

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3 A. Ven Dicey, *Introduction to the Study of the Law of the Constitution*, Macmillan&Co LTD, London, 1931. p. 198

who have the right to use coercion. The only sticking point in this Dicey's definition of the rule of law is the identification of discretionary and arbitrary powers. It was also one of the most common target latter criticisms of his views. One of the most important critics Wade said that Dicey made no distinction between the discretionary and arbitrary government, and that his thesis on the incompatibility of discretionary powers and the rule of law was absolutely unsustainable in terms of the modern state. In this sense, Wade points out that when Dicey wrote his work, the primary function of the state was the preservation of law and order, defence and foreign affairs, the issues not directly related to issues of everyday life. In modern terms, the state government intervenes in many spheres of social life, and thus the need for its discretionary power is almost inevitable.[4]

However, the conceptual origins of the rule of law are much older. They can be found in the works of the most ancient philosophers, above all, Aristotle, as well as in political theory and practice of ancient Greece. Thus, the Greek term *isonomia* marked the legal equality of all citizens[5]. Of course, the idea of legal equality was limited in real political life of the ancient Greeks, because it implied only a possibility of free citizens of Athens to participate in the political life of the polis, regardless of their economic status or political power. Women, slaves and foreigners did not have the right to participate in political life of Athens. The most consistent advocate of the idea of the rule of law, in ancient political thought, was Aristotle. Unlike Plato, Aristotle never had doubts about the question – who is better ruler, men or laws? The rule in the public interest, for Aristotle, was the validity criterion of state regulation, and it was only possible if it was based on the rule of rational and wise laws. Aristotle stated it clearly: "The supreme power should belong to wisely assembled laws and supreme authority, whether it is one or more, should have this authority only insofar as the laws are not precise, because it is not easy to cover all individual cases with general laws"[6]. Aristotle clearly emphasizes the problem of laws generality and discretion power of people who have that power on the basis of those generality. Therefore, he suggests that "well prepared laws should, as far as possible, give precise interpretation of all general cases and, in that way, leave less freedom to the discretion of the judges; first, because it is easier to find one or a few, than a lot of skilled people; second, the laws passed after long deliberation, while a verdict was pronounced in haste, made it difficult to deliver a just and beneficial decision"[7]. This Aristotle statement proves, as pointed out by Friedrich Hayek, that a modern use of the phrase "the rule of law and not of men" comes directly from Aristotle.[8]

Modern interpretations of the idea of the rule of law are twofold. One interpretation sees the rule of law as a formal principle of legality. Such an interpretation is inherent to a legal positivism, especially German legal theory and concept of the state ruled by law - *Rechtsstaat*.[9] Anglo-Saxon legal theory has more peculiar interpretation according to which the rule of law in the meta-legal concept, ideal or policy that does not just talk about how that power should be limited by laws, but also on the quality of these laws and criteria upon which it is possible to assess whether some laws are good or not. The most prominent representative of this interpretation of the rule of law was Friedrich Hayek. The rule of law, according to Hayek, implies the legality, but it is not enough; if a law, in Hayek's opinion, gave the government unlimited power to do what it wants, all its actions will be lawful, but certainly will not be in the spirit of the rule of law. Therefore, the rule of law is more than constitutionalism: it requires that all laws are in accordance with certain principles. Therefore, the rule of law is the rule of a particular law, but the rule which is concerned with what the law should be, *mata-legal* doctrine or political ideal.[10]

Later discussions about the rule of law, have not led to a general consensus on a number of issues concerning the understanding of the essence and the basic characteristics of the rule of law. The general consensus exists only as to its desirability in contemporary society as a necessary precondition for democratization and adequate protection of citizens from the arbitrariness of the state power. The current interpretation of the rule of law in contemporary legal theory is twofold- formal and substantial. The former emphasizes the importance of formal and procedural elements of the rule of law, such as the process of passing laws, the clarity of published norms, whether laws are applied *pro futuro* or not, whether they are publicly announced etc.[11] The substantial concept of the rule of law insists on defining the core values that the rule of law needs to realize. This approach is not indifferent to the values of justice, individual rights and freedoms, and others. Ronald Dworkin points out that the rule of law is the rule of precise and publicly accepted concept of individual rights, and as such contains the request to include the positive law and enforce moral rules as

4 E. C. S. Wade and G. G. Phillips, *Constitutional Law*, Longmans Green and Co. Lonodon, 1948 p. 50
5 K. Čavoški, *Pravo kao umeće slobode-ogled o vladavini prava*, Službeni glasnik, Beograd, 2005, p.12
6 Aristotel, *Politika*, IV, BIGZ, Beograd, 1975, 1282b
7 Aristotel, *Retorika*, Naprijed, Zagreb, 1983, 1354a (7)
8 F. Hajek, *Poredak slobode*, Fond za otvoreno društvo, Beograd, 1998. p.148
9 See: Đ. Šarčević, Pojam pravne države, *Arhiv za pravne i društveni nauke*, 4/89, Beograd.
10 F. Hajek, *Ibid.*, p. 181
11 J. Raz, *The Authority of Law*, Oxford University Press Inc, New York, 1979; L. Fuler, *Moralnost prava*, CID, Podgorica, 1999; R. Summers, The Principles of the Rule of law, *Notre Dame Law Review*, 5, 74, 1999; R. Summers, A Formal Theory of the Rule of Law, *Ratio Juris*, 6, 2, 1993; P. Craig, Formal and Substantive Conceptions of the Rule of Law, *Public Law*, 467, 1997

part of the ideals of law.[12] Worthy of note are the attempts of some authors to reduce the gap between the formal and substantive understanding of the rule of law. Thus, for example, Tamanaha separates the three levels distinctive rule of law that goes from the so-called *thinner* (formal) to *thicker* (substantial) level. The formal concept involves the following three basic forms: the rule by law (law as an instrument of government -thinner), the formal legality (norms should be general, to act *pro futuro*, to be clear), democracy and legality (approval determines the content of the right - thicker). The substantial concept includes: individual rights (ownership, contractual agreements, privacy, autonomy -thinner), the right to dignity and justice and the welfare state (substantive equality, taking care of the community - thicker).[13]

Discussions about the essence of the rule of law do not have only academic significance. The political-ideological and cultural heterogeneity of modern society makes the application of substantive conceptions of the rule of law much harder than the formal conceptions, because the purpose of the rule of law in substantive theory, as we sad, is achievement and realization of dominant values of a society. These values are largely ideologically defined. The ideological source of these values, in contemporary Western society, is a political doctrine of liberalism. But, ideological concept of liberalism is foreign to many other societies having different values which are not established by the official interpretation of liberalism. Accordingly, many authors believe that the formal concept of the rule of law is suitable for practical implementation in any part of the world, because it is much realistic to expect consensus on formal procedural preconditions of the rule of law, than the ideological values and principles. The formal concept of the rule of law, according to Summers, can enjoy broad support because in many societies, there are sharp political divisions on the basic principles of substantive conceptions of the rule of law, such as: how to organize the economy, to what degree should public speech and press be free, religious freedom, democracy and the welfare state. Accordingly, the more formal the rule of law is, the greater is possibility for their politically neutral and broad support from various segments of the political spectrum.[14]

If we focus on the Western society, whose ideological and axiological matrix we belong to (or at least aspire to belong), we can see that the concept of the rule of law is not based only on the formal validity of the law. The European legal sources observe the rule of law as a substantial concept, because the requirements for its realization imply the protection of human rights and freedoms as its primary goal. This conception of the rule of law is evident in the interpretation of the most important institutions of the European judicial system. One of the decisions of the European Court of Justice makes it clear that the rule of law is not just formal procedural requirements, but the protection of fundamental rights and freedoms as well as the substantial value of the rule of law.[15] Correspondingly, the European Court of Human Rights offers a similar interpretation and vision of the rule of law. In *Stafford v United Kingdom* (2001) case, the Court emphasized that the primary requirement for arrest and detention has its legal foundation in domestic law, but in particular the quality of the law in accordance with the rule of law.[16]

The illegal use of police authority can be one of the most serious violations of human rights. We should mention the most important police powers where the illegal use can be seen as serious violations of human rights: the right of the police to use the force (especially firearms); stop and search; detention and temporary restriction of freedom of movement; collection, processing and use of personal data and other. The obligation to respect the principle of legality and the obligation to protect the rights and freedoms of all citizens are highlighted in all relevant international documents of importance to the conduct of the police. Thus, *European Code of Police Ethics* in Article 1, paragraph 2, explicitly states that one of the main objectives of police is the protection of individual rights and freedoms of citizens, particularly those contained in the *European Convention on Human Rights*.[17] A similar obligation is defined by the UN *Code of Conduct for Law Enforcement Officials*[18], as well as by the national legislation of Serbia, primarily, by the *Police Act*. Thus, Article 10, paragraph 1 of this Act defines the task of the police alleged security protection; human rights, freedom and personal integrity of persons, and supports the rule of law.[19]

The legal obligation of the police to serve and protect rights and freedoms of citizens is clearly and precisely formulated in international and national legal documents. Therefore, it is quite clear what the police should do and what values should be protected. It can be concluded that the role of the police in the rule of law cannot be reduced to the respect of the formal principle of legality. The role of the police

12 R. Dworkin, *Political Judges and the Rule of Law*, Maccabaean Lecture in Jurisprudence; published in *Proceedings of the British Academy* 64, 1977, p. 262

13 B. Tamanaha, *On the Rule of Law-History, Politics, Theory*, Cambridge University Press, New York, 2004, p. 91

14 R. Summers, *The Principles of the Rule of Law*, p. 1710

15 *See* Case C-50/00 P, Unión de Pequeños Agricultores [2002] ECR I-06677, para 38 and 39, for more information visit: http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:62000CJ0050

16 *see*. ECtHR *Stafford v United Kingdom*, 28 May 2001, para 63, for more information visit: http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-60486#{"itemid":["001-60486"]}

17 Europan Code of Police Ethics, Recommendation Rec (2001)10 adopted by the Committee of Ministers of the Council of Europe, for more information visit: http://polis.osce.org/library/f/2687/500/CoE-FRA-RPT-2687-EN-500

18 *Code of Conduct for Law Enforcement Officials,* Rezolucija UN 34/169, 1979, for more information visit: http://www.ohchr.org/EN/ProfessionalInterest/Pages/LawEnforcementOfficials.aspx

19 *Police act*, Sl. Glasnik RS, no. 101/05

in a democratic society and the rule of law, involves the protection of fundamental rights and freedoms as substantive criteria of the rule of law. Evidently, the clearly defined normative standards of police conduct offer only a normative frame of what the police should do. Did the police really do that is "the other side of the coin" which requires the analysis of actual implementation of these standards and understanding of the key reasons why the police violate the law. The success of this analysis and understanding of police attitudes towards the rule of law are not possible without an appropriate methodological approach. Such an approach involves exploring the characteristics of the so-called *police subculture* and their impact on the police response to the rule of law.

CHARACTERISTICS OF THE POLICE SUBCULTURE AND THE RULE OF LAW

The expansion of the scientific research of the police and their function in society began in the 60s of XX century. One of the key objectives of this research was to determine the reasons why the police violate the law. The pioneering work in this field is the study of an American author Jerome Skolnick - *Justice without Trail*, from 1966. As a key goal of his research, Skolnick identifies ways in which certain characteristics of the police subculture affect law enforcement and police commitment to the rule of law. The broader context of Skolnick's research was the role of the police in a democratic society, especially the attitude of the police towards the requirements of the rule of law. Skolnick asks: "For what social purpose do police exist? What values do the police serve in a democratic society? Are the police to be principally an agency of social control, where their chief value is the efficient enforcement of the prohibitive norms of substantive criminal law? Or, are the police to be an institution falling under the hegemony of the legal system, with a basic commitment to the rule of law, even if this obligation may result in a reduction of social order? How does this dilemma of democratic society hamper the capacity of the police and how does it institutionally and individually respond to legal standards of the law enforcement?"[20]

In order to provide an answer to these questions, Skolnick starts from the determination of basic characteristics of the so-called - *working personality*. The process by which this 'personality' is developed may be summarized: the policeman's role contains two principal variables, danger and authority, which should be interpreted in the light of a 'constant' pressure to appear efficient.[21] Skolnick emphasizes the importance of these characteristics, because it best reflects the conditions and causes of possible violations of legal norms by police. For example, the element of danger seems to make the policeman especially attentive to signs indicating a potential for violence and lawbreaking. As a result, a policeman is generally a 'suspicious' person. The element of authority reinforces the element of danger in isolating a policeman. Typically, a policeman is required to enforce laws representing puritanical morality, such as those prohibiting drunkenness, traffic laws, etc. In these situations a policeman directs the citizenry, whose typical response denies recognition of his authority, and stresses his obligation to respond to danger. As a result, a policeman is unusually liable to the charge of hypocrisy.[22]

Shortly after Skolnick, numerous authors began to explore the phenomenon of police subculture. Worth mentioning is an English author Robert Reiner who defined police subculture as a set of values, norms, rules of perspective and crafts. The basic features of the police subculture, according to Reiner, have a sense of mission, cynicism, suspicion, collegial solidarity associated with social isolation, conservatism, machismo and racial prejudices. Rainer especially emphasizes the importance of collegial solidarity that arises as a consequence of social isolation of officers on the one hand and the need to rely on each other, on the other hand. The importance of collegial solidarity is reflected on the tendency of police officers to neglect minor transgressions of their colleagues.[23]

A very successful analysis of the phenomenon of police culture was given by Janet Chan. Police culture, according to Chan, is a result of the history and learned (accepted, *prim. R.Z*) rules. Police work is, in her opinion, conditioned by the police officers' perception of what makes some suspicious activity.[24] The contribution to a clearer perception of police culture and its characteristics are given by Prenzler's research, too. In his opinion, there are four key characteristics of police culture that can be recognized in the extensive literature. The first key characteristic is the neglect and contempt of the rules and procedures especially when it comes to the treatment of suspects. Secondly, there is the neglect of the rules of due process in the protection of human rights as a result of the common perception of the police on their function which is primarily focused on the fight against crime. Third, the police culture is primarily characterized by cynicism, isolation

20 J. Skolnick, *Justice Without Trial*, John Wiley & Sons, Inc. New York, 1966, p. 1
21 *Ibid*., p. 44
22 *Ibidem*
23 R. Reiner, *The Politics of Police – fourth edition*, Oxford University Press, 2010
24 J. Chan, *Changing Police Culture: Policing in Multiculrural Society*, Cambridge University Press, 1997, p. 21

and intolerance. The fourth characteristic is collegial solidarity that arises under the influence of the previous characteristics, particularly the isolation and cynicism.[25]

Bearing in mind the intended extent of this paper, we will focus on those factors that have, in our opinion, the most immediate impact on the police response to the requirements of the rule of law. The first aspect of this analysis relates to the widespread belief of the police that the law and legal limits of police activity, negatively affect the efficiency of the police - especially on their effectiveness in combating crime and preserving public order and peace. The second aspect relates to the adoption of social prejudices in multicultural societies which may have a negative effect on the equal application of the law to all members of different social groups.

Certain characteristics of the police subculture particularly have effects on the police response to the rule of law (primarily the request for the protection of human rights and freedoms). Especially important are the requirements for effective policing, especially in the field of combating crime. It is the requirement expected from the police by the society and the police themselves. As we have seen, this requirement is, in Skolnick's opinion, one of the three basic characteristics of *working personality*. Its negative impact on the rule of law manifests in the tendency of the police to be efficient in their work seen as a higher priority than a request for strict respect for the law. The result can be the neglect of formal legal rules and procedures that aim to saturate the rights and freedoms of citizens.

The study from 2000, conducted by the US Ministry of Justice, showed that 43% of the surveyed police officers, from 121 police departments across the United States, believe that "strict adherence to the rules is not compatible with the requirement that the police work gets done and well"[26]. Similar results can be seen by the police officers in Serbia obtained in two conducted surveys. The first was conducted in late 2009, and it was attended by 250 officers of the criminal investigation police department from Belgrade. The results showed that 57.5% of respondents believe that strict adherence to the law, while performing police tasks, can bind the hands of the police to prevent crime and do their job efficiently and properly.[27] Another study, from the beginning of 2014, which was aimed to determine the perceptions of Serbian Crime Police towards discrimination (sample included 258 respondents from five regional police departments - Belgrade, Novi Sad, Subotica, Novi Pazar and Vranje) revealed that 45% of the respondents agreed with the statement that the legal codes are the limiting factor to efficiency of the police in combating crime, while 20% of respondents justified the violation of law if the result may be detecting criminal offenders or obtaining adequate evidence to determine the liability of the suspects.[28]

The tendency of the police to see the law as a limiting factor of their effectiveness can be interpreted as an expression of their assurance that the law, in the rule of law, should be a limiting factor of the state power. But, this is partly true. The purpose of the law, in the rule of law, is to limit the state power, but above all, to limit its arbitrariness, not the effectiveness of its work. The main reason why the police see the law as a limiting factor of efficiency of their work is twofold. First, such a belief is the result of the often-stated fact that the requirements of legality of the police work and their effectiveness are potentially conflicting, and it is difficult to achieve both with the same degree of success[29].The second reason relates to the perception of the police on how they measure efficiency in combating crime. The common practice in police work worldwide (especially in Serbia) is that the efficiency of the police in combating crime is measured by the number of criminal charges, which is only partly true. The measure of the real effectiveness of the police can be seen in the relationship between criminal charges and convictions ruled by judicial decisions. Such decisions can be made by the Court in the rule of law, only if the evidence regarding the responsibility of the perpetrator of a crime is obtained in a lawful manner. Consequently, a simple numeric expression of criminal charges is not proof that they are lawful. The illegality of the criminal evidence must be the reason for refusal of a charge and criminal prosecution (the first public prosecutor's office), and in the final stage, it must be a reason for court rejecting the conviction of persons. Consequently, the above mentioned practice does not lead to qualitative efficiency of policing.

As we mention, one of the characteristics of the police subculture is the racial prejudices. The adopted social prejudice against the members of social and ethnic minorities directly affects the attitude of the police towards the requirements of the rule of law. The personal characteristics of people can sometimes have a decisive influence on the decision of the police if and how the police enforce the law. Police actions, which are motivated by personal characteristics of individuals (e.g. affiliation with a particular social, ethnic, religious or other social group), are an important indicator of potentially discriminatory treatment by the police. The use of police powers, on the basis of racial or other prejudice, is known as *racial profiling*. The

25 T. Prenzler, "Is there a Police Culture", *Australian Journal of Public Administration*, 56/4, 1997, p 48

26 D. Bayley, Law enforcement and the Rule of Law: Is there a trade-off?, *Criminology&Public Policy*, Columbus, vol 2, Issue 1, p. 134

27 R. Zekavica, Stavovi pripadnika kriminalističke policije PU Beograd o najznačajnijim pitanjima demokratske reforme policije-rezultati istraživanja, *Bezbednost,* 2/10, p. 41-73

28 R. Zekavica, *Suzbijanje diskriminacije u Republici Srbiji s posebnim osvrtom na ulogu Ministarstva unutrašnjih poslova RS*, Kancelarija za ljudska i manjinska prava, Vlada RS, Beograd, 2014, p. 66

29 R. Zekavica, Primena prava i efikasnost policije, Zbornik radova „*Suzbijanje kriminala i evropske integracije*„ Kriminalističko policijska akademija, Hanns Seidel Stiftung, 2010, p. 469-478

term is primarily related to the racial and ethnic issues caused by the police actions. Similarly, it can be used to indicate the same phenomenon when the motivating factor in law enforcement is some other personal characteristic (profiling based on religion, political affiliation, sexual orientation, etc.).

Numerous scientific studies in the world, especially in the USA and Great Britain, have pointed out the frequent use of certain police powers (stopping and search, detention, use of firearms) against Afro-Americans in the United States, Pakistanis in Great Britain, or Roma in Europe.[30] The main reason for the frequent use of certain police powers against the members of these social groups can be twofold. First, it is the police response to the violations of regulations by the members of these groups, if it is indeed expressed in practice in a higher percentage.[31] Another reason could be adopted social prejudices and discriminatory motives. In the latter case, there is an undesirable social phenomenon and discriminatory policing that brings a number of adverse consequences for individuals and society as a whole.

Recent cases of racially motivated police conduct in the United States indicate that the problem of police discrimination is present in highly developed democratic societies. The history of racially based violence of the police in the United States has been present for decades.[32] The latest series of incidents began on July 17 2014 by killing of an unarmed African-American Eric Garner (43), who was killed during an arrest for illegal cigarette sales in New York, and then incidents continued: the murder of an African-American teenager Michael Brown (19) on August 9 in Ferguson, the killing of an unarmed African-American Akai Gurlay (28) on 20 November in New York, the murder of 12-year-old African-American boy Tamir Rice in Cleveland and the murder of 18-year-old African-American Anthony Martin in Berkeley on 23 December. As we can see, it is the case of the use of firearms with fatal consequences. A huge social discontent provoked a reaction of the authorities of criminal justice in the United States and the grand jury decision not to initiate the procedure for investigating the responsibility of the police officers who killed the members of the African-American minority. It should be noted that in all these cases the killers were white policemen, which gives rise to the belief of the police discrimination in USA.

Evidently, the police discrimination is not only the problem of American society. The US example tells us that the problem of police discrimination is present in highly developed democracies, especially in the US, which considers itself to be a leading democratic state in the world. The inability of the US to adequately face this challenge casts doubt on their self-proclaimed role. It also draws attention to the fact that the developed democracies are faced with discriminatory behaviour of the police, as the result of the ruling social prejudice. The success of each society in solving the problem of police discrimination depends on the good will of the most responsible political and governmental institutions to deal with this problem at all levels and with all its resources. Only in that way, it is possible to reduce the appearance of discrimination to a minimum, not only in the work of the police, but also the work of other representatives of the state authorities.

CONCLUSION

Although the rule of law is essentially a theoretical concept, it has a practical value and purpose. This aspect of the rule of law is reflected in limiting state power by the law. The ultimate purpose of the rule of law is to protect the basic human values, such as freedom, equality, human dignity and justice. Such a rule of law is possible if the law contains normative protection of the mentioned values. Otherwise, the rule of law would be possible as the rule of destructive and inhuman law. But much more is necessary to achieve the mentioned objectives and purposes of the rule of law. The subject of the paper is the analysis of the police and their relationship with the law as a normative system, especially the claim for lawful and non-discriminatory policing. As we have seen, the understanding of relationship between the rule of law and police, demands the analysis of the main characteristics of police subculture. Such an approach should in particular facilitate understanding of the reasons why the police violate the law, as well as understanding the complex relationships between the police and law. This approach should help us to easily identify the root causes of illegal police work and successfully eliminate them all. The main task of any democratic society is not only to define normative standards of policing, but also to put the required effort into understanding the fundamental causes of illegal policing. No modern society is immune to the illegality of police work. Whether they remain as a democratic society, depends on how they fight against the police misconduct. Subsequently, the contribution of science should be considered as well, particularly the efforts aimed at understanding the underlying causes of illegal policing.

30 *v.* A. Meehan, M. Ponder, Race and Place: The Ecology of Racial Profiling African American Motorists, *Justice Quarterly*, 3, 2002, pp. 399-400; C. Batton, C. Kadleck, Theoretical and Methodolodical Issues in Racial Profiling Research, *Police Quarterly*, 2, 2004, pp. 30-65; R. Reiner, *The Politics of Police – fourh edition*, Oxford University Press, 2010; J. Crank, M. Caldero, *Police Ethics: The Corruption of Noble Cause*, Cincinati:Anderson, 2010; R. Kennedy, *Race, Crime and the Law*, New York: Vintage, 1997; M. Rowe, *Policing, Race and Racism*, London: Wilan Publishing, 2004

31 Z. Kesić, Rasa i etnicitet kao viktimogene predispozicije kod prekoračenja i zloupotrebe službenih ovlašćenja, *Temida – časopis o viktimizaciji, ljudskim pravima i rodu*, 4/15, 2012, p. 164

32 *Kratka istorija policijskog nasilja u Americi,* http://pescanik.net/kratka-istorija-policijskog-nasilja-u-americi/, 22.12. 2014

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CHARACTERISTICS OF CURRENT APPROACHES IN THE PREVENTION OF DOMESTIC VIOLENCE[1]

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Abstract: This paper gives a review of the definition of domestic violence, and indicates the extent and trend of this kind of violence in the Republic of Serbia and the region. This paper highlights the activities of the police which give the best results in the prevention of domestic violence and the modalities for the successful partnership of the police and other entities in the local community in the prevention of domestic violence. A prerequisite for successful prevention of domestic violence is the systematic analysis of problems that lead to the appearance of this type of violence, and the systematic study of the problem requires a police cooperation with social service and health care, cooperation of other entities whose role is important in providing support to victims of domestic violence, as well as cooperation with the citizens in the neighborhood. Organized and coordinated provision of various forms of assistance to victims of violence by social and health services and non-state organizations that provide assistance to victims allows successful prevention of domestic violence, as well as effective response of the police and other competent authorities after reports of domestic violence in the course of prosecution of perpetrators and protection of victims.

Keywords: domestic violence, prevention, police, social services, partnership

INTRODUCTION

Domestic violence involves the use of violence, threats to the life or body, insolent or arrogant behavior by individuals harming peace, bodily or mental integrity of a family member (article 194, paragraph 1 of the Criminal Code of the Republic of Serbia). Endangering tranquility, physical integrity or mental condition of a family member as a result of this crime means the occurrence of specific danger to the family member, which usually involves a certain continuous state in a given period and the regular recurrence of violence, threats or attacks on the life or body, or insolent or reckless behavior, especially when it comes to insolent or reckless behavior [3]. As long as the period is concerned, it is a factual question, but it certainly must have a certain length that is in proportion to the number of actions. More actions repeated in a shorter period of time lead to more established estimate that is appeared a consequence of the crime, and vice versa, if we are talking about only two such actions or relatively small number of actions over a longer period (for example, six months or more) then, as a rule, cannot be considered that was occurred a consequence in the form of relevant threatening[4]. It can be said that the above definition of domestic violence under the Criminal Code is in accordance with the definition of domestic violence in Article 3 of the Council of Europe Convention on preventing and combating violence against women and domestic violence in 2011, by which it means any act of physical, sexual, psychological or economic violence that occurs within the family or households or between former or current spouses or partners, regardless of whether the offender shares or shared the same residence with the victim.

If we take into account the data of the Statistical Office of the Republic of Serbia for the period from 2009 to 2013, the largest number of people reported for the crime of domestic violence was in 2013 - 3782, and the lowest in 2010-2837. Considering the fact that 3384 persons were reported in 2009, 3550 in 2011, and 3624 in 2012, we can say that there is a growth trend for the number of persons reported for the crime of domestic violence. Evidently, this information is only approximate, because it does not reflect the actual state of the scope and trend of domestic violence in the Republic of Serbia, due to the high dark figure in

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4 Шкулић М. *Op. cit.*, p. 14.

the area. The dark figure represents a certain number of these crimes that are not reported to the police and public prosecution. The use of different methodologies makes it even more difficult to compare the data on the presence of domestic violence among different countries, although the importance of victimization research in this area should be emphasized. Researches of victimization in the area of violence against women have been done recently. Such studies and researches were carried out in most Western countries in the early 1990s[5], while in Finnland the first such study was carried out in 1997[6] and in Italy not before 2006[7].

According to the National Strategy for Combating Violence against Women in Family and in Intimate Partner Relationships of the Government of the Republic of Serbia, the first quantitative research on domestic violence in the Republic of Serbia was conducted by the Victimology Society of Serbia in 2001 in seven cities (Belgrade, Subotica, Novi Sad, Vrnjačka Banja, Zaječar, Užice and Niš) and in about 40 villages in the territory of Serbia (excluding Kosovo), on a sample of 700 adult women. The complete number of surveys was 700 including about 440 cases in which women refused to be interviewed. The results showed a serious problem. Every third interviewee in this study had experienced a physical assault by a family member (usually by spouses and partners or ex-spouses and partners). Researches of local non-governmental organizations in the former Yugoslav republics show that even one to two-thirds of women in Croatia and Bosnia and Herzegovina have experienced spouse bullying, and the World Health Organization study shows that every fourth woman who was in partnership in Serbia, experienced physical or sexual violence. Victims of domestic violence are mostly women, and the perpetrators are men[8].

In response to domestic violence, a large number of countries in the Western Balkans region made the appropriate steps in order to adopt the necessary legal solutions that will ensure more effective prevention of domestic violence, especially through creating measures for protection against domestic violence and creating appropriate sanctions for this offense. In the first place social services began to be developed, in order to protect victims of domestic violence and that was followed by taking various activities in terms of raising awareness of the problem of domestic violence, youth education and training experts which is a necessary prerequisite for a comprehensive and coordinated research of domestic violence and developing of effective policies[9].

PARTNERSHIP FOR DOMESTIC VIOLENCE PREVENTION

The experience of many countries shows that the partnership of competent authorities is very important for the prevention of domestic violence, especially between social and health care, educational institutions, services to assist victims of domestic violence, citizens, police, prosecutors and authorities responsible for execution of criminal sanctions. This cooperation should enable timely exchange of information on domestic violence which the above-mentioned subjects find while performing their regular duties and tasks within their competence. These data are necessary for a comprehensive analysis of domestic violence, primarily an analysis of the characteristics of perpetrators and victims of such violence, then other significant characteristics of domestic violence. The analysis of these data should allow for joint planning and implementation of the most suitable measures in primary, secondary and tertiary prevention in order to prevent further manifestation of domestic violence as much as possible.

Although the planning and implementation of activities in primary and secondary prevention of domestic violence is particularly important, the fact is that the partnership is often discussed in the context of tertiary prevention, i.e. when violence has already been manifested and when it is necessary to provide a coordinated response between the competent authorities against the victim and the perpetrator. Thus, for example, the US response to domestic violence was remembered because of the DAIP program (Domestic Abuse Intervention Project), the first comprehensive program that provides coordinated action of the subjects in the local community, starting with the police, shelters for victims of domestic violence, social services, services which supervise people who are on parole, health and other institutions and judicial authorities[10]. It is a program that includes counselling the victims of violence about the court proceedings

5 Martinez M. & Schröttle M. (2006) *State of European research on the prevalence of interpersonal violence and its impacts on the health and human rights* CAHRV February 2006. – according to: Heiskanen M. & Piispa M. (2008). Violence against women in Finnland; Results from two national victimisation surveys. – In: Aromaa K. & Heiskanen M. (eds.). *Victimisation surveys in comparative perspective – papers from the Stockholm Criminology Symposium 2007*. Helsinki: European Institute for Crime Prevention and Control, affiliated with the United Nations.

6 Heiskanen M. & Piispa M. *Op. cit.*, str. 136.

7 Giuseppina Muratore M. & Corazziari I. (2008). The new Italian violence against women survey. – In: Aromaa K. & Heiskanen M. (eds.). *Victimisation surveys in comparative perspective – papers from the Stockholm Criminology Symposium 2007*. Helsinki: European Institute for Crime Prevention and Control, affiliated with the United Nations, p. 160-161.

8 Dokmanović M. (2007). *Posedovanje vatrenog oružja i nasilje u porodici na zapadnom Balkanu: komparativna studija zakonodavstava i mehanizama za primenu.* Beograd: Centar za kontrolu lakog naoružanja u Jugoistočnoj i Istočnoj Evropi, p. 3–4.

9 *Ibid.*

10 Jovanović S. (2008). Američki odgovor na nasilje u porodici. – U: Ćirić J. (ur.). *Uvod u pravo SAD*. Beograd: Institut za uporedno pravo, p. 337-338.

and assisting victims in obtaining a court restraining order and creating a plan for their safety. Officials responsible for the supervision of bullies, in addition to their primary function take care of the needs of victims and their security[11]. Partnership and coordination between the competent authorities and agencies in the United States in the prevention of domestic violence is ensured through the development of protocols where their duties are specified in terms of the treatening a victim at the scene, conversation with the victim and the perpetrator, informing the victim about his/her rights in relation to protective measures, the participation of the victim in criminal proceedings, shelters for victims and other assistance programs, as well as providing conditions for victims to go to the doctor[12].

Due to the positive experiences in the implementation of the DAIP program in the Republic of Serbia it was discussed that there was the possibility of applying the program through the analysis of common base of the model consisting of: 1) a clear policy and a theoretical concept 2) clearly defined roles for the service 3) well-defined instructions on handling and 4) an organized monitoring of the effects[13]. It was concluded that the primary determinants of the DAIP model adapted to the context in Serbia would include: 1) building a common "reference framework" for the way services should react and behave 2) the development and implementation of policies and real procedures within each of the services 3) joint planning of protective measures 4) information exchange and communication between departments 5) monitoring of treatment and 6) evaluation of the effects[14].

National Strategy for Combating Violence against Women in Family and in Intimate Partner Relationships which was adopted by the Government of the Republic of Serbia in 2011, points out the importance of multi-sectoral approach in response to this type of violence. One of the four strategic areas and one of the strategic objectives beside the prevention, regulatory framework and a system of measures for protection and supporting victims is precisely the multi-sectoral cooperation and creating bigger capacities of the authorities and specialized agencies. At the same time the Strategy pointed out that the survey results showed that victims of domestic violence who asked for help from competent authorities and services noticed a lack of coordinated action and cooperation in providing institutional response. Mistakes in exchanging information between social services centres, police and health services represented a particular problem, as well as the forms of cooperation which were not clearly established. On the other hand, the Strategy indicates that in the years preceding its adoption the number of public campaigns against domestic violence was significantly increased by civil society organizations and the national and regional gender equality bodies and other entities got involved in organizing conferences, campaigns, printing posters and information materials and the like. However, it was observed that these campaigns were not carried out in all local communities, nor did they include all target groups, and it was also noted that they should become continuous and that they should be carried out throughout the year.

It is interesting to point out that the Strategy identifies other problems that could complicate systematic involvement of relevant subjects in the prevention of domestic violence, especially in primary and secondary prevention. Experts, who are faced with domestic violence in their work, did not receive knowledge about domestic violence during their formal education, nor did they have the obligation to seek and get professional training for work for themselves in this area. The problems of violence against women and domestic violence are not part of the curriculum in schools, insufficient number of employees have attended programs of additional professional training in this area, there was no review of available training programs, there were no analyses about training content and evaluation of their quality and there were no comprehensive studies on human and financial capacities of state bodies and institutions for combating these forms of violence. According to the records of social centres, in 2008 there was a total number of 516 907 beneficiaries, which means that one expert on average worked with 281.5 users that year, which clearly shows what kind of overload that was.

The results of the research in Vojvodina have shown that a significant percentage of women were not satisfied with some services for helping victims, mostly because of the way they were treated by the staff in these institutions, especially in the social (welfare) centres and in the police premises[15]. It has been shown that raising the sensitivity and making employees more aware of the situation of victims of domestic violence is the main condition for the successful provision of assistance to victims and the way they treat them affects their level of trust in the police and social (welfare) centres. Most interviewees who decided to ask help from non-governmental organizations were satisfied. However, a small number of subjects addressed non-governmental organizations and used the services of these organizations although a high percentage of women are aware of their existence. One reason for this is a small number of these organizations in Vojvodina. The research has shown that it is necessary to further educate the entire population (especially

11 *Ibid,* p. 337-338.
12 *Ibid*, p. 341.
13 Ignjatović, T. (2010). Ka modelu koordinirane akcije zajednice u zaštiti od partnerskog nasilja u Srbiji. *Socijalna misao*, 17(3), p. 132-136.
14 *Ibid*, p. 132-136.
15 Nikolić J., Nikolić-Ristanović V., & Petrović N. M. (2010). Stanje raspoloživih usluga i kapaciteta za pomoć žrtvama nasilja u porodici u Vojvodini i upoznatost i zadovoljstvo žena sa njima. *Temida*, 13(2), 61-79.

rural) about the criminal nature of domestic violence and the ways in which they can protect themselves from this phenomenon while introducing new measures of protection (e.g. placement in a safe house) in the legislation[16].

Although there is no doubt that it is necessary to ensure partnerships and coordination of activities in the prevention of domestic violence, one should bear in mind that the practice of partnership does not have to be effective even in those cases when the problem of domestic violence is identified in a local community, or when the importance of the partnership is recognized. This can be seen from the experience of the town Steelsite and the town Pitplace in northern England[17]. Domestic violence in Steelsite was seen as a gendered issue and services were committed to seeing it as violence against women issue rather than a crime prevention issue. Partnership initiative tried to avoid the city's crime prevention structures and services appeared concerned about domestic violence marginalization rather than escalation in importance, particularly in relation with racial and homophobic harassment in crime and disorder strategy. The concern about these policy developments is that survivors' needs come to be forgotten in a policy environment in which the reality of domestic violence is silenced by the rhetoric of collective concern and action[18].

Domestic violence in Pittplace had increased in prominence, but Kirsty Welsh put two questions. First, she wanted to know if its roots and reality were lost in the rush to take on the problem. Second, if the practical response to survivors improved because "ludicrously senior people" owned the work. Services in Pittplace assumed the answer to this question was yes but domestic violence provision in the town remained poor and dedicated domestic violence organizations continued to face an uncertain financial future[19]. Further, if the partnership response can lead to greater coordination in domestic violence services, Kirsty Welsh found no such connection between partnership initiatives and service provision to women and their children in Pittplace and Steelsite[20]. There was a rather noticeable *disassociation* between this collective action, services on domestic abuse and women's potential to survive male violence. Certainly, there is little evidence that male offending in intimate and familial relationships is declining as a result of these policy shifts, and the single most significant risk to women's safety and the safety of their children continues to be the involvement with a violent man who may rape, assault and murder them.

Individual researchers in some developed countries e.g. Canada notice that the prevention of violence against women still is not in the focus of local and regional governments although there are some examples of good practice[21]. However, we should not forget to mention the efforts undertaken to determine the most effective mechanisms for prevention of domestic violence. Under the auspices of the Ministry of Internal Affairs a survey was conducted in the UK in which 27 projects were evaluated as regards domestic violence, and they were classified into seven areas depending on their major interventions[22]. The projects were evaluated by teams based at the University of Bristol (with Nottingham, Sunderland and Warwick), University of East London and London South Bank University (both the Criminal Policy Research Unit and the Faculty of Health and Social Care). The key aim of the evaluations was to identify 'what worked' to support victims and tackle domestic violence via an assessment of project design, implementation, delivery, outputs, impact and cost. The evaluation teams used methods, which included: 518 interviews with project staff and partner agencies; 174 interviews with domestic violence victims/survivors; 22 focus groups; and 2935 questionnaires. Quantitative data (gathered mostly through the police) were collected on 80 350 domestic violence victims/survivors, 35 349 domestic violence perpetrators, and 5 687 children living in domestic violence situations. The analysis of primary prevention for children and young people was conducted across a range of age groups and showed that was particularly valued when it was student-centred, interactive, with visual input such as drama. There were indications that pupils had increased their awareness of factual information regarding domestic violence, but some teachers were concerned that such interventions led to short-term impacts. Training for teachers and multi-agency support was important, and cross-curricular approaches reinforced the positive programme impacts[23].

This research recommended that primary prevention programmes should be implemented in primary and secondary schools, and should at least be included in the Personal, Social Health and Citizenship Education curriculum[24]. Teachers providing primary prevention programmes should be trained and be confident in using the project materials and for effective implementation, teachers should feel supported to deal with any issues raised through primary prevention via local education authority and multiagency links.

16 *Ibid.*
17 Welsh K. (2008). Current policy on domestic violence: a move in the right direction or a step too far? *Crime Prevention and Community Safety* 10, p. 244.
18 *Ibid,* pp. 243-244.
19 *Ibid,* pp. 243-244.
20 *Ibid,* pp. 243-244.
21 Pehar J. & Sevigny C. (2009). Laying the foundation for effective collaboration and problem solving partnerships. *Institute for the prevention of crime review* 3, March, p. 175.
22 Hester M. & Westmarland N. (2005). *Tackling domestic violence: effective interventions and approaches*. Home Office Research Study 290. London: Home Office Research, Development and Statistics Directorate.
23 *Ibid*.
24 *Ibid*.

An effective approach to children and young people in schools who may or may not be living with domestic violence involves primary prevention in schools, one-to-one work and group work. For women who are experiencing domestic violence but not actively seeking help, publicity campaigns, routine enquiry, outreach and support to help them report to the police are needed[25]. Although violence prevention programs have shown promising results in changing attitudes that support violence against women, efforts to change attitudes at the individual level can easily be undermined by standards at the social level and cultural contexts. Therefore, we need a comprehensive strategy that includes social institutions, cultural norms, changing attitudes at the individual level and support for victims[26].

Response against domestic violence requires engagement of many agencies at the national level and local levels, and response should not be uniformed[27]. Matczak, Hatzidimitriadou and Lindsay point out that domestic violence requires the engagement of numerous agencies at the national and local level and that despite many improvements in the domestic violence policy in England over the last few years, it is difficult to measure the quality of these initiatives. They point out to the lack of full scale evaluation of existing policies and strategies and that fragmented and uneven services, regional discrepancies result in varying levels and quality of the response/service for domestic violence victims. Family policy in England needs to be more firmly integrated with the domestic violence strategy as contact between children and abusive men/women might endanger the victims. For the purpose of preserving the balance in legal services, policy should include more training for solicitors from both civil and criminal fields. Too much attention is given to the criminal justice system, thus civil remedies are not being successfully delivered because of lack of knowledge. Furthermore, legal remedies do not seem to be the only solution to domestic violence and the limitations of legal responses to domestic violence need to be recognised[28]. Matczak, Hatzidimitriadou and Lindsay point out that the migration policy is also linked to the issue of domestic violence, as the immigration status of women might be dependent on their husbands and the power imbalances within a marriage are further weighed against women by law. A threat of deportation might be a constraining factor in reporting the incident of domestic abuse, thus future policy recommendations should recognise this matter as a serious one. At the end, the same authors point out that more attention should be paid to the needs of certain groups such as prisoners, people with mental health problems and learning disabilities, and migrant groups[29].

POLICE ACTIVITIES IN THE PREVENTION OF DOMESTIC VIOLENCE

Police practices research in other countries has shown that due to the complexity of the tasks of the police in preventing the recurrence of domestic violence and the successful prosecution of the perpetrator is extremely important for developing special rules of procedure in the cases of domestic violence[30]. Thus, the Ministry of Internal Affairs of the Republic of Serbia adopted a Special protocol on the conduct of police officers in cases of violence against women in intimate relationships. On the other hand, it is important to continue to educate police officers to ensure their introduction to the characteristics, structure and dynamics of domestic violence as to overcome prejudices and stereotypes, as well as acquire necessary skills for successful communication with participants in the events on the spot in cases of reported violence in the family[31].

Police preventive activities can be directed towards the control of potential perpetrators and protection of potential victims of domestic violence. Activities aimed at controlling potential bullies are usually associated with the possibility of detention of persons suspected of committing criminal acts of domestic violence, even though they should include much broader measures and actions of the police if we take a look at their content. The results published in the study "Minneapolis Experiment" from 1984 indicated that the arrest had more significant role in the reduction of the number of repeated spouse abuse than counselling and separation[32]. The research in Minneapolis found that bullies who spent eight hours in jail, repeated violence during the next six months but in less than half of the cases, as opposed to those who were not detained. Although the authors of this experiment suggested that on the basis of their conclusions arrests

25 *Ibid*.
26 Johnson H. (2007). Preventing violence against women: progress and challenges. *Institute for the prevention of crime review* 1, p. 84.
27 Matczak A., Hatzidimitriadou E. & Lindsay J. (2011). *Review of Domestic Violence policies in England and Wales*. London: Kingston University and St George's, University of London.
28 *Ibid.*
29 *Ibid*.
30 Konstantinović-Vilić, S. D., & Petrušić, N. (2005). Reagovanje policije na nasilje u porodici - teorijski okvir i strana iskustva. *Temida*, 8(1), p. 9-10.
31 *Ibid.*
32 *Ibid*, p. 6.

policies should be adopted (not mandatory arrest), many supporters of mandatory arrest emphasized this experiment which actually influenced the policy of arrests by the police in the entire United States[33].

According to one study, in more than half of the cases there was no recurrence of violence in the following six months, while in another study in 74% of cases there was no recurrence of violence, and especially good results could be seen in situations where the police considered a victim to be very interested in the case and providing assistance[34]. By 2005, twenty-three states in the US had adopted a policy of mandatory arrest of the abuser without a court decision, based only on the assessment of a police officer on the existence of reasonable doubt that the violence actually occurred, or that the victim is in a dangerous situation where she can get physically hurt[35]. However, it should be noted that the arrest or apprehension of a suspect should be followed by effective gathering of evidence that will enable the successful start and conduct of criminal proceedings and the imposition of appropriate sanctions for the abuser. In this sense, there are significant changes of legal acts which have been adopted in the United States due to the large number of prosecutions which were stopped because the victim did not want to prosecute the offender or because they withheld cooperation: according the prosecutor's office legal changes allow the use of all legal possibilities to prosecute the accused to the end, regardless of whether the victim wishes to cooperate or not[36]. In this regard, an obligation was introduced that the spouse had to testify in the trial against the other spouse who is suspected of a criminal offense against the person or property of a spouse, child, parent, relative or person with whom he/she shares an apartment while a special attention is given to the expertise of the abused-women syndrome[37]. The fact that the detention of a person suspected of domestic violence is being widely used in other countries, can be seen from the data of the Ministry of Internal Affairs of Great Britain. Namely, in 200 000 incidents out of a million cases of domestic violence that are reported to the police each year, the result was the arrest of the suspect[38].

Preventive activities that police conduct within the strategy of community policing should also enable more effective prevention of domestic violence through improved solidarity between citizens themselves and partnerships with the police[39]. The relationship full of trust which the police should build with citizens at the neighbourhood level should enable more effective detection of domestic violence at the stage when it is still possible to prevent the occurrence of severe consequences, particularly in terms of gathering data about the seriousness of the threat, the legal possession of firearms by a family member and the like. Moreover, it is necessary to continuously monitor the behaviour of citizens who have a license to hold firearms. Considering the fact that the police have the important role in the process of deciding upon requests of citizens for the purchase of firearms and issuing permits for keeping firearms it is very important for police officers who work on the field to check the eligibility of citizens who submit these requirements as responsible as they can. One of the criticisms is the lack of precise instructions for checking persons who submit the request, which certainly should include consultation with family members and ex-partners about the potentially violent behaviour of the applicant[40].

The data from Canada show that, on average, 40 percent of women killed by their husbands were killed by firearms, mostly rifles legally owned (80%), and because of that the country adopted the 1995 Firearms Act, which regulates, among other things, strict checking of firearms owners (every five years and continuous eligibility checks), as well as current and former (in the last two years) spouses must be notified about an individual's intention to acquire a firearm license[41]. Although the acquisition of weapons does not require the consent of a partner, his/her concern leads to additional application revision and check, and there is also a toll-free telephone line for spouses of applicants or other persons who may be concerned for their safety.

Canadian Coalition for Gun Control has made recommendations for the implementation of the Act and amendments to the concerning regulations, and among them there recommendations that should be mentioned: when deciding whether to grant a license in doubt, a permit should not be issued/ if the former partner was not possible to locate, the police must conduct a thorough investigation into the local community while guaranteeing privacy and safety of all participants in investigation / bear in mind that most victims of domestic violence have been assaulted 30 times before they filed a formal complaint/ expand the investigation beyond local databases and data collection on previous residences of candidates in the last five years with a mandatory check with the relevant authorities at these locations[42].

33 *Ibid*, p. 6.
34 Jovanović S. *Op. cit.*, p. 340.
35 *Ibid*, p. 341.
36 *Ibid*, p. 341.
37 *Ibid*, p. 341.
38 Matczak A., Hatzidimitriadou E. & Lindsay J. *Op. cit.*
39 Vuković S. (2014). *Prevencija kriminala*. Beograd: Kriminalističko-policijska akademija, p. 199-205.
40 Dokmanović M. *Op. cit.*
41 *Ibid.*
42 *Ibid.*

CONCLUSION

The analysis of current activities undertaken in the prevention of domestic violence both in Serbia and in other countries which recognize the need for more efficient society's response to this problem, clearly shows that the necessity for providing partnerships between relevant institutions from both the state and non-state sectors, as well as citizens in the neighborhood is of the utmost importance. However, practice shows that the level of achievement that precondition for the success of prevention activities is not always satisfactory, and that within the institutions who should cooperate it is necessary to strengthen the awareness of the need of achieving full cooperation as regards the exchange of information which these institutions obtain in daily treatment of domestic violence actors for the purposes of conducting a comprehensive analysis and identification of relevant factors that allow the expression of domestic violence, as well as in the planning of preventive measures and coordinating joint activities. Preventive activities require full commitment of the members of the relevant services and organizations in the local community in order to systematically explore the problem in the background of domestic violence and find a response to the question what the most appropriate measures to prevent this kind of violence are. The fact is that this partnership is still predominantly directed towards activities in the field of tertiary prevention, aiming to provide the conditions for a more efficient prosecution of perpetrators and providing full support and assistance to victims of domestic violence. On the other hand, underdeveloped and underutilized opportunities for development activities in the field of primary and secondary prevention are still present, which should achieve substantial expectations of victims of domestic violence, i.e. prevent the manifestation of violence because of wrongly based attitudes or stereotypes and prejudices with regard to male female relationships and roles.

When it comes to the activities of the police, the analysis shows that their members can play a very important role in the immediate prevention of further manifestation of domestic violence through an adequate assessment of the situation at the scene of violence and taking appropriate measures against the violator, primarily deprivation of liberty, as well as taking measures to ensure the protection and full safety for a victim of domestic violence. On the other hand, police officers through daily work in the area of security sector should work on collecting information about potentially risky relationships in certain families that may culminate in the manifestation of various forms of violence. In this regard, their work is especially important in the area of checking eligibility of citizens who apply for the purchase of firearms and issuing permits for possession and carrying of firearms, as well as checking the relationship in the families of those persons who have already been issued licenses for the possession and carrying of firearms. The experience of other countries, primarily Canada, shows that the development of additional precise instructions can affect the success of the detection of high-risk circumstances that would make justified rejection of the request for issuing approval for the purchase of such firearms, or confiscation of firearms that are already in legal possession of citizens.

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PERSONAL CHARACTERISTICS OF THE PERPETRATOR AND SENTENCING[1]

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Abstract: The subject of this paper is personal characteristics of the perpetrator, its significance for sentencing in Criminal Legislation, Criminal Law Literature and jurisprudence. In the first part of the paper, the author will consider the term and types of sentencing as well as circumstances which are relevant for sentencing in our Criminal Legislation. Special attention will be paid to the influence of personal characteristics of perpetrator for sentencing. There is a great number of dilemmas in theory and jurisprudence related to this topic to the resolution of which the author will try to contribute. In principle there is no unique opinion on what is meant by personal characteristics of perpetrator. If the perpetrator has a profession which is of high social importance (policeman, doctor, etc.), it is unclear whether this circumstance should be taken into account as mitigating or aggravating. Also, there is a question whether the unemployment of perpetrator should be taken into account in sentencing as aggravating or mitigating circumstance. It is disputable whether the courts should take into account only personal characteristics that existed in time of execution of offense or the ones occurred after commission of offense are relevant as well.

Finally, the results of jurisprudence research will be presented in this paper which almost always takes personal characteristics of perpetrator as mitigating circumstance. The author will explain his critical opinion on court's proceeding in sentencing.

Keywords: personal characteristics, sentencing, mitigating and aggravating circumstances.

INTRODUCTION

The sentencing is important institute of Criminal Law because the purpose of perpetrator punishment can be realized only under condition that this criminal sanction is adequately sentenced. Consequently, sentencing in our Criminal Legislation is very important (Art. 54-63 of CCS). However, CCS does not define the term of sentencing. On the other hand, in the Criminal Law theory is generally accepted the opinion that sentencing the penalty to the perpetrator of offense means determine the type and amount of penalty.[2] This refers to regular sentencing which is regulated by Article 54 of CCS. In broader sense the sentencing refers not only to sentencing in law determined limits for specific offense but to sentencing below and above special minimum of penalty as well.[3]

From CCS provision which prescribes regular sentencing follows that the legislator in our country accepts so called system of relatively defined penalties, according to which the court sentence the penalty within the type and range of penalty defined by legislator.[4] The system of absolutely indeterminate penalties which application would result the unlimited arbitrariness of judges while sentencing the strictest criminal sanction is overcame, and as such is not accepted in most modern criminal codes. Also, its application would lead to legal uncertainty because of the possibility that the courts for the same or similar offenses sentence largely different penalties, which is unacceptable.

However, the system of indeterminate penalties was accepted till 80's of the 20th century in the United States for offenses prescribed by federal laws. It was not a system of absolute indeterminate penalties in the true sense of the word, because the laws have always prescribed only minimum penalty for certain offenses. After that, came into effect a system of determinate penalties,[5] which means the sentence of fixed pen-

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2 N. Srzentić, et. al., Krivično pravo Jugoslavije - opšti deo, Beograd, 1995, str. 307.
3 Z. Stojanović, Krivično pravo – opšti deo, Beograd, 2011, str. 271.
4 G. Božilović-Petrović, Odmeravanje kazne, Zbornik radova: Strategija državnog reagovanja protiv kriminala, Beograd, 2003, str. 276.
5 1984 godine je donet Sentencing reform Act.

alties. This system which may be called a system of absolutely determinate penalties showed serious faults, which are primarily reflected in the fact that judges have discretion in terms of conditional release, depending on the behavior of the convicted during the penalty execution. Thus, the legal system of determinate penalties due to jurisprudence became a system of indeterminate penalties.[6] In addition, fixed penalties do not allow the possibility of taking into account various aggravating and mitigating circumstances which are relevant for sentencing in a particular criminal matter. Therefore, the purpose of Sentencing Reform Act from 1984 has not been achieved, because it contributed to legal uncertainty and led to the situation that different persons for the same or similar offenses are being punished with significantly different penalties.

When considering sentencing in the United States one should bear in mind that according to the Constitution of this country's jurisdiction for sentencing is divided between the legislative, judicial and executive authority. The legislative authority prescribes federal offenses, the type and range of penalties, as well as manner of execution; judicial authority determines the type and amount of punishment in a specific case within the limits set by the legislator; executive authority determines the place where convicts serve their sentence in prison and supervise after serving the sentence.[7]

In this regard, it is disputable whether we can speak about the judicial and legislative sentencing. Some authors believe that with the judicial should accept the existence of the legislative sentencing, because the courts must comply with the type and amount of the sentence prescribed by the legislator. This is true, but it is also true that within different types and ranges of penalties determined by the legislator courts have sufficient freedom,[8] which is why there is opinion that the concept of sentencing refers exclusively to the court activity.[9] It is our opinion that this view should be accepted, because the penalties in modern criminal codes are often prescribed in large ranges, because the view that the legislator sentences the penalty to perpetrator prescribing the type and range cannot be accepted. According to the opposite view, not only that legislative sentencing is not challenged, but disputes the existence of the penal policy of the courts. It is emphasized that there is no penal policy of the courts, but the courts through their decisions in specific criminal matters only realize penal policy of the legislature.[10] This cannot be accepted, not only because of the large range of penalties for certain offenses. As we shall see, it often happens that when interpreting the provisions which regulate sentencing, on court assessment depends whether a circumstance should be taken into account as a mitigating or aggravating. Some authors believe that the legislature should "avoid overbroad criminal frames when prescribes penalty for a particular offense, because it allows arbitrariness in sentencing."[11] The author of this opinion suggests that in order to achieve this goal, the legislature determines relatively small penalty ranges for basic forms of some offenses, predicting easier or harder form of offense for which special penalties are prescribed. This may be accepted in general, but it is difficult to realize in practice because for certain severe offenses ranges of penalties must be great. Accordingly, the courts have a decisive role in sentencing and in the creation of penal policy.

The legislature in our country prescribes the types of penalties, ranges and circumstances that must be taken into account when sentencing in particular cases. Within the prescribed types and ranges of penalty courts impose specific penalties, "considering the purpose of punishment and taking into account all the circumstances that affect that sentence be smaller or larger (mitigating and aggravating circumstances), and in particular: the degree of guilt, the motives for the committed offense, the intensity of endanger or injury of the protected good, the circumstances under which the offense was committed, the past life of the perpetrator, his personal characteristics, his conduct after the commission of the offense and particularly his relation towards the victim of the offense, as well as other circumstances related to the personality of the perpetrator (Article 54 of the Criminal Code)."

Therefore, in our criminal legislature circumstances which court takes into account when sentencing are exhaustively listed, while each of these circumstances, depending on the specifics of a particular event can be aggravating or mitigating. The mitigating circumstance refers to the one that affects that smaller penalty is sentenced to the perpetrator within prescribed range of penalty; while the aggravating circumstances are the ones that affect larger penalty to be sentenced within prescribed limits.

The alternative is particularly exhaustive listing of aggravating and mitigating circumstances, which is not a solution, because it is not disputed that each circumstance relevant to sentencing may be aggravating or mitigating. For example, the degree of guilt of the perpetrator may be an aggravating circumstance (direct or indirect premeditation) or mitigating circumstance (conscious or unconscious negligence). According to one view, the assessment of mitigating and aggravating circumstances "penalty is agreed with

6 F. Doherty, Indeterminate sentencing returns: the invention of supervised release, N.Y.U. Law Review, 2013/3, New York, str. 958.
7 R. Howell, Sentencing Reform Lessons: From the Sentencing Reform Act of 1984 to the Feeney Amendment, Journal of Criminal Law and Criminology, 2004/5, Chicago, str. 1071.
8 D. Janković, Odmeravanje i individualizacija kazne u krivičnom zakonodavstvu i sudskoj praksi Republike Srbije, Anali, 2010/2, Beograd, str. 373.
9 Z. Stojanović, op. cit., str. 270.
10 Z. Perović, Kaznena politika sudova, Zbornik radova: Strategija državnog reagovanja protiv kriminala, Beograd, 2003, str. 247.
11 F. Bačić, Krivično pravo – opći dio, Zagreb, 1995, str. 367.

degree of free will expressed by perpetrator in the commission of the offense, as well as with all objective circumstances characterizing the perpetrator and concrete offense."[12] According to the author of this opinion, sentencing and penalty individualization are two different concepts, which are justified criticized in the theory of criminal law, because there are no clear criteria for distinguishing them.[13] In addition, followers of the penalty individualization consider that the circumstances relevant to the individualization are the ones that courts take into account when sentencing (the degree of guilt, the motives for the committed offense, the intensity of endanger or injury of the protected good, etc.),[14] which is also in favor of our thesis that the concept of individualization is redundant.

However, the starting point of authors who support the penalty individualization can be accepted. They argue that the court in any criminal matter should adjust the penalty to the personality of the perpetrator. Only if the penalty is adjusted to the personality of perpetrator, regardless of the committed offense, the objectives of special prevention may be achieved.[15] This means that when sentencing, the personal characteristics of perpetrator which are not associated with the offense should be taken into account, which will be explained with more details in the following chapters.

PERSONAL CHARACTERISTICS OF PERPETRATOR IN THE THEORY OF CRIMINAL LAW

As in this paper noted above, Article 54 of the CC prescribes that the court when sentencing should take into account besides the purpose of punishment among others the personal characteristics of the perpetrator. It could be said that this provision of our CC is in accordance with the provisions of comparative legislation which regulates the sentencing. According to Article 46 CC of Germany: "1) the basis for sentencing is the perpetrator's guilt. In sentencing is taken into account the expected impact from penalty on the future life of the perpetrator; 2) in sentencing, the court assesses the relationship between aggravating and mitigating circumstances. Court also specifically assesses: motives and aims of the perpetrator; moral perceptions arising from committed offense and the perpetrator's will manifested while committing the offense; extent of violations of duties; manner of execution and consequences of the offense, the past life of perpetrator; the personal and material characteristics of the perpetrator; his conduct after the commission of the offense, particularly his efforts to indemnify and attempt to reach a settlement with the injured party. 3) Circumstances which are already special elements of offense must not be taken into account."[16]

If we compare Article 54 of the CCS and Article 46 of the CCG, we come to the conclusion that the legislature regulates sentencing in both countries in a similar manner. In both Codes the personal characteristics of the perpetrator are mentioned as circumstances relevant for sentencing. We note that the legislator in Germany does not provide recidivism as a special circumstance of importance for sentencing, as opposed to solution which has been accepted in our country (Article 55 CCS). The perpetrator's recidivism is according the German jurisprudence and theory circumstance related to the personal characteristics of the perpetrator. However, it is our opinion that the recidivism is too important circumstance for sentencing, that it should be considered when assessing the personal characteristics of the perpetrator.

It is disputable primarily what is meant by personal characteristics of the perpetrator. According to the German theory and jurisprudence, these are the circumstances that are not directly related to the commission of a criminal offense, but are relevant for sentencing:[17] the conditions of socialization, education, profession, social status, health status and previous guiltiness and impunity of the perpetrator.[18] However, in one verdict while sentencing for the offense under Article 125 of CCG (disturbance of the general peace), the court did not take into account as a mitigating circumstance the fact that the defendant was the illegitimate child who grew up in foster homes, which according to psychology often causes psychological damage of personality which are accompanied by a greater degree of aggressiveness.[19] We believe that this attitude of the court may be criticized, because the conditions within which the personality of the perpetrator has been developing were in the causal relation to the committed offense.

According to Atanackovic, personal characteristics of perpetrator are circumstances that are of importance to the moral gravity of the offense, while on the other hand, the personal characteristics may be rele-

12 D. Janković, op. cit., str. 374-375.
13 B. Schünemann, Tatsächliche Strafzumessung, gesetzliche Strafdohungen und Gerechtigkeits – und Präventionserwartungen der Öffentlichkeit aus der deutscher Sicht. In: Krise des Strafrechts und der Kriminaliwissenschaften?, Berlin, 2001, str. 345; (Prema: Z. Stojanović, str. 271).
14 D. Janković, op. cit., str. 374-387.
15 F. Bačić, op. cit., str. 372.
16 A. Schönke, H. Schröder, Strafgesetzbuch – kommentar, München, 2001, str. 270.
17 F. Streng, Münchener Kommentar zum Strafgesetzbuch, München, 2003, str. 1440.
18 Ibid. str. 1443.
19 OLG Hamburg, Urt. v. 8. 9. 1971. – 1 Ss 67/71; (Prema: NJW, 1972/6, München-Frankfurt/Main, str. 265).

vant for assessing the tendency of the perpetrator to commit offenses in the future.[20] According to this author, personal characteristics may affect the assessment of whether the perpetrator has tendency to commit offenses only under certain conditions. It is necessary to determine that there is a causal relation between 1. the circumstances that make personal characteristics of perpetrator; 2. the offense; 3. the tendency of the perpetrator to commit offenses. Accordingly, the circumstances that make personal characteristics of perpetrator must through the commission of the offense indicate that there is a tendency to commit offense in the future. In favor of that the following example is stated, if one person is left orphan early, living in an environment that has negative impact on his mental development, it is necessary to determine whether the cause of violation of criminal law provisions is the negative impact of the social environment, as well as whether mentioned personal characteristics may be the cause of committing offenses in the future. It follows that not every circumstance of the perpetrator's life may be classified as personal characteristics in terms of sentencing, but only those circumstances that are causally related to the committing of the offense and with the perpetrator's tendency to commit new offenses.

Part of the theory considers that personal characteristics are "the circumstances under which the perpetrator lived before and after the commission of the offense", which can be divided into subjective and objective circumstances.[21] The circumstances of the subjective nature are the age of the perpetrator, family circumstances, material status, etc., while circumstances of objective nature are rarely mentioned (e.g. housing circumstances of the perpetrator). Our opinion is that housing circumstances in general cannot be relevant for sentencing, except in the case if the commission of the property related offense is motivated by perpetrator's desire to buy or rent an apartment.

In the German theory is represented the concept according to which the personal characteristics of the perpetrator refers to for example age, intelligence and family characteristics, while economic characteristics of the perpetrator have a special significance in sentencing the amercement.[22] It is disputable whether the specific lifestyle of the perpetrator can be considered in terms of personal characteristics as an aggravating or mitigating circumstance. It is believed that lifestyle of the perpetrator may be relevant for sentencing only under condition that in specific case a close relationship between lifestyle and commission of the offense is established.[23] It is pointed out that as a mitigating circumstance should be taken into account the perpetrator's work in the public interest (for example, participation in the rescue during floods, work in non-government organizations which care for the general interest and vulnerable populations etc.).[24]

Given that in the theory and practice is generally accepted opinion that the profession of the perpetrator should be taken into account when sentencing, one might ask what is the relationship between the responsibilities of a person in the community or company and sentencing for the committed offense. In other words, whether the persons who have a greater responsibility therefore be more severe punished. We believe that it should accept the opinion according to which the degree of responsibility is not always proportional to the measure of the penalty to be imposed upon the perpetrator of offense.[25] It is assumed that there is no general rule according to which certain categories of persons who have a greater level of duty in society deserve greater penalty. For example, a civil servant should not be punished stricter comparing with any citizen, if he commits rape or any other offense against sexual freedom. In this regard, in our theory identical position is taken: if the perpetrator of rape is married and has children, this circumstance should not be taken into account as a mitigating, because it is not in the direct causal relation with the committed offense.[26] According to one view, the fact that the perpetrator of rape is married can be taken into account as an aggravating circumstance, "because it cannot be expected from the family man such violent and illegal behavior in sexual life, and if he did such a thing he should be subject to heavier sentence in relation to the perpetrator with different personal characteristics."[27] The starting point of this concept can be accepted, because it is unexpected that a married man who has children commits rape, but if it happens, it is our opinion that this circumstance should not be taken into account as an aggravating circumstance. Simply put, the fact that the commission of offense by certain categories of perpetrators is a surprise or an exception to the statistical data indicating that the perpetrators are other persons, should not be relevant for sentencing. If we accept the opposite solution, it would give the courts too broad powers without clear limits and the result would be sentencing of different penalties in the same or similar cases, i.e. would lead to legal uncertainty and inequality of citizens before the law.

20 D. Atanacković, Kriterijumi odmeravanja kazne, Beograd, 1975, str. 104.
21 M. Milović, Lične prilike učinioca kao okolnost pri odmravanju kazne, Zbornik radova: Strategija državnog reagovanja protiv kriminala, Beograd, 2003, str. 287.
22 U. Kindhäuser, Strafgesetzbuch, Berlin, 2003, str. 299.
23 F. Streng, op. cit., str. 1443.
24 A. Schönke, H. Schröder, op. cit., str. 730.
25 Ibid., str. 732.
26 D. Atanacković, op. cit., str. 105.
27 D. Miladinović-Stefanović, Redovno odmeravanje kazne u krivičnom pravu, neobjavljena doktorska disertacija, Beograd, 2012. str. 444.

Similar to the above example, if a police officer commits the offense by non-payment of taxes, his profession should not be taken into account as an aggravating circumstance. Accordingly, in general it can be said that for sentencing is not important whether the perpetrator is a lawyer, a doctor, a manual worker or a professional soldier. However, according to this view, the profession of the perpetrator may be relevant for sentencing if directly related to the offense, i.e. if it is misused for committing an offense (for example, a lawyer is abusing the trust of the client and makes a criminal offense).[28] One might ask whether the greater extent of penalty deserve the traffic police officers or instructors in driving schools if they commit an offense against traffic safety. According to German jurisprudence, these categories of persons are imposed stricter penalties for traffic offenses.[29] At first glance, this reasoning cannot be disputed because the perpetrators were people who best knew the traffic regulations; they are at least expected to violate them. Also, these are the persons who should contribute that traffic participants comply with traffic regulations and not themselves not to comply with the same. However, our opinion is that profession can be taken into account as an aggravating circumstance to these categories of persons only if it is misused with the commission of the offense. In other words, if a traffic policeman while performing official duty violates traffic regulations, it is aggravating circumstance in sentencing. In contrast, if the traffic offense has been committed when traffic policeman was not on duty, profession of perpetrator is not relevant to sentencing. This does not mean that in this and similar cases profession of perpetrator cannot be taken into account when determining the degree of guilt of the perpetrator.

In this paper has already been said that each of the circumstances which are according to our criminal legislation relevant to sentencing may be taken into account as an aggravating or mitigating circumstance. On the other hand, when the court evaluates the personal characteristics of the perpetrator some circumstances are always taken into account as mitigating.[30] For example, a youth of perpetrator is always a mitigating circumstance, which is not questioned in the theory of criminal law. A particular problem is to determine whether the perpetrator is young or mature man, which will be said with more details in the following chapters. Generally speaking, we believe that the youth of the perpetrator should to be taken into account as a mitigating circumstance. The reason is inexperience, immaturity and frivolity of young people, who in most cases make a decision about commission of offense in the moment, without thinking about the consequences of such act. Also, serving prison sentence will have more serious consequences on the young man i.e. his re-socialization will be more difficult. However, when assessing the importance of youth it should be taken into account that it is about the age of person, on which anyone can not influence on their own will. In theory, there is opinion that the circumstances that are relevant for sentencing could qualify considering the fact whether some of those circumstances depend on the perpetrator will or not. According to this view, greater importance should have circumstances that depend on perpetrator will, "because they represent the attitude of the perpetrator on generally accepted social values."[31] We believe that this opinion should be accepted, i.e. perpetrator's youth should be taken into account when sentencing as a mitigating circumstance, but that the importance of this circumstance should be relativized. Simply told, the fact that the perpetrator is young by itself says nothing about his attitude towards the system of values in a society. Conversely, if he employed, and supports his family, this circumstance indicates the positive traits of his personality that should be given special importance in sentencing. Everything that is said about perpetrator's youth as a mitigating circumstance refers to the old age as well. Of course, if there is a perpetrator who is sick this circumstance should be taken into account as a mitigating. From the severity of the disease the importance that this circumstance will have to sentencing will depend on.

Against this view, there is an opinion that personal characteristics "are such circumstances to which the perpetrator cannot influence by his owe will."[32] We believe that this reasoning cannot be accepted. For example, if a perpetrator because of gambling lost his property or refused a job that was offered by the Department of Employment and thus brought into question the existence of family, poor financial situation cannot be taken into account as a mitigating circumstance.[33] Thus, the poor financial situation is not always a mitigating circumstance in sentencing. However, our courts as per rule take bad financial situation of the perpetrator as a mitigating circumstance without the necessary checks.

Referred to Article 54, Paragraph 2 of the CCS shows that the courts in sentencing the amercement will particularly take into account the financial status of the perpetrator. However, this does not mean that the financial status is not relevant to sentencing in prison. We believe that it should accept the opinion that personal characteristics of the perpetrator also include his property status, if it is related with the commission of an offense.[34] For example, if the perpetrator committed the offense because of the difficult economic

28 F. Streng, op. cit., str. 1443.
29 A. Schönke, H. Schröder, op. cit., str. 733.
30 M. Milović, op. cit., str. 288.
31 D. Miladinović-Stefanović, op. cit., str. 443.
32 M. Milović, op. cit., str. 287.
33 A. Schönke, H. Schröder, op. cit., str. 731
34 F. Streng, op. cit., str. 1443.

situation of his family, this fact should be taken into account as a mitigating. As already stated, this does not mean that the poor financial situation of the perpetrator will always be a mitigating circumstance. Accordingly, if the perpetrator was able to meet the modest basic existential necessities of life, but had no means of appropriate cultural life (theater, concerts, and exhibitions), better clothes, etc., property status does not have significance of mitigating circumstance. In other words, if the minimum existence is provided without the execution of offense, bad financial situation has no importance of mitigating circumstance.[35] Also, if perpetrator is situated, this circumstance cannot always have importance of aggravating circumstance, because it is a factual issue. In a judgment of German highest court instances the court took into account as an aggravating circumstance to the perpetrator of offense accepting a bribe, "ruthless ambition to become rich."[36]

If the perpetrator is existentially threatened, in exceptional cases can be discussed on the application of necessity. In some cases, in Spanish jurisprudence drug dealers referred to the necessity. Their defense was based on the claim that they were forced to sell drugs in order to provide their families livelihoods. However, the courts did not accept their defense, because the property situation of perpetrators was not the state of necessity, i.e. they could ensure livelihoods on other way which was in accordance with the law.[37] According to the English jurisprudence (case Williams from 1971) stems that the hungry, the homeless and other persons who have existential problems are not entitled to refer to the necessity if they commit an offense.[38] The exception may be only the situation in which the perpetrator by stealing food prevents death from starvation.[39] In contrast, there is opinion that the intent of the perpetrator to steal food to sustain life can only consider as a mitigating circumstance in sentencing.[40] We find this view too strict i.e. that because of the significance of life as the most important legal interest hunger that threatens life should be understood as a danger in terms of necessity. Of course, only under the condition other terms for the application of necessity prescribed by criminal legislation are fulfilled.

So far in this paper we mainly discussed the particular circumstances which are in theory and jurisprudence considered as personal characteristics of the perpetrator in terms of sentencing. We may ask whether it is possible to determine an abstract definition of personal characteristics. The starting point is that any circumstance which belongs to the personal characteristics of the perpetrator cannot be considered relevant for sentencing. According to one view, under the personal characteristics are considered only those circumstances related with the commission of the offense or the guilt of the perpetrator.[41] It is our opinion that this definition is too narrow because it does not take into account the circumstances that could be classified as personal characteristics, and occurred after the commission of the offense (for example, the perpetrator is seriously ill after commission of the offense) and circumstances which are not directly related with offense or guilt (the perpetrator takes care of the multi-member family). Therefore, we believe that we should refrain from abstract definition of personal characteristics and let the courts determine whether a circumstance which belongs to the personal characteristics of the perpetrator is relevant to sentencing in particular case. Instead of dealing with a definition which will certainly be unspecific, energy should be focused on individual circumstances which belong to the personal characteristics of the perpetrator and their significance for sentencing.

PERSONAL CHARACTERISTICS OF PERPETRATOR IN JURISPRUDENCE[42]

The personal characteristics of the perpetrator in our jurisprudence almost always have the significance of mitigating circumstance. This is supported by the results of our study that analyzed 50 final judgments of the High Court in Belgrade, referring to drug related offenses: illicit production and trafficking of narcotic drugs (Article 246 CCS), unauthorized possession of narcotic drugs (Article 246a CCS) and enabling the use of narcotic drugs (Article 247 CCS). The analyzed judgments became final in the period of 2010-2012:

35 A. Schönke, H. Schröder, op. cit., str. 734.
36 BGH, Urt. v. 19. 8. 1986 – 1 StR 359/86 (LG Stuttgart); (Prema: NJW, 1987/9, München-Frankfurt/Main, str. 510).
37 Olivares, G. Q., Prats, F. M., Parte General del Derecho Penal, Barcelona, 2006, str. 505; (Presuda Vrhovnog suda Španije od 16. septembra 1982. godine).
38 J. Herring, Criminal Law, London, 2004, str. 619.
39 M. Jefferson, Criminal Law, London, 2007, str. 274.
40 R. Heaton, Criminal Law – cases and materials, London, 1988, str. 182.
41 A. S chönke, H. Schröder, op. cit., str. 732.
42 This paper is a result of scientific-research projects financed by Ministry of interior affairs of Republic of Serbia: "Criminality in Serbia and instruments of State reaction", realized by Academy of Criminalistic and Police Studies in Belgrade 2015–2019 (the project coordinator Professor PhD Dragana Kolarić).

8 judgments from 2010,[43] 4 judgments from 2011, [44]and 38 judgments from 2012.[45] From a total of 50 analyzed judgments, 12 are modified.[46]

The Court in observed sample in each of the judgments the personal characteristics of the perpetrator took into account as a mitigating circumstance, arises from the next table. On the other hand, in any of the analyzed criminal matters personal characteristics of the perpetrator according to court opinion did not have the character of aggravating circumstances in the sense of Article 54 CCS.

Personal characteristics of perpetrator (50 judgments)	Mitigating circumstance	50
	Aggravating circumstance	-

According to view of the High Court in Belgrade, mitigating circumstance is the youth of perpetrator; this is widely accepted opinion in the theory of criminal law, which in this paper has already been discussed. However, in certain judgments the Court takes the view that the youth of perpetrator is mitigating circumstance despite the fact that it is a person who is 33 years old,[47] or 38 years old.[48] In certain judgments it is stated that the defendant at the time of the commission of offense was a relatively young man.[49] There is no need to set a quantitative limit on the age of perpetrators and to consider young people only those who have not reached, for example, 25 years. It is a factual question to which the answer gives the court in each particular case, taking into account all relevant circumstances (type and severity of offense, the manner of execution, etc.). However, it is not justified to take into account the youth as a mitigating circumstance if the perpetrator as in the examples above is 33 or 38 years old. A particular problem is that in terms of youth as a mitigating circumstance there is no uniform jurisprudence. For example, in the judgment K. 263/12 the court justified did not take into account the youth of perpetrator who was at the time of commission of the offense 34 years old.

In addition, the court as a mitigating circumstance takes into account the fact that the defendant is parent.[50] However, in almost all analyzed judgments in the explanation of the sentenced criminal sanction courts lump sum state that the defendant is parent, without providing data whether he actually supports his family, or whether he is the only one supporting his family. There is no doubt that the family members of the convicted person become a victim of his punishment, if they are economically dependent on him. Example to be followed is the judgment K. 263/12 according to which the defendant "is the only one who supports a wife and three small children." Therefore, it is necessary in the explanation of sentenced criminal sanction to indicate whether the perpetrator has children, whether they are a minor or the adult children, if children have the other parent, and whether the other parent has the possibility to take care of the children while the defendant serves a prison sentence. A similar comment can be given to taking into account as mitigating circumstance that the defendant takes care of younger sister who is at school, [51]or has a sick family member.[52]

In some judgments the court highlights as a mitigating circumstance the fact that the defendant is student.[53] However, this circumstance as well as many others related to the personal characteristics of the perpetrator is determined by the data taken from the perpetrator without checking. The judgment does not specify what college defendant studies, which is the number of his index, is he passed some of the exams or just enrolled in college.

In some judgments from our sample the fact that the defendant is employed is taken into account as a mitigating circumstance.[54] However, according to the jurisprudence of the Court of Appeal in

43 K. 150/10, K. 257/10, K. 301/10, K. 485/10, K. 529/10, K. 701/10, K. 1923/10, K. 3943/10.
44 K. 677/11, K. 882/11, K. 944/11, K. 1276/11.
45 K. 14/12, K. 18/12, K. 34/12, K. 112/12, K. 143/12, K. 181/12, K. 240/12, K. 263/12, K. 334/12, K. 398/12, K. 444/12, K. 456/12, K. 467/12, K. 551/12, K. 552/12, K. 570/12, K. 614/12, K. 637/12, K. 686/12, K. 709/12, K. 716/12, K. 721/12, K. 722/12, K. 741/12, K. 128/12, K. 749/12, K. 761/12, K. 764/12, K. 787/12, K. 832/12, K. 834/12, K. 863/12, K. 886/12, K. 970/12, K. 1009/12, K. 276/12, K. 121/12, K. 1078/12.
46 The following judgment are modified: K. 150/10 (modified by judgment of Appeal Court K. 1313/13); K. 301/10 (modified by judgment of Appeal Court K. 184/13); K. 18/12 (modified by judgment of Appeal Court K. 425/13); K. 34/12 (modified by judgment of Appeal Court K. 5933/12); K. 112/12 (modified by judgment of Appeal Court K. 600/13); K. 467/12 (modified by judgment of Appeal Court K. 463/13); K. 570/12 (modified by judgment of Appeal Court K. 803/13); K. 614/12 (modified by judgment of Appeal Court K. 427/13); K. 721/12 (modified by judgment of Appeal Court K. 2311/13); K. 761/12 (modified by judgment of Appeal Court K. 1038/13); K. 764/12 (modified by judgment of Appeal Court K. 1235/13); K. 1009/12 (modified by judgment of Appeal Court K. 1511/13).
47 K. 551/12.
48 K. 722/12.
49 K. 529/10.
50 K. 276/12.
51 K. 721/12.
52 K. 570/12.
53 K. 34/12.
54 K. 834/12.

Kragujevac, the fact that the defendant is unemployed is also a mitigating circumstance in terms of sentencing.[55] The question is whether it is justified to qualify one and other circumstance as a mitigating, especially if it is known that the data are taken from the defendant without checking. It is disputable why the fact that the defendant is employed or unemployed is relevant to sentencing. If the defendant is unemployed for a longer period it may indicate a lack of employment opportunities in the labor market or the lack of ambition of the defendant. In the second case, it is a life attitude of defendant which consequences only he will have to bear, because we do not see the connection with sentencing. However, for short-term penalties of deprivation of freedom it is important to determine whether the defendant is employed, because the length of the prison sentence may affect the eventual termination of employment.

Here it should be noted that in the analyzed judgments difficult financial situation has no importance of mitigating circumstance. For example, in the above mentioned judgment K. 263/12 the court in the explanation of sentenced criminal sanction states that the defendant as a car mechanic who earns 30.000 dinars per month "is the only one who supports a wife and three minor children," but this circumstance (amount of earnings) is not relevant to sentencing. This can be accepted for two reasons: first, the Court in the judgment stated without checking that the defendant earns 30.000 dinars per month (car mechanics generally earn much more); second, the defendant can increase his income in other ways that does not include the commission of offenses.

In this paper it has been already stated that according to the opinion of the theory level of education is one of the personal characteristics in terms of sentencing.[56] However, in the observed sample court did not take into account the education of the perpetrator as a relevant circumstance. The Court in the introduction of judgment, as per rule specifies the level of education of the perpetrator, but this circumstance is not taken into account in sentencing. In the sample the perpetrators of the primary and secondary levels of education are dominant (from a total of 69 defendants 14 completed primary school, 53 secondary, while only 2 defendants graduated from university).

In certain criminal matters, the court did not take into account as a mitigating circumstance the defendant's disease (epilepsy); although the expert psychiatrist in his report stated that the defendant was suffering from this disease.[57] The circumstance that the defendant healed from addiction to narcotic drugs has significance of mitigating circumstance.[58] It is disputable whether the fact that the defendant is addicted to narcotic drugs has significance in sentencing for drug related offenses. It is our opinion that this circumstance should be taken into account as a mitigating, especially with the criminal offense of unauthorized possession of narcotic drugs (Article 246a CCS). However, in the judgment K. 1276/2011 court did not take into account the perpetrator's addiction as a mitigating circumstance, although the expert psychiatrist found that the offense was committed in a state of addiction, due to which the perpetrator's insanity has been reduced. In the observed sample of 50 judgments, from a total of 69 perpetrators 15 are addicted to narcotic drugs (21.74%), which make it necessary to consider the effect of addiction on the sentencing.

Finally, in certain judgments generally is stated that the court took into account the personal characteristics of perpetrator as a mitigating circumstance, whereby the court gives no explanation what exactly is considered as mitigating circumstance and why it was taken into account.[59] This kind of sentencing is not acceptable, because it will cause legal uncertainty and enable manifestation of judge's arbitrariness.

The data we obtained in our study do not mean that the personal characteristics of the perpetrator can only be a mitigating circumstance. As in this paper has already been said, if the perpetrator abuses his profession for commission of offense, his personal characteristics may have significance of aggravating circumstance. The Serbian Supreme Court took the view that the aggravating circumstance is the fact that the defendant "killed his wife who was the mother of two children and the only foster parent of the family", while on the other hand, "the fact that the defendant was the father of two children in a particular case can not represent a mitigating circumstance." [60] The Court took into account that the commission of offense has serious impact on children of the perpetrator and that for growing up a minor daughter who attended the commission of the offense "is more favorable to grow up in the absence of the defendant."

55 K. 5552/13.
56 F. Streng, op. cit., str. 1443.
57 K. 764/12.
58 K. 716/12.
59 K. 121/12, K. 257/10, K. 128/12.
60 K. 118/07.

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RELEVANCE OF CONCEPTUALIZING THE RELATIONSHIP BETWEEN INTERNATIONAL AND NATIONAL LAW FOR THE LEGAL NATURE OF THE EUROPEAN UNION[1]

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Abstract: The masonic role of the Court of Justice of the EU in relation to the modern-day EU edifice is undisputable. Much of that masonry has been erected on the fine line between community/union law and international law. The paper aims to show how theoretic paradigms relied on by the Court of the Justice of the EU have encompassed opposing views on the relationship between international and internal law. The first part the paper explains why reasoning of CJEU in its famous judgments of 1960-ies, which instituted principles of direct effect and primacy of Community law, may be regarded as having been based on a monist approach to the rapport between international and internal law, if Community law is regarded as international law, in contrast to national laws of member states. The second part presents arguments for the opinion that five decades later, the same court seems to be taking a dualistic stance in relation to the same issue when it conceives relations between EU law and international law. In the third part a theoretical background for the phenomena analyzed in the first and second part is provided, with particular emphasis on the opposing perspectives on fragmentation and constitutionalization of international law. Constitutionalization of the EU itself, not only of its law, has lasted over the span of time between the two subject phenomena. It appears that the Court's use of opposing theoretical paradigms over the entire timespan has been in all instances motivated by the urge to support and/or promote different stages of EC/EU constitutionalization.

Keywords: Court of Justice the European Union, monism, dualism, constitutionalization, fragmentation, European Union law, international law.

INTRODUCTION

Modern-day European Union has been built on the foundation made of its law, consisting of the founding treaties and of the case-law of the Court of the European Union interpreting those treaties. Legal theory has so far not been able to provide a decisive and simple determination of the legal nature of the European Union - an international organization, a regional organization, a union of states - federation or confederation - when looked from different angles, the EU creates different perceptions of itself.[3] The term "ever-closer union" can explain some of the confusion that has persisted to exist in connection with this question, by pointing to a process rather than to a static phenomenon. However, the practice of the European Court of Justice in the past decade has revived one particular attribute – the quality of autonomy of the Community / Union law.

It was the law of the European Union, instead the European Union itself, that gained attributes of sovereignty.[4] The bestowment of sovereignty lasted more than half a century. It started with the Court's judgments in famous cases *Van Gend en Loos*[5] and *Costa v. E.N.E.L.*[6] in the early 1960s. On that occasion the attribute "autonome" existed in the French version of the *Costa* judgment, mirroring the English term "independent".

The process seems to have been brought to completion in 2008, with the famous *Kadi*[7] judgment. In that decision, as well in some other recent judgments, the attribute "autonomous" has become the single

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3 See: Bruno de Witte, "European Union Law: How Autonomous is its Legal Order?", *ZOR* 2010, No. 65, 146-147.
4 Chalmers and Monti expressly refer to present-day "sovereignty of EU law". Damian Chalmers, Giorgio Monti, "Sovereignty and federalism: the authority of EU law and its limits", in: *European Union Law, Text and Materials, Updating Supplement*, Cambridge University Press, Cambridge- New York 2009, 49.
5 Case 26/62 *Van Gend en Loos v Nederlandse Administratie der Belastingen* [1963] ECR 1.
6 Case 6/64 *Costa v ENEL* [1964] ECR 585.
7 *Yassin Abdullah Kadi v. Council of the European Union and Commission of the European Communities*, (C-402/05) P, [2008], ECR I-0000.

solution for both language versions. The "double claim" for autonomy of EU law - both on the internal and on the external plane - has attracted attention of many distinguished scholars.[8]

The effect of the Court's jurisprudence has been unidirectional: increasing the powers of Community and EU bodies, and widening of the scope of Community and EU competences. It was a gradual, almost creeping claim to sovereignty.

The theoretic background of the subject group of judgments, however, varied significantly. Judgments from the 1960-ies established claim of the Community law to autonomy from the laws of Member States. It was this sort of autonomy that enabled courts to establish principles of direct effect of Community law in the legal systems of Member States, as well as of primacy of Community law over laws of Member States. Since Community law was treaty-based, one conclusion is inevitable: the Court at that time adhered to a monist view on the relationship between the international and national law. Half a decade later, in cases *Mox Plant, Kadi, al Barakaat, Intertanko* the Court denied direct effect to the norms of international law – the pattern shifted to dualism.

MONIST APPROACH IN EARLY LANDMARK CASES

Almost five decades ago, in the *Flaminio Costa v. E.N.E.L.* judgment of 1964[9], the Court wrote the famous and almost solemn paragraph that, in the French wording, ended with the qualification that the law born out of the EEC Treaty became "une source autonome" of law. In the English text, however, the term used was "independent source". This judgment has since become the basis of a principle that can be nowhere found in the founding treaties of the European Communities: the primacy or supremacy of the EEC/EC/EU law over the law of the member states.[10] The same combination of the two attributes - "independent" in the English version and "autonome" in the French text - for the EEC Treaty as the source of law was applied six years later in the *Internationale Handelsgesselschaft* judgment, serving the same purpose as in the earlier opinions: to emphasize the differentiation between the EEC law and the legal systems of the member states, which was then used as a starting point for stating supremacy of EEC law.[11]

The *Costa* opinion cannot be interpreted without reference to a judgment that preceded it for a bit more than a year: *Van Gend & Loos*.[12] In this ruling, the Court also interpreted the EEC Treaty and found in it a principle not expressly stated therein: that the EEC law was to be directly applied by the national courts of member states: the doctrine of direct effect.[13] The discovery was justified, *inter alia*, by the qualification of the EEC legal system as "independent" (in both English and French text) from the legal systems of the members states.[14]

In order to secure resolution of conflicts between the Community law and the national laws, in the *Costa* opinion the Court implied the principle of primacy of Community law, which stipulated that Community law supersedes any rule of the national law, including constitutional rules.[15] This ground-breaking principle, which had constituted the cornerstone of constitutionalization of the Community/Union that ensued, appeared as a pure rule of interpretation required by logic – if the Community law was integrated in the laws of member states, that the system could preserve coherence only if the Community had primacy over all national laws.[16] Apart from the Court's case law, this principle has been affirmed in Declaration No. 17 appended to the Treaty of Lisbon.[17]

8 Bruno de Witte, "European Union Law: How Autonomous is its Legal Order?," p. 142.
9 Case 6/64 *Costa v ENEL* [1964] ECR 585.
10 Paul Craig, Grainne de Burca, *EU Law, Text, Cases, and Materials*, Oxford University Press, Oxford, 4ed, 2008, 272-275.
11 ECJ, Judgment of 17 December 1970 in Case 11/70 *Internationale Handelsgesellschaft mbH v Einfuhr- und Vorratsstelle für Getreide und Futtermittel* [1970]
12 Case 26/62 *NV Algemeine Transport- en Expeditie Onderneming Van Gend en Loos v. Nederlandse administratie der belastingen* [1963] ECR I.
13 Paul Craig, Grianne de Burca, *EU Law, Text, Cases, and Materials*, 272-275.
14 "This judgment had shattering effects, since, keeping the statement - previously elaborated - by which the supranational order and that of Member States should be considered "distinct and different", it can be concluded now that Community law had a quite natural power to regulate individual juridical situations of citizens without the intervention of the MS issuing any implementation act." Enzo Di Salvatore, "17 Declaration Concerning Primacy", in: Herman-Josef Blanke, Stelio Mangiameli (eds.), *The Treaty on EU (TEU). A Commentary*, Springer, Heidelberg - New York 2013, p. 1776.
15 CJEU, 15 July 1964, *Costa v ENEL*, 6/64; 17 December 1970, *Internationale Handelsgesellschaft*, 11/70. J. Callewaert explains that this principle requires that "the national authorities are obliged to leave unapplied any national rule which is incompatible with a rule of EU law, of whatever kind." Johan Callewaert, *The accession of the European Union to the European Convention on Human Rights*, Council of Europe Publishing, Council of Europe, August 2014, p. 29.
16 Nial Fennelly, "The National Judge as Judge of the European Union", in: Allan Rosas (ed.), *The Court of Justice and the Construction of Europe: Analyses and Perspectives on Sixty Years of Case-law*, Asser Press, The Hague 2013, p. 66.
17 The Declaration replaced the Article I-13 of the Constitutional Treaty, which was supposed to stipulate the principle of primacy. "Declaration 17. The Conference recalls that, in accordance with well settled case law of the Court of Justice of the European Union, the Treaties and the law adopted by the Union on the basis of the Treaties have primacy over the law of Member States, under the

Reasoning in both judgments departed from the same assertion - that by virtue of the founding treaties of the EEC a "new legal order/system" had been born. It may be worth also noting that while *Van Gend & Loos v. Netherlands* talked a "new legal order of international law", *Costa v. E.N.E.L.* referred to a "legal system" which by virtue of the EEC Treaty became "integral part of the legal states of member states." [18] Reliance on the validity of international law in one, and on the virtue of national legal systems in the other decision, lessened the possibility that the birth of the new legal order be associated with the idea that a new centre of sovereignty was thus being conceived. Many academics regard these decisions as a departure of the Community from its roots in international public law and the beginning of its "constitutionalization."[19]

It should be noted that the Court did proceed gradually: direct effect preceded primacy of EEC law. Although this may of course be due to a mere coincidence, one cannot escape the sense that the Court proceeded in a way that would minimize opposition: direct effect infringed less upon sovereignty of member states than primacy of EEC law.

The Court asserted the autonomy of the common legal system but did not expressly state the reference point of that autonomy, i.e. from which phenomenon was the common legal system autonomous. From the contents of the subject judgments, however, it was obvious that the Court referred to the autonomy from the legal systems of the member states. Since the Community consisted of member states, the Court thus based its decision on the claim that the whole was autonomous from its parts. Since in such logical setup it is not common to rely on the attribute of autonomy, obviously the Court had some other quality in mind when it proclaimed "autonomy". At this point, it should be noted that the Court in fact did mention sovereignty, but that it avoided to attribute it directly to the Community or the Community law, but limited itself to stating that "the Community constitutes a new legal order of international law for the benefit of which the states have limited their sovereign rights, albeit within limited fields, and the subjects of which comprise not only the member states but also their nationals". [20] By applying *argumentum a contrario*, one may easily conclude that if the states have limited their sovereign rights, the "new legal order " acquired a portion of the states' sovereignty. The Court left to readers of its judgment to make one last inference from the presented opinion: since a legal system may not be sovereign, but only a political community, the member states in effect surrendered a portion of their sovereignty to the Community. Such a tacit promotion of the Community sovereignty is obvious also from the fact that in the very same sentence the Court affirmed that the subjects of the "new legal order of international law" were not only member states but also their nationals. If the subject new legal order was truly one of the international law, then member states' nationals could not have been its subjects. Having in mind that sovereignty is, in democratic society, vested in the members of a political community, it is obvious that the Court aimed at promoting sovereignty of the Community when it emphasized the direct legal nexus between the "new legal order" and the member states' citizens.

The Court, in effect, was searching for the optimal way to promote the supremacy of Community law over the laws of member states.[21] Since the Community was grounded on founding treaties, i.e. in international law, the monist approach to the relationship between international and national law seemed like an ideal tool for asserting supremacy of Community law.[22] This undertaking has turned to be successful, as the member states accepted this principle in a declaration attached to the Lisbon Treaty, thus expressing political agreement with it. [23]

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conditions laid down by the said case law."; An opinion of the Council's Legal Service was attached to the Declaration. Opinion of the Council Legal Service, EU Council Dec 11197/07, 22 June 2007.

18 CJEU, 15 July 1964, *Costa v ENEL*, 6/64; „This implied, as a logical consequence, 'the inability of a further unilateral measure to prevail against a legal system' accepted by MS could derogate Community law would place at risk the pursuit of the aims enshrined in the Treaty. Within this perspective, the transfer of powers by the MS in favour of European Communities, resulting from an act of limitation of their sovereignty, must be understood as final and capable of creating 'a complex of binding law for their citizens and for themselves'. If then, the MS had adopted an act conflicting with the EU order, it would be considered as ineffective and, when the Community rule provided real individual rights to citizens, that rule should be directly applied by national judges." Enzo Di Salvatore, "17 Declaration Concerning Primacy", in: Herman-Josef Blanke, Stelio Mangiameli (eds.), *The Treaty on EU (TEU). A Commentary*, Springer, Heidelberg - New York 2013, p. 1776.

19 Joseph H. H. Weiler, Urlich R. Haltern, "The Autonomy of the Community Legal Order - Through the Looking Glass", *Harvard International Law Journal*, Vol. 37. No. 2., 420; "The case of *Van Gend and Loos,* from which come the words quoted above, as well as the *Costa v. ENEL case* (1964) mark transformation of the Court of Justice from just an institution within the EEC into something new and dynamic with a clear understanding of its particular role." Ditlev Tamm, "The History of the Court of Justice of the European Union", in: Allan Rosas (ed.), *The Court of Justice and the Construction of Europe: Analyses and Perspectives on Sixty Years of Case-law*, Asser Press, The Hague 2013, p. 24.

20 CJEU, 5 February 1963, *Van Gend and Loos*, 26/62.

21 "The legal and judicial component of the acquis communautaire is a European Union legal order whose '*essential characteristics...are in particular its primacy over the laws of the Member States and the direct effect of a whole series of its provisions*..' Opinion 1/91[1991] ECR I-6079, para. 21; Nial Fennelly, "The National Judge as Judge of the European Union", in: Allan Rosas (ed.), *The Court of Justice and the Construction of Europe: Analyses and Perspectives on Sixty Years of Case-law*, Asser Press, The Hague 2013, p. 61.

22 "In the opinion of the national [constitutional] Courts, the relationship between the legal order of European Communities (now EU) and the legal systems of MS was traceable to a monist scheme." Enzo Di Salvatore, "17 Declaration Concerning Primacy", in: Herman-Josef Blanke, Stelio Mangiameli (eds.), *The Treaty on EU (TEU). A Commentary*, Springer, Heidelberg - New York 2013, 1775.

23 Damian Chalmers, Giorgio Monti, "Sovereignty and federalism: the authority of EU law and its limits", in: *European Union Law, Text and Materials, Updating Supplement*, Cambridge University Press, Cambridge- New York 2009, pp. 50-51.

DUALIST APPROACH IN JUDGMENTS FROM THE LAST DECADE

The Court's judgment in the *Mox plant* case[24], of 2006, is of manifold importance for the doctrine of autonomy of EU law.[25] The ECJ judgment in the *MOX* case (2006) is of great importance for the autonomy of EU law. The judgment affirmed the exclusivity of the Court's jurisdiction for interpretation of the founding treaties and the EU law in general. The EU law was assumed to encompass all contractual obligations to which the EU accedes even in those areas in which the EU shares competence with member states. The judgment based the duty of cooperation of member states with the EU on the principle of cooperation, stipulated in the founding agreements. The joint effect of the subsumption of mixed agreements under EU law, affirmation of exclusive competence of the EU Court for EU law disputes, and interpretation of the duty of cooperation as a limitation on the competences of Member States has led to a practical decoupling of the legal systems of the EU Member States from the rights and obligations that those States hold under international law; affirming the role of EU institutions as a powerful intermediary between the two legal realms.

In addition, another gradual development can be recognized in recent practice of the Court, starting from the same *Mox Plant* decision: differentiation between the scope, and the resulting applicability of EU law, from the competences of the EU as opposed to competences of member states. The fact that in a given area the states preserved their competence does not mean that their actions may not be scrutinized under the "basic principles" of EU law. The described mechanism has substantially narrowed the possibilities for member states to enter into international agreements on their own.

Moreover, the expansion of the Court's denial of direct effect from WTO agreements to other mixed agreements, as in the judgment in the *Intertanko* case[26] (2008), seems synchronized with the appearance of the dualistic approach to the effect of international law in the Court's case law, [27] for both seem to lead to a complete decoupling of the member states capacity to assume rights and obligations from the realm of international law, and to affirmation of the EU as the sole entity authorized to undertake rights and obligations under international law on behalf and in the name of itself and its member states.

The encounter between targeted sanctions, imposed by the UN Security Council,[28] and the legal system of the European Union has led to particularly tumultuous interactions.[29] The case of *Jassin Abdulah Kadi,* whom the UN Security Council listed as a target for such sanctions, served as an ideal background for the ECJ to explore possibilities of an authentic value-based stance on targeted sanctions.[30] The ECJ effectively contrasted EU values against international norms. In the judgment in *Kadi* and *Jusuf and al Barakaat Cases* (2008)[31], the Court upheld the legal position of fundamental rights, guaranteed by the European Union, as "constitutional principles" of the European Union,[32] above that of UN Security Council resolutions enacted under Chapter VII of the UN Charter.[33] This defense of due process standards has led to several reforms of the UN Security Council proceedings for the listing of targeted individuals. Strong criticism of this holding among academics cited fear that it led to a discontinuity between EU law and international law, i.e. that it strongly contributed to the "fragmentation" of international law. [34] However, it is also undisputable that

24 C-459/03 *Commission of the European Communities v. Ireland* [Grand Chamber], 30 May 2006.

25 See: Maja Lukić, "Authority of the EU Court of Justice more important than Legal Security - MOX Plant Judgment", *Annals of the Faculty of Law in Belgrade - Belgrade Law Review*, Belgrade 1/2013, 223-248.

26 *Queen (The) on the Application of International Association of Independent Tanker Owners (Intertanko) and Others v. Secretary of State for Transport* (308/06), [2008] OJ C183/2.

27 Marise Cremona, "External Relations and External Competence of the European Union: the Emergence of an Integrated Policy", in: *The Evolution of EU Law*, (eds. Paul Craig, Grainne de Burca), Oxford University Press, Oxford - New York 2011, 217-268; 233.

28 Ch. Duffy points out that UN anti-terroirst sanctions are generally based on confidential evidence. Cf. Duffy, *The "War on Terror" and the Framework of International L*aw (CUP, 2005), pp. 553 et seq.

29 See: Maja Lukić, "The Security Council's targeted sanctions in the light of recent developments occurring in the EU context", (in English), *Annals of the Faculty of Law in Belgrade – International Edition*, 3/2009, 239-250.

30 According to Robert Uerpmann-Wittzack, UN sanctions aimed at individuals lacked legal protection completely. Robert Uerpmann-Wittzack, "The Constitutional Role of International Law", in: *Principles of European Constitutional Law,* (eds. Armin von Bogdandy, Jurgen Bast), Hart Publishing Oxford 2010, 131-167; p. 164.

31 *Yassin Abdullah Kadi v. Council of the European Union and Commission of the European Communities,* (C-402/05) P, [2008] ECR I-0000. Joined cases C-402 & 415/05 P, *Kadi and Al Barakaat International Foundation* v. *Council and Commission* (*Kadi* I ECJ), [2008] ECR I-6351.

32 See: Maja Lukić, "Kadi v. Commission: Legacy of three Judgments", Legal Capacity of Serbia for EU Integration, Faculty of Law University of Belgrade, 2013, 236-249.

33 Following the judgment, the European Commission reinstated sanctions against *Kadi*, who then again resorted to a lawsuit. In the repeated procedure, the Court in the first instance performed full review of the Commission's decisions and found, in 2010, that *Kadi*'s constitutional rights were violated (the so-called *Kadi II* judgment). *Kadi* II is significant because it mandates full review of the Commission's decisions, notwithstanding the origin of the sanctions – the same review applies to the sanctions that present an obligation under the UN Charter and to sanctions autonomously enacted by the European Union itself. The outcome of the Commission's appeal will never be known because the UN Security Council thereafter delisted Kadi from the targeted sanctions list in 2012, after which the European Commission scrapped its sanctions as well. *Kadi*'s listing in the US was however upheld by the District Court for the District of Columbia. In *Kadi v. Geithner*, Civ. No. 09-0108, 2012 U.S. Dist. LEXIS 36053 (D.D.C. Mar. 19).

34 Denys Simon, "Propos introductifs", in: Denys Simon, Yves Daudet (eds.), *Actualité des relations entre l'Union européenne et l'Organisation des Nations Unies: coopération, tensions, subsidiarité*?, Journée d'études de l'Ecole doctorale de droit international et eu-

this is a seminal judgment for the affirmation of "constitutional principles" of the European Union as the single most powerful source of legal rules in the European Union, stronger even than UN Security Council Chapter VII resolutions.[35] It is not a coincidence that this decision was brought at the time of ratification of the Lisbon Treaty, which replaced the Constitutional Treaty but was itself deprived of the constitutional dimension. The Court's preparedness to conduct full review of the compliance of a UN Security Council measure with the EU constitutional principles is in marked contrast to the approach adopted by the European Court of Human Rights in the *Behrami* decision, in which that court implied that it should substantially limit review of actions sanctions under the UN Security Council resolutions. [36] According to Robert Uerpmann-Wittzack, by doing so the Court "rejected the idea that the UN Charter would be a supplementary constitutions for the EC." [37]

CONCEIVING PROBABLE OUTCOMES: THEORETICAL BACKGROUND FOR PROJECTING FUTURE DEVELOPMENT OF EUROPEAN UNION

The described theoretic discrepancy between the Court's judgments of the 1960-ies and those rendered in the past decade in respect of the relationship between international and national law gives room to fearing whether it is possible to derive from the Courts' case law a logically consistent and applicable framework for defining the relationship between the EU and its law on one side and the international law and international organizations on the other. Moreover, the subject discrepancy in theoretic approach to the question crucial for interpreting the legal nature of the EU invites analysis of what may be probable outcomes of the theoretical debate regarding that nature. In order to be able to address those questions, a spectator should take into account certain other relevant theoretic considerations.

The world has not remained the same as the Community evolved into the Union. Globalization pervaded the law as any other aspect of the society. The nation-state has experienced a steep decline. The human rights movement is being challenged on the global level. The last decade has been filled with events reminiscent of the Clash of Civilizations.

On the external plane, the assertion of supremacy of EU law over international obligations of EU member states in *Mox Plant, Kadi* and *Intertanko* decisions has caused widespread fear from "fragmentation" of international law, a conclusion obviously grounded in the view on EU as a specific realm of international treaty law.[38]

One group of academics sees the European Union as a phenomenon that is the strongest factor of the fragmentation of the international law. The other group, however, sees only the process of constitutionalization of the European Union itself. [39] These are two major groups, but some other views are present as well. One view sees the constitutionalization of the European Union merely as a process that precedes constitutionalization of the entire international law.[40] It is obvious that this confrontation is on the level of values more than on the level of logic.

The question of legal nature of the EU is tackled from an immense number of perspectives, that may be differentiated, *inter alia,* on whether they understand the state as an indispensable element of the structure, or they attempt to explain the EU as a *sui generis* entity. The latter, as a rule, insist on the need of preserving and respecting the sovereignty of member states, and, as result, speak almost always in favor of enhances coordination between member states. Notwithstanding allegiance to one of the enumerated views, almost

ropéen du 20 juin 2012, Perspectives internationales, n. 34, Editions Pédone, 2014 Paris, pp. 5-8.

35 According to Armin Cuyvers, *Kadi* decisions have not helped the EU law overcome the difficulties created by the targeted sanctions regime, for many cases involving that regime remain pending before European and member states' national courts, and the jurisprudence seems to lack "satisfactory answers". Armin Cuyvers, "Give me one good reason: The unified standard of review for sanctions after *Kadi* II", *Common Market Law Review* Vol. 51, 6/2014, 1760.

36 ECtHR (GC) App No 71412/01 and 78166/01, *Behrami et al/France et al* (2007) 45 EHRR SE10, paras 146-51.

37 Robert Uerpmann-Wittzack, "The Constitutional Role of International Law", in: *Principles of European Constitutional Law,* (eds. Armin von Bogdandy, Jurgen Bast), Hart Publishing Oxford 2010, 131-167; 164.

38 M. Koskenniemi, "Fragmentation of International Law: Difficulties Arising From the Diversification and Expansion of International Law", *Report of the Study Group of the International Law Commission*, International Law Commission, Fifty-eighth session, Geneva, 1 May - 9 June and 3 July - 11 August 2006.

39 On "constitutionalization" see: C. Lebeck, "The European Court of Human Rights on the relation between ECHR and EC-law: the limits of constitutionalisation of public international law", *ZÖR* 62, 2007, 195–236; R. Streinz, "The European Constitution after the Failure of the Constitutional Treaty", *ZÖR* 63, 2008, 159–187.

40 James Crawford, "Constitutionalizing International Law", in: Chance, Order, Change: The Course of International Law, General Course on Public International Law, *Collected Courses of the Hague Academy of International Law* 2013, Martinus Nijhoff Publishers, Leiden - Boston 2013, p. 342.

all authors agree that the ECJ has so far played a key role in the process of "constitutionalization" of the EU law, as well as that it still needs to play a decisive role in that respect in immediate future.[41]

Most recent judgments of the Court in cases *Fransson*[42] and *Melloni*[43] seem to show that the Court is resolved to read the Constitutional Charter of the EU as a true constitution, and not simply as an intergovernmental treaty.[44] In these judgments the Court seems to have intentionally favored greater scope of review of national courts to the detriment of the authority of the European Court of Human Rights, thus implicitly emphasising the constitutional unity of values within the realm of the EU, as opposed to the Council of Europe.[45]

For projecting the course of the development of the manner in which the legal nature of the EU shall be conceived, one should take into account that the most important aspect of the "autonomy" of EU law from the laws of its Members States is the power of EU institutions to decide upon their own competences. The recognition of such a power to the ECJ by the Member States is both voluntary and continuous. [46]

The adoption of the Fiscal Compact by almost all members of the EU[47], but outside of the realm of the formal European Union, marked a significant new development for the European Union as a political community. EU law had until then served as the sole basis of that community, but was then circumvented in order to save the Union. While many academics criticize this move on various grounds,[48] we suggest that it may be looked upon as the ultimate evidence that the interest-based and value-based of EU as political union has overgrown its legal craddle.

It is clear that the European Union does not possess political, historical, national identity necessary for the birth of a nation state. However, one should not forget that nation states are a relatively young phenomenon and that successful and long-lasting political communities existed and were based on other grounds. Ancient Rome and the Eastern Roman Empire (Byzantium) both lasted for ten centuries, and yet both consisted of many different nations. The European Union is surely a political community, based both on common interests and on common values of its members. A historical-comparative approach that would take into account a perspective of ten or twenty centuries, instead of one or two, would therefore be much more optimistic about the prospects that the EU may become a supra-national centre of sovereignty.[49]

CONCLUSION

The strong dynamics of the development of the normative framework of the EC/EU as a whole, and of its perception by policymakers, legal practitioners, academics, and by citizens of member states in general, is the obvious reason for widely diverging analyses and understandings of the Court's description of the EEC/EC/EU legal system as being "autonomous". The same term has persisted in the Court's use for almost five decades in relation to the findings of crucial importance for the nature of the Community/Union and its legal system. In different times it was assigned as a key quality of the Community/Union legal system with the purpose of justifying different effects of the nature of that system: at first supremacy over the laws of member states, then supremacy over international obligations of member states. If one were to devise the attribute that would have best served both purposes, the concept of sovereignty would be hard to avoid. In effect, sovereignty was bestowed upon European Union law by the European Court of Justice, under the disguise of the quality of "autonomy" of European Union law. The *Kadi / Jusuf / al Barakaat* judgment of 2008 effectively complemented the Treaty of Lisbon by adding the constitutional dimension to the EU law,

41 Loic Azoulai, «Le rôle constitutionnel de la Cour de justice des Communautés européennes tel qu'il se dégage de sa jurisprudence», *Revue trimestrielle de droit européen*, 1, 2008, 29.
42 *Åklagaren v. Hans Äkerberg Fransson*, Case C-617/10 of 26 February 2013.
43 Case C-399/11, *Stefano Melloni v. Ministerio Fiscal*
44 Antoine Bailleux, "Entre droits fondamentaux et integration européenne, la Charte des droits fondamentaux de l'Union européenne face à son destin", (C.J.U.E., *Stefano Melloni* et *Akerberg Fransson* 26 fevrier 203), *Revue trimestrielle des droits de l'homme* 97/2014, p. 235.
45 See also a similar interpretation in Bas van Bockel, Peter Wattel, "New Wine into Old Wineskins: The Scope of the Charter of Fundamental Rights of the EU after Akerberg Fransson", *European Current Law* 3/2014, p. 289.
46 Edouard Dubout rebuts pretentions that the EU legal system is unique in the sense that it accommodates numerous legal systems into one pluralist reality, as opposed to traditional categorizations of monist and dualist relationship between international and national law. For that purpose, he cites the role of the Court of Justice of the European Union as the force that coordinates interpretation of legal texts and therefore coordinates values and interests across the Union. Edouard Dubout, "Le niveau de protection des droits fondamentaux dans l'Union européenne: unitarisme constitutif *versus* pluralism constitutionnel", *Cahier de droit européen*, 2/2013, p. 313-314.
47 The Treaty on Stability, Coordination and Governance in the Economic and Monetary Union, was signed in March 2012 by all members of the EU except the Czech Republic and the UK. It entered into force on 1 January 2013.
48 Paolo Mengozzi, "Conclusions" in: Lucia Serena Rossi, Federico Casolari (eds.), The EU after Lisbon. Amending or Coping with the Existing Treaties?, Springer, Cham-Heifelberg-New York 2014, pp. 294-295.
49 Maja Lukić, "Pluralism of constitutions or of constitutional actors? The European Union as a herald of the new era of divisible sovereignty", *Teme* 4/2013, 1705-1718.

compensating thus the failure to have the same dimension stipulated in the black letter law of the founding treaties in the draft Constitutional Treaty.

It may therefore be concluded that the Court has consciously changed its approach to the relationship between international and national law, with an obvious intent to make the greatest profit on the plane of the legal nature of the Community / Union. The Court did that by relying first on the monist approach, at the time when it needed to penetrate and subdue national legal orders of the member states.

The decoupling of the legal systems of EU member states from their rights and obligations under the international treaties, promulgated in the *Mox Plant* judgment of 2006, served as a preparatory stage for the promotion of the dualistic approach to the relationship between the international law and domestic law. Over the course of the past decade the Court switched the paradigm and adopted the dualistic approach, in order to assert unity of values of the European Union in contrast to the general framework of international law, as contained in the law of the United Nations and/or of the World Trade Organization. In doing so, the Court disguised its claim for sovereignty of the Community/EU only to an extent needed to avoid alarm of the general public, for it has been clear to any informed spectator that the attribute of "being autonomous" afforded to the legal order by the Court clearly referred to sovereignty of the political community promulgating that order.

While one part of the academic community sees in the development of the legal system of the EU a process of the constitutionalization of the EU itself, another part of the same community sees the very same process as "fragmentation" of the international law, assuming that EU law is nothing more than a part of international law. The Court has obviously done more than one could have reasonably imagined towards strengthening the European Union as a political community, and has thus come to the point at which it cannot hide its agenda any more, as well as from which point onwards different factors are necessary for pushing that agenda further.

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REPORT OF THE INTER-ALLIED COMMISSION ON CRIMES COMMITTED BY THE BULGARIANS IN OCCUPIED SERBIA (1915-1918)

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Abstract: Inter-Allied Commission founded after the end of the First World War to determine all violations of the Hague Convention and international law perpetrated by the Bulgarians in occupied Serbia from 1915 until 1918, consisted of Ljubomir Stojanovic, Panta Gavrilovic, Slobodan Jovanović, Bonasije and Men, has collected evidence of criminal activities of Bulgarian occupation authorities. The Commission was tasked to conduct a preliminary survey, which would determine the need for prosecution of the criminals, and used as a basis for Serbian government's reparation demands from Bulgarian government. The Commission had information collected, processed, and documented during military operations and immediately after the end of World War I by the professor and renowned expert in criminology, neutral investigator, Archibald Reiss, PhD. On the other hand, the Commission was literally flooded with complaints and testimonies from all parts of the country under the control of the Bulgarian regime. Due to inability to verify merits of these complaints, the Commission's delegates visited only the most important cities, focusing on determining if the aforementioned violations generally were committed. The Commission attributed partial responsibility to Bulgarian government and its organs, soldiers and officials, as well as Komitas, whose crimes were mostly tolerated. The Commission wrote the 11-chapter report, describing the results of their survey: Violation of the Hague Convention regarding Laws and Customs of War on Land; Killing civilians; Maltreatment and Torture; Rape; Internment; Taxes, requisitions, and other charges; Robbery; Forced labor; Demolition of buildings, Arsons; Forced denationalization; Endangering Serbian state sovereignty; and Conclusion. Noting that there was no law established by the Hague Convention that had not been broken by Bulgarians during their occupation of Serbia, the Commission concluded that the entire Bulgarian regime bore indisputable criminal character, finding the Bulgarian government and the Bulgarian Supreme Command responsible.

Keywords: Inter-Allied Commission, international law, Bulgarian occupation crimes.

INTRODUCTION

The assassination of Archduke Franz Ferdinand in Sarajevo was the cause for Austro-Hungarian Empire to start the long-desired war with Serbia which, given high tensions between most of the European countries at the time, meant the beginning of the World War I. The leadership of the German Reich supported Austro-Hungarian annexation plans, allowing them to determine its extent, while being willing to give significant benefits to Bulgaria, whose support had to be rewarded mainly with Serbian territories to the extent required by Bulgarian authorities. Shortly after declaring war to Serbia, Austria-Hungary openly offered Serbian territories to Bulgaria, but Bulgarian leaders decided to remain neutral since Romania and Italy had decided not to join the Monarchy and the Reich, while Britain had joined Russia and France. Serbian allies also tried to get Bulgarian support, guaranteeing them parts of neighboring countries lost in the Second Balkan War as a reward for being neutral or for joining the Triple Entente.[3] When Bulgarian king Ferdinand and his ministers finally decided to join the Central Powers, they signed the Union Agreement on 6th of September 1915,[4] which guaranteed them all of Macedonian, southern and eastern Serbian territories, and potentially some areas of Romania and Greece, if they joined the opposite side.[5]

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Joint invasion of Austro-German-Bulgarian troops in the autumn of 1915 caused the collapse of Serbian army, and the implementation of the Austro-Hungarian and Bulgarian administration. Based on principles of military administration, Bulgaria formed two military-inspection areas: Morava, with the headquarters in Niš, and Macedonia with the headquarters in Skopje.[6] Considering the occupied territories as Bulgarian and assuming the collapse and disappearance of Serbia from the political map of Europe, the authorities were conducting forced "bulgarization". Serbian people were under repression the entire duration of the occupation, yet Bulgarian terror reached its peak during the rebellion in 1917, triggered by forced recruitment of Serbian people to the Bulgarian army in Toplica, Jablanica, Jastrebac, as well as mid- and western areas of Kopaonik.[7]

EFFORTS OF INTER-ALLIED COMMISSION TO DOCUMENT BULGARIAN CRIMES IN OCCUPIED SERBIA

Serbian government from Corfu tried to get informed about the situation in the occupied country,[8] but since Bulgarians refused to cooperate and to provide any information, they requested the Allies, neutral countries, and the International Red Cross to force Bulgaria to respect the Hague Convention.[9] At the same time, they asked Professor Reiss to investigate and document Bulgarian atrocities.[10] Reiss informed the public about the results, and urged to stop crimes threatening to extinct Serbian population. After the war, he delivered the document to the Serbian government, claiming breaking the international war laws by Bulgarians,[11] and made the list of 99 Bulgarian soldiers and clerks responsible for those crimes.[12]

Shortly after the war ended, Inter-Allied Commission was established, consisting of Lj. Stojanović, President, P. Gavrilovic, Authorized Minister, S. Jovanovic, professor at Belgrade University, Bonnasieux, the French delegate and Lt. Col. Men, the British delegate. Its task was to examine Bulgarian crimes in occupied Serbia, considering a preliminary survey which identified the need for criminal-judicial measures, and was used as the basis for the reparation demands of Serbian government from Bulgarian government. The Commission, through its delegates, visited the most important places and limited itself to summarizing relevant material, and focusing on determining if the violations of the international laws had been committed, leaving special commissions with full investigative authority to determine violations of international law in each particular case. Commission had data which, besides Reiss, was collected by William Drayton, who named the Serbian town of Surdulica slaughter house ("the slaughter house of Serbia"),[13] a Swiss doctor Viktor Kun,[14] American journalist John Reed,[15] and nurse Catherine Sturzeneger.[16]

All those data indicated the vast proportions of Bulgarian crimes in Serbia, occasionally committed by the rowdy soldiers, yet mostly planned and organized by the Bulgarian leadership - the king, the govern-

6 Germany did not have its occupational area in Serbia, but retained mines in eastern Serbia and around Aleksinac and established a background zone to control the Morava-Vardar railways. A. Mitrovic, *Creation of the German occupation zones and Austro-Hungarian government in Serbia (Fall 1915-Spring 1916)*, Historical Gazette, 1977, no. 1-2, 7-37.

7 According to the Inter-Allied Commission, during the rebellion 20,000 people were killed. M. Perovic, *Toplica rebellion of 1917*, Belgrade 1971; A. Mitrovic, *Uprising battles in Serbia 1916-1918*, Belgrade 1987; *Toplica uprising of 1917: a collection of documents*, prepared by B. Mladenovic, Belgrade 2007; *Commemorative book victims of Bulgarian terror in southern Serbia 1915-1918*, edited by M. Pavlović, Belgrade 2007; S. Dinić, *Bulgarian atrocities in Vranje district*, I-II, Belgrade 1922.

8 Bulgarian Red Cross 04/26/1916 in letter to Inernational Committee in Geneva says: "We would be very grateful to you if you would like to tell these gentlemen ... that with them we cannot consort nor give information about the population of the former Serbia, which has become Bulgarian and which is now being covered by the Bulgarian laws ". M. Perovic, op. work, Belgrade 1971, 48.

9 The Hague Conventions of 1899 and 1907, were largely codified customary rules already crystallized, had established certain standards of warfare that had to be respected and in relation to Serbia, although it was not ratified by them. G. Perazić, *International law of war*, Belgrade 1966; N.N. Smirnova, *International Humanitarian rights*, Sankt-Peterburg 2001.

10 As a neutral investigator Reiss in 1914 investigated the Austro-Hungarian crimes. R. A. Reiss, *Report submitted to the Serbian government on the atrocities committed by the Austro-Hungarian army during the first invasion of Serbia*, Belgrade-Gornji Milanovac 1995.

11 Work *Atrocities Bulgarians and Austro-Germans (Bulgarian atrocities during the war)* was published in Thessaloniki in 1916, although not published under his name, undoubtedly his work. See: Gazette de Lausanne on 25 October and 10 November 1915, on 10 and 13 February, 24 June, 4th, and 3rd October 1917 and 3 April 1918.

12 R. A. Reiss, *Report of the Bulgarian atrocities in occupied Serbia 1915-1918* on 11 January 1919 and *Report to the Lord President of the Council of Ministers* dated 24 January 1919, the Military Archives, the Archives of the Army of the Kingdom of Serbia, Supreme Command, k. 3, reg. no. 22/1. Published in: M. Pršić and S. Bojković, *The crimes of the Austro-Germans-Bulgarians in Serbia 1914-1918,* Belgrade 1997, 179-210. Reiss's report to the Supreme Command of the Serbian Army named *Surdulica* was published in Paris 1919.

13 *Bulgarian Atrocities in Serbia*, William Drayton Papers Box 1, Folder "Bulgarian Military Occupation of Serbia 1915-1918." In his diary Drayton recorded the statements of some 15 witnesses to these crimes accusing the Bulgarian army. *Diary*, November 11 1918 to December 17 1918, Hoover Institution Archives.

14 *Les Bulgarians peints par eux-mêmes documents et commentaires et recueillis rédigés pair Victor Kuhne*, Lausanne 1917.

15 *War in Eastern Europe*, New York 1916.

16 *Serbia into the European War 1914-1915: based on letters, documents and personal experience and over 100 original photographs*, Novi Sad 1915.

ment, and the Supreme Command.[17] Inter-Allied Commission submitted its first report to the Serbian government in the end of 1918.[18] While the Ministry of Foreign Affairs in Belgrade in April 1919 was organizing collected reports on Bulgarian terror,[19] and the Peace Conference was redefining the borders between Serbia and Bulgaria, the first volume of documents on the Bulgarian atrocities was published in Paris.[20]

The Commission's report provides the most complete overview of Bulgarian crimes. The introductory section highlights three facts: 1) The Commission took into account only the documents that could undeniably be proven as legitimate; 2) None of the victims' testimonies were received without checking their legitimacy, and were based on the identical testimonies from all parts of the occupied areas, so the Commission carried out some general conclusions about Bulgarian administration in occupied Serbia; and 3) The Commission, being cautious not to accuse Bulgarian government for something that could not actually be their responsibility, was held responsible for the acts of its soldiers, officers, and parts of the Komitas organization.

In the **Hague Convention with respect to the Laws and Customs of War on Land violations chapter, the Commission** chapter**,** specific violations were divided into four groups. In the first part, it was concluded that Bulgarians were killing Serbian prisoners and wounded soldiers "with torture and torment", executed the entire groups of captives, and that all the prisoners were also robbed. In the second part, it is stated that the surviving captives were not treated in accordance with the Laws of war (almost all were robbed or on the way to prison camps or in the camp, were given duties related to military operations, and even initiated into Bulgarian army), the officers were treated in contrary to Art. 6 of the Hague Regulations, and the fugitives were sentenced to a death penalty, in contrary to Art. 8 of the Hague Convention. The third count determined that the bombing of hospitals in Vertekop on the 27th of February 1917 violated Article 7 of the Geneva Convention.[21] The fourth count determined that the bombing of undefended city of Bitola violated the Art. 25 of the Hague Regulations, and the use of asphyxiating gases was in contrast with the St Petersburg Declaration.[22]

The second section, Killing Civilians, begins with the statement that, after entering Serbia in the fall of 1915, Bulgarian troops committed "a series of murders" that lasted until the end of the war. Killing en masse in the area around Vranje ended in May 1916 after the pressure by the German Supreme Command, but started again in May 1917, after the Serbian rebels penetrated to Ristovac and threatened to destroy the Vranje-Skopje railroad.[23] In the beginning, mostly the priests were being executed (about 200 of them, led by the Bishop of Skopje, Vicentije), followed by teachers, and other prominent people, because Bulgarian plan was to destroy Serbian people by eliminating its leaders.[24] There were several massacres - especially in Macedonia, where some villages were destroyed due to long and persistent resistance towards Bulgarian propaganda - in the vicinity of Veles, Prilep and in the Porec county "they went from house to house, and they killed anything they could find "; in eastern Serbia the mass murders were carried out in Pozarevac county, where a group of 150 people had been executed using cannons, in Vranje district people were tied, put in baskets, and burned alive, and especially in Toplica district, since slaughtering of the population triggered the protests in Geneva on May 22nd 1917.[25] People in Skopje believed that the spiritual organizer of mass murders of Serbian priests was the Bulgarian Bishop of Skopje, Neofit.[26] Following the lists for execu-

17 The crimes began before Bulgaria entered the war. During an attack on a railway station in Valandovo on April 3, 1915, 300 Serbian soldiers were injured - 200 were killed in combat, and 100 captured Bulgarians sprinkled with gasoline and burned alive, which was confirmed by the investigation of sanitary mission. Bulgarian king and the government accused komitas of this crime, but their involvement was obvious since the Komitas Executive Officers were armed with weapons from the arsenal of the Bulgarian army. Archives of Serbia (=AS), the Ministry of Foreign Affairs (=MID) Political Department (= PO), 1915, XIII / 742 and 743, *The process of verbal d'enquête sur les incidents medicale de Strumica.* Compare to.: R. A. Reiss, "A Balkan War," Gazette de Lausanne on 21 October 1915.

18 *Rapports enquites et de la Commission sur les inetralliee violations du droit des Genes commises en Macedonie orientale par les armées Bulgarians*, Nancy-Paris-Strasbourg 1918.

19 A special commission was investigating the violations of international law in the prison camps in Bulgaria; its efforts resulted in releasing about 22,000 prisoners, but part of the camp inmates returned to their homes before the initiative.

20 Soon they published two more volumes; the first two contained the documents, and the third is attached as an annex. *Documentes relatives aux violations des conventcions de la Haye et du Droit International en general, commises de 1915-1918. par les Bulgarians en Serbie occupée. Annexe: Album des crimes Bulgarians* (Next: *Documentes*), I-III, Paris 1919.

21 Reiss in his expert's report stated that the Red Cross could have been seen from the airplane that bombed the hospital.

22 The St. Petersburg Declaration of 1868, inter alia standardized principles of humanity based on the notion of the joining countries about the progress of civilization, which should have the effect of mitigating the disaster of the war, and that the only legitimate objective is weakening the military forces of the enemy.

23 J. H. Vasiljevic, *Bulgaria atrocities in Vranje and the environment (1915-1918),* Novi Sad 1922, 5.

24 Reiss in the aforementioned report of 24, January 1919 stated that the goal of the government in Sofia was to exterminate as many Serbs as possible to maintain the perception of the Bulgarian character of the occupied areas.

25 *Le recrutement forcé des Serbes par les Bulgarians. Protestations publiques de Genève et Lausanne*, Genève 1917.

26 Only during 1915-1916 in Vranje district were 42 priests killed. M. Perovic, op. work, Belgrade 1971. Bulgarian Minister of Foreign Affairs 12/27/1918 reported to the commander of allied troops, General Chretien, that the Commission found that in the area of Vranje several priests were killed, and that the number and names of the victims cannot be determined without previous check that they are not among those who were interned and released from Bulgaria; the same with 37 priests imprisoned in the Fortress and 10 in Zajecar High School. *Documents,* I, 302, 303.

tion created before Bulgarians troops even invaded Serbia, killing civilians was orchestrated by the leaders of Komitas, as well as the officers of the regular army.[27]

In the chapter about **Torture**, the Commission states: "It is safe to assume that no murder was committed without torture or maltreatment." Large number of wounds was noticed on many corpses - "have them cut to pieces or tremendously ravaged; people with their eyes dug out, nose, ears and lips cut; women were cut their breasts", victims were "beaten, hung, and burned " before killing, and some were buried alive or buried in an outhouse pit or latrine. Maltreatments were also carried out regardless of the murders for variety of reasons - "to punish them as fiercely as possible because they dared to be Serbs", to find out if they have any weapons or Serbian books, whether they are connected to the Serbian Komitas, to extort money, or for no reason - "simply because of a whim, because the abuse had become one sadistic enjoyment of Bulgarians." Commands for torturing were issued by the Komitas, military and civil authorities, and many are examples that "military and police leaders personally tortured or directly managed maltreatments". The most common way of molestation was using thick beating poles called "the white guns",[28] as well as the other torturing tools: people were hung by their legs with their head facing down, were put on the fire, put heavy iron balls on their feet, cut off flesh with pliers, hammered metal needled under their nails.[29] Women were abused and tortured the same way as men, while the beating of women was usually followed by embarrassment since they were beaten naked.[30] In addition to physical, Bulgarians were using moral torture - the families of the victims were forced to watch hanging or shooting of their family members, were put under the supervision, or brought to the police station on a daily basis and questioned for a long time. There are numerous examples "bestiality" and heinous bullying.[31]

In section about **Rape**, the Commission initially discovered that these crimes were the most difficult to prove because "raped women were ashamed to admit", but "because of the large number of infected women, illegitimate children, and children born during husband's absence" they can clearly conclude that "raping was done in a very large scale." In each district there were whole villages where the locals complained that no woman over 12 years was spared because "Bulgarian soldiers and Executive Officers, who were allowed to kill and rob Serbs were not prevented by their superiors to rape Serbian women". All rapes were "followed by very much sadism."[32]

The **Internment** section described that the internment of civilians, in order to break the compact Serbian settlements, began as soon as the Bulgarians entered Serbia, and it was particularly common in Macedonia. Bulgarian mass internments and internments after finished operations can be considered as "just as violent deprivation of liberty" and cannot be justified. It was the responsibility of the Bulgarian government, who ordered the internment of all Serbian priests, teachers, deputies, officers, and other "suspicious persons", and who prepared the prisons for accepting large numbers of prisoners long before the war started.[33] Internments were completely random, regardless of sex, age, and health condition, while local authorities that made the lists for imprisonments, together with Komitas, were sometimes guided by greed or similar motives.[34] While capturing targeted people, numerous acts of violence occurred, most commonly killing. The main "adventitious slaughter house" on the way to the camp was Surdulica, where about 3,000 people were killed, according to the citizens. The life of Serbs in detention camps was "arranged to deliberately lead to their extermination", resulting in around a half of 100,000 internees who never returned home, and those who have returned "were in a deplorable condition."

27 One of them was Colonel Zekov, who in 1916 promoted to General and assumed command of the Bulgarian army in occupied Serbia, and later was even a candidate for Minister of War. Dr Vasil Radoslavov, *Daily observations 1914-1916*, edited by Ivan Ilchev, Sofia 1993, 185.

28 "After Bulgarian beating, skin is splashed and flesh fell off; people remained black and swollen ... An old peasant ribs, under beatings, separated from the spine and landed in the chest, causing the heart and liver come out of the body."

29 In Žitni Potok soldiers skinned a woman alive and hung her; in Grgur the man was put in a kettle with boiling water, while being stung by bayonets; Gave Duke is in the man who ignited the dried grass on the men's chest and hung him upside down from a tree, while his soldiers were pounding on his head with sticks ... to lash out soot."

30 In the decree no. 13 Military inspection Moravia field of 29 May 1918 Serbian women are labeled as "the most fanatical and most forceful chauvinists." *Documents*, I, 284-298.

31 In Surdulica, mourning women were forced to dance at the place where slain Serbs were buried; the wife of Jovan Babunski was brought three times to the scaffold and returned to prison; most prominent Serbs were forced to clean the streets and wash toilets, taken to carry heavy loads and treated like cattle.

32 In Požarevac district a lieutenant Čavdarev sent infected soldiers to rape innocent girls, and some Mijura Ferdinand made his dog attack a woman.

33 In the Commandment No. 4, commander of Moravian military inspection generals Kutinci of 14. 12.1916. states: "All soldiers from 18 to 50 years of age who have served in the Serbian army, all officers, former teachers, priests, journalists, reporters, former ambassadors, military officers and all suspicious persons should be seized and interned in the empire, according to the orders. "M. Perovic, op. work, 41-48. "For Serbs, the entire Bulgaria was a detention camp." I. Đuković, *Reporting delegates Serbian Supreme Command of Bulgaria (October-December 1918)*, Military Historic Gazette 1-2 (2002), 69-89. "As far as we know, there were from 1916 to the end of the war at least twenty active concentration camps for Serbian civilians in pre-war Bulgaria." M. Pissaro, *Bulgarian Crimes against Civilians in Occupied Serbia during the First Worl War,* Balcanica XLIV (2013), 382.

34 Blagoev, the socialist, and the Democrats leader Malinov protested against this in the Parliament. V. Stojančević, *Serbia and the Serbian people during the war and occupation,* Leskovac 1988, 38.

Under **Taxes, Requisitions and other Levies** is mentioned that Bulgarians pursued extensive economic exploitation of occupied Serbia, resulting in impoverishment of the entire nation. It was found that Bulgarians, contrary to Art. 48 of the Hague Regulations, replaced Serbian tax policies with Bulgarian, while adding new requisitions (eg. forced work), that imposing taxes "was done without any consideration of the economic power of taxpayers", and introduced new taxes (for playing, singing, traveling, working at own farm outside the place of residence), were imposed by the mayors. Serbian currency was deliberately destroyed,[35] and new contributions were required (in Macedonia in the form of voluntary contributions, in Morava with openly criminal character). The harshest were the requisitions - Bulgarian government demanded that the requisitions be carried out indefinitely, until the population was completely financially depleted, followed by various ways of abuse made by the government officials. In the beginning, (?) for seized goods people would get a receipt (?) (not very clear), often claiming significantly lower value, but since the Spring of 1916. "Soldiers were no longer hesitating to just take whatever they needed."

In the chapter about **Robbery,** the Commission notes that, under the Bulgarian regime, robbery as "regular action of the military and civil authorities" followed all their activities. It was closely related to requisitions, but it was also done during internments, detentions, killings, and in a combat zone during evacuation. Shameless looting was done by Bulgarian government itself, that declared all movable properties of the Serbian state, as well as all the assets of Serbian citizens who fled together with the Serbian army, the properties without the owners, and exhibited for public sale in favor of the state budget.[36] Besides robberies, Bulgarians were also blackmailing people in order to extort considerable amount of money and goods, but after receiving that money, they still conducted murders or internments.[37]

Chapter related to **Forced Work** states that people were used "to transfer ammunition and food to the positions, to dig ditches and trenches, to build defensive structures, for construction of roads and railways." Forced work was very difficult to people due to its duration, being away from home, and high expenses that were not reimbursed. When used as a punishment for "Serbomans", forced labor was one long torture.[38]

Chapter **Demolition of buildings and Arsons** describes that Bulgarians "ruthlessly destroyed and burned Serbian villages and homes," and, according to the Commission, the scale of material damage cannot be determined until separate body has been established, solely for that purpose.

Chapter **Forced denationalization** states that, based on the premise that in the entire occupied territory only Bulgarian people are allowed to live, Bulgarians assumed they had a right to prosecute anyone who would not act and behave as a Bulgarian, and destroy everything related to Serbian culture, tradition, or nation. Serbian language was completely banned, as well as Serbian books; manuscripts, court and church archives were destroyed (some documents deposited in churches were saved and used for recruitment);[39] Serbian schools and churches closed; some school and church buildings devastated or destroyed; Serbian teachers and priests were killed or interned; Serbian historical monuments destroyed. Along with the destroying of Serbian, Bulgarian culture was forcibly implemented - Bulgarian schools and churches were founded, surnames had to be modified to sound Bulgarian, people had to participate in all events related to expressing Bulgarian patriotism (celebrations of National holidays, religious ceremonies, contributions to the Bulgarian Red Cross and the Fund for Bulgarian orphans).

Chapter **Endangering Serbian state sovereignty** states that Bulgarians did not respect the rights of the Serbian country, because once their troops invaded Serbia, Bulgarians considered that "Serbian government does not exist anymore, and the occupied Serbian areas were considered Bulgarian, even without formal annexation."[40] They established administrative and judicial authorities in the occupied territories, and hired Bulgarian clerks and officers. All Serbian laws were declared invalid. Serbian state property was taken over[41] due to Bulgarian claims that Serbia does not exist anymore, and all its properties were considered as *res nullius*. Bulgaria's appropriation of sovereign power reached its peak when, contrary to the Art. 23 of the Hague Regulations, ordered forcible recruitment of Serbians for Bulgarian army, but when the recruiting committees faced strong resistance and "very weak response", they implemented certain draconian meas-

35 Commend announced that on 7, October 1916, began collecting taxes to Bulgarian legislation, while *Mir* on 27 October 1916 reported that the Serbian currency was destroyed.
36 Although the occupation did not mean annexation, the Bulgarian *National Justice* constantly published numerous sales of "unowned property."
37 In Macedonia, after the murder of the family member, soldiers asked requested redemption with assurances that he is still alive.
38 Eg. Kicevska way, 20-30 people were dying per day, during winter up to 40-50.
39 Vlasotinačka church was used by Bulgarians as a stable, and erased the labels with images of Serbian King Uros and his wife, and replaced them with the names of the Bulgarian King Boris and his wife.
40 President of the Bulgarian government Radoslavov on 1, February 1916 in the Assembly, said: "Serbia does not exist anymore, it is erased from the map of Europe. It can only exist as a memory, and nothing more. Anything that brave Bulgarian army occupied remains Bulgarian and would not allow a foot of it." M. Novakovitch, *L'occupation Austro-Bulgare en Serbie,* Paris-Nancy 1918, 53.
41 Thus, contrary to Art. 56 of the Hague Regulations, books and manuscripts of the National and University Library were declared as the profits of war.

ures. After they failed, collective responsibility was enacted for the families and the entire villages for not responding to Bulgarian requests to join the army.[42]

The Commission noted in **Conclusion** that the entire Bulgarian occupation administration was inspired by an idea contrary to the international law. Assuming that they were legally in charge of the occupied areas and considered them as a part of Bulgaria, determined to root out "Serbomans" who they attributed to a lack of "Bulgarian" sentiments, Bulgarians "found themselves in a vicious circle": to justify exercising full sovereign authority in occupied Serbia, they claimed that its population was completely Bulgarian. To keep this approach valid, they had to have more power than they had as the conquerors, which was not enough for denationalization of Serbia. Therefore, they reinforced pressure on the population until their regime in occupied Serbia became "one ruthless tyranny." Bulgarian maltreatments were not ordinary violations of international law, they were clearly crimes, and the entire Bulgarian regime "bears indisputable criminal character." For these crimes, as well as the horrors of the prison camps, the Commission blames Bulgarian government, whose anti-Serbian policies by its regional authorities pursued "with a bestial brutality and refined atrocity, which borders with sadism." Finally, the Commission considered that the entire Bulgarian nation, for demonstrated ability for "a wild criminal hatred" that was recklessly demonstrated, deserved an appropriate and severe penalty, "because only the punishment can teach them that crimes and inhumanities no longer pay off. "

CLOSING REMARKS

Serbian people in Macedonia and Morava, who found themselves under Bulgarian occupation after the retreat of the Serbian army, were aware of the threats based on the first actions of the occupation authorities. Although the occupation did not mean annexation, the authorities in Sofia treated the occupied areas as ethnically clean part of Bulgaria. Being in a position in 1915 to finally fulfill their aspirations, Bulgarians had to face rejection by the Serbs.[43] Year-long experience was enough for Bulgarians to realize that Serbs will not accept their authority after the end of war.[44] Since it had to maintain a belief on ethnographically Bulgarian Morava and Macedonia, the Bulgarian government organized a scientific intelligence mission through the Military authorities, with the goal to examine "the newly liberated Bulgarian lands," establish the western border of Bulgarian people, Bulgaria's monumental heritage, and economic potential of the occupied areas.[45] Considering denationalization of the occupied areas a foundation of their anti-Serbian policy, Bulgarian government has consistently enforced this method, while adapting to different population groups and grading ways of coercion. With the constant expansion of the concept of the enemies of Bulgarisation, more violent methods of denationalization were implemented, becoming openly criminal.

When the public got the news about atrocities in occupied Serbia, the Bulgarian government denied them at first, than accused Komitas, yet when it became obvious that mass atrocities were executed by its authorities, used war as an excuse and simply ignored them. Asking for the answers about the responsibility for Bulgarian crimes had to be postponed until the end of the war, while in the meantime the data on the misdeeds and the perpetrators was collected. The collected material was the foundation for the Inter-Allied Commission, founded to determine all the violations of the Hague Convention and international law by Bulgarians in occupied Serbia. The Commission discovered the violations and classified them into 11 groups, presented as organized criminal activity orchestrated by the Bulgarian government, rather than coincidental set of events.

The results of the Commission's work were published at the time of the Peace Conference in Paris, where the question about responsibility for war crimes was raised in order to determine the criminal-judicial measures. The material which Inter-Allied Commission submitted to the delegation of the Kingdom of Serbs, Croats and Slovenes provided a basis for criminal charges against 500 Bulgarian citizens and leaders. The delegation requested the extradition of 25 persons, designated as the main villains, creating a foundation for including the clause that Bulgaria is obliged to extradite its citizens accused of war crimes in the Peace treaty. The dilemma about accusing the Bulgarian rulers was resolved by accepting Pasic's opinion that the responsibility of the ruler cannot cover the responsibility of the nation, and in terms of jurisdiction for the trial of war crimes, delegation approved the proposal of Slobodan Jovanovic on establishing international courts.

42 In Macedonia, these measures are not applied due to the fear of the revolt near Thessaloniki front, while in eastern Serbia its application provoked an rebellion that the Bulgarian government " managed to quell with great difficulty."

43 The Austro-Hungarian consul in Nis in May 1915 reported that the inhabitants of the Bulgarian occupation area "filled with boundless hatred" against the invaders. A. Mitrovic, *Rebellion battles in Serbia 1916-1918*, 67.

44 Authorities in Nis in 1916 estimated that the Bulgarians are for residents, "the uninvited guests ... traitors, bastards that should be destroyed." Memorandum with the Repport from 11.20.1916. Archive Military History Institute, mf., 107/ CXLVII.

45 The mission was made up of 15 philologists, economists, historians, geographers, geologists, mostly from the University of Sofia. P. Hr. Petrov, *Scientific Expedition in Macedonia and Pomoravieto 1916*, Sofia 1993.

The Commission for Responsibility codified the 32 types of crimes against humanity and the laws of war,[46] which was supposed to be the legal basis for the prosecution of those responsible before the international courts. However, political reasons prevailed over legal: getting agreement with Germany as a model for all other contracts, the Supreme Council of the Conference rejected the proposal on establishing the international tribunals, leaving the war criminals to the affected countries to prosecute them.[47] Being aware that the decision to charge the German Emperor was a concession to France, which had a "special interest to make a show out of the trial," the delegation of the SHS Kingdom stated that it will not bring Ferdinand Koburg to the court, removed that issue from the agenda.[48] This allowed the Bulgarian delegation to keep the attitude of denial, and simply ignore the earlier statements, in which they acknowledged the responsibility of military personnel. The final outcome was that none of the 500 Bulgarian citizens that Serbia considered responsible for war crimes has been sentenced.[49]

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47 "Many obstacles prevented the consciousness of these crimes and their early formulation from turning into fully-fledged concepts in international criminal law at the start of the interwar period. Great Power conflicts and nationalist resistance were two of the stumbling blocks; domestic instability and the use of domestic political justice in the Balkans were others." M. Lewis, *The Birth of the New Justice: The Internalization of Crime and Punishment 1919-1950*, Oxford 2014, 65.

48 A. Mitrovic, *Yugoslavia at the Peace Conference 1919-1920*, Belgrade 1969, 196.

49 *Statement by the Bulgarian Peace Delegation on Alleged Bulgarian Atrocities in Serbia,* 1919, www.firstworldwar.com

20. M. Pršić and S. Bojković, *The crimes of the Austro-Germans-Bulgarians in Serbia 1914-1918,* Belgrade 1997.

21. N. N. Smirnova, *International Humanitarian rights*, Sankt-Peterburg 2001.

22. P. Hr. Petrov, *Scientific Expedition in Macedonia and Pomoravieto 1916*, Sofia 1993.

23. R. A. Reiss, "A Balkan War," Gazette de Lausanne on 21 October 1915.

24. R. A. Reiss, *Atrocities Bulgarians and Austro-Germans (Bulgarian atrocities during the war)*, Thessaloniki 1916.

25. R. A. Reiss, *Report of the Bulgarian atrocities in occupied Serbia 1915-1918* on 11 January 1919 and *Report to the Lord President of the Council of Ministers* dated 24 January 1919, the Military Archives, the Archives of the Army of the Kingdom of Serbia, Supreme Command, k. 3, reg. no. 22/1.

26. R. A. Reiss, *Report submitted to the Serbian government on the atrocities committed by the Austro-Hungarian army during the first invasion of Serbia*, Belgrade-Gornji Milanovac 1995.

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34. V. Stojančević*, Serbia and the Serbian people during the war and occupation,* Leskovac 1988.

35. W. Drayton, *Diary*, Hoover Institution Archives.

36. War in Eastern Europe, New York 1916.

37. Z. Avramovski, *Bulgarian claims on the annexation of parts of Kosovo in the First World War*, in: Yugoslav-Bulgarian relations in the twentieth century, Proceedings 2, Belgrade 1982, 119-151.

38. Z. Avramovski, *War goals of Bulgaria and the Central Powers 1914-1918*, Belgrade 1985.

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THE IMPACT OF THE EUROPEAN COURT OF HUMAN RIGHTS ON DOMESTIC PROTECTION OF THE RIGHT TO A TRIAL WITHIN A REASONABLE TIME: THE MACEDONIAN CASE

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Abstract: The paper discusses the measures undertaken by the respondent state in order to give effect to the judgments of the European Court of Human Rights finding a violation of the right to a trial within a reasonable time. It aims to assess to what extent these measures can result in a reinforcement of the established national mechanism for protection of the right to a trial within a reasonable time through analysis of Macedonian experience in this regard. The paper focuses upon the following question: What is the impact of European Court of Human Rights on protection of the right to a trial within a reasonable time in the Republic of Macedonia? In order to answer the question, the paper determines what the term "reasonable time" means based on the existing case law of the Court. In addition, it analyses the Court's judgments finding a violation of the right to a trial within a reasonable time by the Republic of Macedonia and the measures undertaken by the national authorities in response to these judgments. The Macedonian case shows that the judgments of the European Court of Human Rights have impact on domestic protection of the right to a trial within a reasonable time.

Keywords: ECHR, Article 6, trial within a reasonable time, European Court of Human Rights, Macedonia.

INTRODUCTION

European Convention of Human Rights (ECHR) guarantees the right to a trial within a reasonable time and requires the Contracting States "to organise their legal systems in such a way that their courts can guarantee to everyone the right to a final decision within a reasonable time in the determination of his civil rights and obligations"[2]or any criminal charge against him. As the European Court of Human Rights (ECtHR) observed "in requiring cases to be heard within a "reasonable time", the Convention underlines the importance of administering justice without delays which might jeopardise its effectiveness and credibility."[3] One may find very hard to dispute over the importance of speedy trial for individual's confidence in justice itself and state's obligation to prevent excessive length of judicial proceedings. At the same time, the state is obliged to provide proper administration of justice. National authorities should strike a fair balance between prompt judicial proceedings and proper administration of justice. One must admit that this isn't an easy task but, neither an impossible one. Could the ECtHR be of assistance in this regard? What is the impact of the Court on domestic protection of the right to a trial within a reasonable time?

The role of the ECtHR has been discussed in the literature many times so far. Significant number of authors argues that the Court has impact on domestic legal systems[4] of member states of the ECHR.[5] Some of the existing researches show that "implementation of the Convention varies from one member state to the other"[6] but "in fact, the rate of compliance by states with the Court's rulings is very high."[7] On the other hand, there is a debate in the literature about the methodological problems in measurement of compliance

1 marijamilenkovska@yahoo.com.
2 Frydlender v. France [GC] , no. 30979/96, § 45, ECHR 2000 VII.
3 Katte Klitsche de la Grange v. Italy, no. 12539/86, § 61, Series A293-B.
4 According to Barrett "there are also tentative indications that Russia has been prompted to implement some military and administrativereforms in response to the Court's jurisprudence." See: Joseph, Barrett. Chechnya Last Hope? Enforced Disappearances and the European Court on Human Rights, *Harvard Human Rights Journal*, Vol.22 (2009) 133-143, p. 142.
5 See: Dia Anagnostou & Evangelia Psychogiopoulou (eds), The European Court of Human Rights and the Rights of Marginalized Individuals and Minorities in National Context, Martinus Nijhoff Publishers, Leiden/Boston, 2010; Nina-Louisa Arold, The Legal Culture of European Court for Human Rights, Martinus Nijhoff Publishers, Leiden/Boston, 2007; Eva Steiner, The Application of the European Convention on Human Rights by French Courts, *The Kings College Law Journal*, 6 (1995-1996), 49-61.
6 Nina-Louisa Arold, The Legal Culture of European Court for Human Rights, Martinus Nijhoff Publishers, Leiden/Boston, 2007, p. 32.
7 Ibid.

with human rights treaties.[8] In this context, Greer speaks about the methodological problems in measurement of compliance with the ECHR and one may agree with its conclusion that "while it is difficult, if not impossible, objectively to measure a state's Convention compliance, it can, nevertheless, be assessed in other ways."[9]The paper discusses the measures undertaken by the respondent state (in instant case Macedonia) in order to give effect to the judgments of the ECtHR. It seems as a logical approach if one bears in mind state's obligation under Article 46 of the ECHR to to abide Court's judgment in any case to which it is a party. As Sweet and Keller observe "the extent of the Court's influence can be assessed most directly following a finding of violation on the part of the Court"[10] Such rulings, as they claim "challenge national officials to take decisions that will render national law compatible with the Convention."[11]

Arnold uses the Netherlands and the United Kingdom as examples in order to illustrate that the ECtHR impacts national legal orders through its judgments. According to Arnold "the examples of the Netherlands and the United Kingdom show how powerful the rulings and impact of the Court can be."[12] The Court "breaks century old traditions in national legal systems and replaces them with its own interpretation of the law of the Convention."[13]As Arnold observes in the Netherlands, "the Court' judgments changed many fields of law, including criminal law."[14]One of the areas of the criminal procedure that was changed through the impact of the ECtHR is delays in conducting of criminal trials. Did the Court have the similar effect on the length of judicial proceedings in the Republic of Macedonia? The paper argues it did. The ECtHR impacts the domestic protection of the right to a trial within reasonable time in Macedonia through its judgments.

The paper is divided into five sections including conclusion. The first section of the paper examines Article 6 (1) of the ECHR. It identifies the criteria that ECtHR applies when it assesses the reasonableness of a proceeding. The second section addresses the main problems faced by the Republic of Macedonia concerning the right to trial within a reasonable time under Article 6 (1) of the ECHR. The third section of the paper provides brief analysis of the process of implementation of the judgments of the ECtHR. It also determines certain terms relevant for the matter under discussion: individual measures, just satisfaction, general measures. The fourth section considers the impact of the European Court of Human Rights on protecting the right to a trial within a reasonable time in Macedonia through analysis of general measures undertaken by Macedonia authorities in response to the judgments finding a violation of the right. The main changes in Macedonian legislation concerning length of judicial proceedings made in response to the Court's judgments are underlined in the conclusion.

THE RIGHT TO A TRIAL WITHIN A REASONABLE TIME UNDER ECHR: HOW LONG IS TOO LONG?

Article 6 (1) provides that "in determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within reasonable time by an independent and impartial tribunal established by law." The wording of the article leads to the conclusion that the state is obliged to meet the "reasonable time" requirement in both criminal and civil cases. However, the Convention remains silent on other important issues. Which period of time is relevant for assessment under Article 6(1)? Which length of time is unreasonable and it constitutes a violation of Article 6 (1) of the ECHR? How long is too long? The answers to these questions or at least general guidance can be found in the case law of the ECtHR.

In criminal cases, the relevant period of time which is to be assessed under Article 6 (1) begins to run from "the date on which the first charges were levelled against"[15] a person. The case law of the ECtHR reveals that the term charge has autonomous meaning in context of Article 6 of the Convention. It is defined as "the official notification given to an individual by the competent authority of an allegation that he has committed a criminal offence,"[16] This definition corresponds to the date when "the situation of the [suspect] has been substantially affected.[17] The circumstances of each case reveal the concrete date when the appli-

8 See: Ryan Goodman, Mark Janis, Measuring the effects of Human Rights Treaties, *European Journal of International Law*, 14 (2003), 171-183; Steven Greer, European Convention for Human Rights: Achievements, Problems and Prospect,Oxford University Press, New York, 2006, pp.62-78; Oona A. Hathaway, Do Human Rights Treaties Make a Difference?, The Yale Journal, 111(2002) 1935-2042.
9 Steven Greer, European Convention for Human Rights: Achievements, Problems and Prospect, Oxford University Press, New York, 2006, p. 72.
10 Alec Sweet Stone, and Helen Keller, The Reception of the ECHR in National Legal Orders, *Faculty Scholarship Series,* .Paper 89, 2008, p. 30. .http://digitalcommons.law.yale.edu/fss_papers/89.
11 Ibid.
12 Nina- Louisa, Arold. op.cit, p. 34.
13 Ibid.
14 Ibid, p. 33.
15 *Wemhoff v. Germany*, 27 June 1968, § 19, Series A no. 7.
16 *McFarlane v. Ireland* [GC], no. 31333/06, §143, 10 September 2010*; Eckle v. Germany*, 15 July 1982, §73, Series A no. 51.
17 *McFarlane v. Ireland* [GC], no. 31333/06, § 143, 10 September 2010.

cant's situation was substantially affected. For instance, in the case *McFarlane v Ireland* the Court considers the applicant "to have been "substantially affected"on his arrest."[18]The beginning of the period relevant for assessment under Article 6 (1) in civil cases corresponds to "the moment the action was instituted before the tribunal"[19]competent for determination of civil rights and obligations (for instance the date on which the divorce petition was lodged with the competent court - Düsseldorf Regional Court[20]). However, the case law of the ECtHR supports the thesis that (exceptionally) the period relevant for assessment may begin "even before the issue of the writ commencing proceedings before the court to which the plaintiff submits the dispute,"[21]for example (as the Court itself stated) "where certain preliminary steps were a necessary preamble to the proceedings."[22]The final decision (final determination of the dispute) regardless the instance where it is delivered (at first instance, on appeal or in cassation),[23] including the proceedings before the Constitutional Court where its decision "is capable of affecting the outcome of the dispute before the ordinary courts"[24]marks the end of the relevant period of time which is to be assessed under Article 6(1). In both criminal and civil cases the execution of judgments is regarded "as an integral part of the trial for the purposes of Article 6."[25]

Having established the period of time that is relevant for assessment under Article 6(1) of the ECHR, another important question (raised above) that one needs to explain concerns the amount of time that constitutes a violation of the article in respect to reasonable time requirement. For example, the Court in the case *H v United Kingdom* concluded that the period of time of two years and seven months constitutes a violation of Article 6 (1) but, in the case *Neumeister v Austria* where the domestic proceedings lasted more than seven years the Court didn't find a violation of the reasonable time requirement. At first glance one can be confused. However, the case law of the ECtHR provides certain explanations. Neither the Convention neither the Court prescribes the exact length of time that should be regarded as unreasonable. The reasonableness of the length of proceedings (the whole proceedings) is assessed "according to particular circumstances of the case"[26] which as Court's practice shows may "call for global assignment[27]and having regarded the following criteria:

1) Complexity of the case (that includes both the complexity related to the facts and legal complexity) – the Court, *inter alia*, may accept certain delay in: cases involving a large number of people (parties,[28] defendants[29] or witnesses) or charges;[30] cases that exceeded the national borders[31]or cases that raised a complex problem of interpretation[32];
2) Conduct of the parties[33] (the authorities and the applicant/s) – although the Court reiterates many times that "only delays attributable to the State may justify a finding of failure to comply with the "reasonable time" requirement"[34]the conduct of the applicant (for instance, his or her deliberate attempts to delay the investigation[35]) must be taken into consideration by the Court when it assesses the reasonableness of the length of the proceedings.
3) Importance of what was at stake for applicant (nature of the case) – the state, for example, is under duty to exercise exceptional diligence in: a) cases that deal with adoption;[36] b) cases involving an applicant who suffers from incurable disease like AIDS[37] or an applicant in detention pending trial[38] and c) cases concerning employment disputes[39]or determination of compensation in personal injuries.[40]

18 Ibid, para. 144.
19 *Blake v. the United Kingdom*, no. 68890/01, § 40, 26 September 2006; Poiss v. Austria, 23 April 1987, § 177, Series A no. 117.
20 *Bock v. Germany*, 29 March 1989, § 35, Series A no. 150.
21 *Golder v. the United Kingdom*, 21 February 1975, § 32, Series A no. 18.
22 *Blake v. the United Kingdom*, no. 68890/01, § 40, 26 September 2006.
23 See for instance: *Delcourt v. Belgium*, 17 January 1970, § 39, Series A no. 11; *König v. Germany*, 28 June 1978, § 25, Series A no. 27; *Robins v. the United Kingdom*, 23 September 1997, § 28-29, Reports of Judgments and Decisions 1997-V.
24 *Süßmann v. Germany*, 16 September 1996, § 39, Reports of Judgments and Decisions 1996-IV.
25 See for instance: *Assanidze v. Georgia* [GC], no. 71503/01, § 181, ECHR 2004-II and *Silva Pontes v. Portugal*, 23 March 1994, § 33, Series A no. 286-A.
26 See: *H. v. the United Kingdom*, 8 July 1987, § 71, Series A no. 120; *Pretto and Others v. Italy*, 8 December 1983, § 31, Series A no. 71; *Abdoella v. the Netherlands*, 25 November 1992, §20, Series A no. 248-A.
27 *Boddaert v. Belgium*, 12 October 1992, § 36, Series A no. 235-D.
28 See *H. v. the United Kingdom*, 8 July 1987, § 72, Series A no. 120.
29 See *Meilus v. Lithuania*, no. 53161/99, 6 November 2003.
30 See *Vaivada v. Lithuania*, nos. 66004/01 and 36996/02, 16 November 2006.
31 See for example, *Neumeister v. Austria*, 27 June 1968, Series A no. 8.
32 See for example, *Pretto and Others v. Italy*, 8 December 1983, § 32, Series A no. 71.
33 For conduct of the parties see more in Dovydas Vitkauskas & Grigoriy Dikov, Protecting the Right to a Fair Trial under European Convention on Human Rights, Council of Europe, 2012, pp. 75-77.
34 *X v. France*, 31 March 1992, § 55, Series A no. 234-C.
35 See for instance, *A. v. France*, 23 September 1998, Reports of Judgments and Decisions 1998-VII.
36 See for instance *H. v. the United Kingdom*, 8 July 1987, § 85, Series A no. 120.
37 See for instance *X v. France*, 31 March 1992, § …, Series A no. 234-C.
38 See *Abdoella v. the Netherlands*, 25 November 1992, § 24, Series A no. 248-A.
39 See *Vocaturo v. Italy*, 24 May 1991, § 47 Series A no. 206-C, para. 17.
40 See *Sali v. the Former Yugoslav Republic of Macedonia*, no. 14349/03, 5 July 2007.

VIOLATIONS OF THE RIGHT TO A TRIAL WITHIN A REASONABLE TIME: THE MACEDONIAN CASE

The European Court of Human Rights has delivered 100 judgments concerning Republic of Macedonia until the end of 2013. In 93 of them it found at least one violation of the Convention. A vast majority of the Court's judgments finding a violation of the Convention involved Article 6 (88 judgments). In more than sixty percentages of the judgments finding a violation of the right to a fair trial (63, 63 % or 56 judgments) the Court concluded that the authorities failed to meet reasonable time requirement. If one analyses the judgments of ECtHR finding a violation of reasonable time requirement one can see that all applications are individual applications. The vast majority of the applications (over 96 % of them) were submitted by individuals or group of individuals. A very small number of applications involved legal person.

The statistics provided above addresses the main problem facing Republic of Macedonia regarding to the implementation of the ECHR – the right to a trial within a reasonable time. But, where is the source of the problem? The analysis of the judgments of the ECtHR finding a violation of the Article 6 (in relation to the reasonable time requirement) could provide an answer to the question. If one examine the judgments one can make the following observations:

1. In significant number of cases the Court reiterates that "it is for the Contracting States to organise their legal systems in such a way that their courts can guarantee everyone's right to obtain a final decision on disputes relating to civil rights and obligations within a reasonable time."[41] Such constant indication by the Court implies a dilemma whether the Macedonian legal system is not organized in a way that its courts can guarantee everyone's right to a trial within reasonable time or at least it wasn't.

2. In the case *Atanasovic and others v Macedonia*, the Court found that the state failed to comply with its obligation under Article 13, taken in conjunction with Article 6 to provide effective remedy in respect of the length of the proceedings complaints. The Court found a violation of Article 13, taken in conjunction with Article 6 in other cases as well, including *Nikolov v Macedonia*[42]and *Ograzden and others v Macedonia*.[43]

3. In a number of cases considering Macedonia the Court points out to the repeated re-examination of cases (returning the case files to the first instance court). Although the Court "is not in a position to analyse the quality of the case-law of the domestic courts,"[44] it considers that, "since the remittal of cases for re-examination is usually ordered as a result of errors committed by lower courts, the repetition of such orders within one set of proceedings discloses a serious deficiency in the judicial system."[45]The Court's remarks about a serious deficiency in the judicial system deserve the authorities' attention. Did they make some steps to deal with this problem?

4. Macedonia has faced another problem concerning the right to a trial within a reasonable time: excessive length of enforcement proceedings. According to the ECtHR "the execution of a judgment given by any court must be regarded as an integral part of the "trial" for the purposes of Article 6 of the Convention[46] and the article requires "all stages of legal proceedings for the "determination of ... civil rights and obligations", not excluding stages subsequent to judgment on the merits, be completed within a reasonable time."[47] Furthermore, the Court requires the state "to organise a system for enforcement of judgments that is effective both in law and in practice and ensures their enforcement without undue delay" [48](positive obligation). The judgments in *Nikolov v Macedonia* and *Pecevi v Macedonia* illustrate that the country had certain problems in this regard. Have they been solved till now? One must have in mind that "the Convention is intended to guarantee not rights that are theoretical or illusory but rights that are practical and effective."[49]

5. In the case *Čaminski v Macedonia* the Court observed that "the main problem that affected the length of the proceedings was the trial court's inability to secure the attendance of the defendants, their representative or the witnesses."[50]

6. It is important to be noted that the Court found a violation of Article 6 in respect to reasonable time requirement even in cases which by their nature required special diligence: employment-related disputes,[51] disputes concerning the determination of compensation in personal injuries cases[52]or pension disputes.[53]

41 *Gjozev v. the former Yugoslav Republic of Macedonia,* no. 14260/03, § 51, 19 June 2008.
42 *Krsto Nikolov v. the former Yugoslav Republic of Macedonia*, no. 13904/02, 23 October 2008.
43 *Ogražden Ad and Others v. the former Yugoslav Republic of Macedonia*, nos. 35630/04, 53442/07 and 42580/09, 29 May 2012.
44 *Ziberi v. the former Yugoslav Republic of Macedonia*, no. 27866/02, § 46, 5 July 2007.
45 Ibid.
46 *Krsto Nikolov v. the former Yugoslav Republic of Macedonia*, no. 13904/02, § 21, 23 October 2008.
47 *Pecevi v. the former Yugoslav Republic of Macedonia*, no. 21839/03, § 29, 6 November 2008.
48 Ibid.
49 *Artico v. Italy*, 13 May 1980, § 33, Series A no. 37.
50 *Čaminski v Macedonia*, no.1194/04, 24 February 2011, para.30.
51 See, for example, *Ziberi v. the former Yugoslav Republic of Macedonia*, no. 27866/02, § 47, 5 July 2007
52 See *Blage Ilievski v. the former Yugoslav Republic of Macedonia*, no. 39538/03, § 23, 25 June 2009.
53 See *Dika v. the former Yugoslav Republic of Macedonia*, no. 13270/02, § 59, 31 May 2007

7. Several judgments finding a violation of reasonable time requirement reveal that in its submission to the Court Macedonian Government has admitted the problem of excessive workload of the Supreme Court. In order to explain the length of proceedings the Government referred to the excessive workload of the Supreme Court, "due to the low statutory threshold for lodging an appeal on points of law at the material time"[54] and its extensive scope of jurisdiction.[55]But, can excessive workload of the court to justify unreasonable length of proceedings? In its response to the Government the Court, referring to the existing case law stated that "a chronic overload cannot justify an excessive length of proceedings."[56]

IMPLEMENTATION OF THE JUDGMENTS OF THE EUROPEAN COURT OF HUMAN RIGHTS

Article 46 of the ECHR provides that "the Contracting Parties undertake to abide by the final judgment of the Court in any case to which they are parties."[57] The judgment of the ECtHR finding a violation of the Convention imposes on the respondent state an obligation to: 1.pay any sums awarded by the Court by way of just satisfaction; 2. adopt, where appropriate, individual measures to put an end to the violation found by the Court and to redress, as far as possible, its effects; 3. adopt, where appropriate, the general measures needed to put an end to similar violations or prevent them.[58]This has been confirmed in many cases by the Court so far. For instance, in the case *Scordino v Italy* the Court stated "where the Court finds a violation, the respondent State has a legal obligation not just to pay those concerned the sums awarded by way of just satisfaction under Article 41, but also to select, subject to supervision by the Committee of Ministers, the general and/or, if appropriate, individual measures to be adopted in their domestic legal order to put an end to the violation found by the Court and to redress as far as possible the effects."[59]The respondent state could be obliged to undertake two types of measures in order to give effect to the judgment of the ECtHR: individual measures (to provide the just satisfaction (Article 41) or to achieve as far as possible *restitutio in integrum*) and general measures (review of legislation, regulations and/or judicial practice, refurbishing of a prison, construction of prisons, training of police, translation and dissemination of the judgments, etc.).[60] But, which concrete measures have to be taken by the state in response to the judgment? Is it for the Court to determine them? The search for an answer to the last questions leads us to the margin of appreciation doctrine. Although the ECtHR in some cases points to the measures that have to be taken by a state when implementing its judgement (particularly in cases of systemic and structural violations – pilot judgements[61]) it is in principle not for the Court to determine them[62]. States enjoy certain discretion in this regard. As the Court in the case *Broniowski v Poland* observes "respondent State remains free to choose the means by which it will discharge its legal obligation under Article 46 of the Convention, provided that such means are compatible with the conclusions set out in the Court's judgment."[63]On the other hand, it is important to stress that the process of implementation of the Court's judgments is subject to supervision by the Committee of Ministers of the Council of Europe.

MACEDONIAN RESPONSE TO THE VIOALTIONS OF THE RIGHT TO A TRIAL WITHIN A REASONABLE TIME

In 2009 Republic of Macedonia has adopted the Law on the Implementation of Decisions by the European Court of Human Rights and the Law on Representation of the Republic of Macedonia before the European Court of Human Rights. The former lays down the procedure for the implementation of

54 *Markoski v. the former Yugoslav Republic of Macedonia*, no. 22928/03, § 33, 2 November 2006.
55 Ibid.
56 See for instance *Markoski v. the Former Yugoslav Republic of Macedonia*, no. 22928/03, § 39, 2 November 2006; *Lickov v. the Former Yugoslav Republic of Macedonia*, no. 38202/02, § 31, 28 September 2006.
57 Article 46, ECHR.
58 Recommendation CM/Rec(2008) of the Committee of Ministers to member states on efficient domestic capacity for rapid execution of judgments of the European Court of Human Rights, 2008.
59 *Scordino v. Italy,* (no. 1) [GC], no. 36813/97, § 233, ECHR 2006-V.
60 See more in: Elisabeth Lambert Abdelgawad, The Execution of Judgment of the European Court of Human Rights. 2nd edition, Human Rights Files No.19, Council of Europe Publishing, 2008, p. 5; Michael K. Addo, The Legal Nature of International Human Rights, Martinus Nijhoff Publishers, Leiden/Boston, 2010, p. 16; Council of Europe, Committee of Ministers, Supervision of the execution of judgmentsof the European Court of Human Rights, Annual report, 2010 p.16.
61 According to Colondrea "the Court seems to consider thepilot-judgment procedure as a tool intended to clarify how States must fulfiltheir obligations under the Convention." See: Valerio Colondrea, On the Power of the European Court of Human Rights to Order Specific Non-monetary Measures: Some Remarks in Light of the Assanidze, Broniowski and Sejdovic Cases, *Human Rights Law Review*, 7:2.(2007), 396-411.
62 *Broniowski v. Poland* [GC], no. 31443/96, § 193, ECHR 2004-V.
63 Ibid, para. 192.

Court decisions (including the timelines for specific actions related to the implementation of judgment finding a violation of the Convention by Macedonia) and sets up an inter-sectoral commission responsible for monitoring of the implementation of the decision by the EChtHR chaired by Minister of Justice. The latter establishes the Bureau for the Representation of RM before the ECtHR headed by a Director - Governmental Agent. Macedonian legislation explicitly provides that the implementation of the Court's decisions is compulsory. Under Law on the Implementation of Decisions by the European Court of Human Rights, implementation of Court decisions is effectuated by paying off the complainants the adjudicated amount of money as a form of just satisfaction, and also by adopting and undertaking individual and general measures for the purpose of elimination of the violation and the incurrent consequences, but also of the reasons leading to the application of the complaint to the Court and adequate prevention of such or similar violations.[64] Hence, the legal framework for implementation of the decisions by the European Court of Human Rights in the Republic of Macedonia has been adopted (with certain delays) and the mechanism for implementation of the decision has been established. However, what bears noticing here is also the fact that RM was late in enforcing the legal framework in practice; particularly it was late in establishing the Inter-Sectoral Commission for Implementation of the ECtHR rulings. Could these delays be prevented? Probably, they could. However, the paper doesn't involve in such debate, but tries to assess the impact of the ECtHR on protection of the right to a trial within a reasonable time at national level through analysis of the measures undertaken by the Macedonian authorities in order to give effect to the Court's judgments finding a violation of the right to a trial within a reasonable time.

If one analyses the action report providing an overview of the general measures taken in response to violations found in a set of cases concerning the right to a trial within a reasonable time submitted by the Republic of Macedonia in 2011 one may find hard to argue that the authorities remain silent on those violations. But, can the measures undertaken in response to the violations of the right to a trial within a reasonable time prevent similar violations in the future? The review of the legislative changes made in response of the Court's rulings provided in following part of the paper will be of a great assistance in reaching some conclusions in this regard.

Domestic remedy in respect of the length of the proceedings

In 2006 a new Law on Courts was introduced. The law provides a domestic remedy in respect to the length of the proceedings where by an interested party may request protection of his or her right to a trial within a reasonable time before domestic courts and where appropriate be awarded just satisfaction. However, the remedy introduced in 2006 did not solve the problem. The ECtHR criticized the remedy because of the ambiguity of rules concerning the determination of the court competent to decide upon such remedy and the timeline when the proceedings upon the request for protection of the right to a trial within a reasonable time should terminate.[65] It had not accepted the remedy as effective[66] before the amendments to the Law on Courts were adopted in 2008.[67]

The 2008 amendments solved the main dilemmas raised by the ECtHR. According to the amendments, an interested party is entitled to apply to the Supreme Court of the Republic of Macedonia if he or she considers that there had been a violation by a competent court of the right to a trial within a reasonable time. The Supreme Court is obliged to decide upon the request within six months. In deciding upon the request the Supreme Court shall take in consideration the rules and principles defined in the ECHR. According to Article 36 of the Law on Courts "if the Supreme Court finds a violation of the right to a trial within a reasonable time, it will in its decision set a time-limit for the court before which the impugned proceedings are pending to determine the right, obligation or criminal responsibility of the claimant and award just satisfaction for the claimant, owing to a violation of the right to a trial within a reasonable time."[68] The domestic remedy in respect of the length of the proceedings (after 2008 amendments) is designed to accelerate the pending proceedings and to redress a violation of the right. So, one may conclude that it is effective within the meaning of the ECHR. In 2011 in its decision in the case *Adze Spirkoska v Macedonia* the ECtHR also observed that "the length remedy, as specified in the 2008 Act, is fully operational"[69]by referring to the statistics on the examined cases by the Supreme Court of the Republic of Macedonia. What does the statistics provided in the last report issued by the Supreme Court speak? The 2013 Annual Report of the Supreme Court reveals that in 2013, 694 length proceedings cases were brought before the Court (Special division for trial within reasonable time). At the same time, 225 cases were pending from the last year (weren't resolved

64 Artcle 2, Law on the Implementation of Decisions by the European Court of Human Rights, Official Gazette of the RM, no. 67/2009.
65 See for instance Parizov v. the former Yugoslav Republic of Macedonia, no. 14258/03, 7 February 2008
66 See for instance Ogražden Ad and Others v. the former Yugoslav Republic of Macedonia, nos. 35630/04, 53442/07 and 42580/09, § 29 29 May 2012.
67 In the case *Adzi Spirkoska and others v Macedonia* the ECtHR observed that "the length remedy provided for by the 2008 Act is to be regarded, in principle, as effective within the meaning of Article 35 § 1 of the Convention." See: Adzi Spirkoska and others v Macedonia, nos.38914/05and 1789/05, Des. 03 November 2011.
68 Article 36, Law on Amendment on the Law on Courts, Official Gazette of RM, 35/2008.
69 *Adzi Spirkoska and others v Macedonia*, nos.38914/05 and 1789/05, Des. 03 November 2011.

in 2012). The Supreme Court examined 779 cases.[70] Although, general conclusion concerning domestic remedy in respect of the length of the proceeding cannot be reached just based on the statistics, the figures speak in favor of the claim that the remedy gives certain results.

Civil proceedings

A new Law on Civil Proceedings was adopted in 2005 that as a fact is marked in several annual reports on supervision of the execution of judgments and decisions of the ECtHR issued by the Committee of Ministers of the Council of Europe. The Law, among other things, provides possibility of filing a motion for repetition of procedure following a judgment of the ECtHR finding a violation of the ECHR. The 2005 Law represents a step forward in respect of conducting the civil proceedings. However, it didn't solve all problems. Certain shortcomings that affect the length of proceedings have remained. In meantime, the ECtHR has delivered a number of judgments finding a violation of the right to a trial within a reasonable time by Macedonia. Macedonian authorities have taken concrete measures to prevent similar violation in the future (general measures) Thus, in 2010 in response to the judgments of the ECtHR (as it is stated in Government's action report):

1. The manner of service the writ was changed. The Law provides a possibility for delivering the writs by electronic mail. In this regard, article 125-a provides that "the service of the writs to the attorneys, state bodies, or state administration bodies, local self-government units, legal entities and persons with public authorizations shall be done electronically in electronic mailbox; "[71]

2. The manner of disclosure of the evidence through expert testimony was changed.

At the same time, in 2010 timelines for certain type of actions (including timelines for scheduling and maintenance of preparatory hearing and timelines within which the court of second instance is obliged to pass a judgment upon the appeal) were prescribed, detailed or changed by the amendments to the Law on Civil Proceedings. The amendments also prescribed obligation for the Court "in the cases for which mediation is allowed, to send a written instruction to the parties in the summons for the preparatory hearing that the case can be solved in a mediation procedure."[72] It is also important to note the changes made in Article 301 (1) of the Law on Civil proceedings. Article 301 (1) as amended in 2010 provides that If the hearing is postponed, a new hearing will be (not if possible will be as before the amendments) held before the same panel.

One may welcomed the improvements made in legislation concerning civil proceedings. However, what bears noticing here is the fact that the problem (pointed out in the judgments of the ECtHR) related to the repeated re-examination of civil cases as a result of errors committed by lower courts (returning the case files to the first instance court) has not be solved yet. The new Law on Criminal Proceedings has made a step forward in this regard by providing that the second instance court shall hold a hearing and rule on the merits of the case if the appealed judgment has already been nullified once.

Enforcement of judgments

A new Law on Enforcement was adopted in 2005. The Law has been amended many times so far. What bears noticing here is the fact that the amendments made in 2009 have introduced a new way of issuing payment order. According the amendments the basic courts are not anymore authorized to issue the payment order. They were replaced by the public notaries. The action report[73] submitted to Committee of Ministers by Macedonian Government argues that the changes in national enforcement legislation were made in response to the remarks of the ECtHR and they aimed to prevent violations of the right to a trial within reasonable time regarding the length of enforcement proceedings in the future.

CONCLUSION

The paper analysed the measures undertaken by Macedonian authorities in response to the judgments of the ECtHR finding a violation of the right to a trial within a reasonable time in order to assess the impact of the Court on protection of this right at national level. One cannot claim that the paper succeeded to assess the full effect of the ECtHR on protection of the individual's right to a trial within a reasonable time in Macedonia However, it provided solid arguments to be claimed that the Court's judgments have impact on protection of the right to a trial within a reasonable time at national level. Significant changes of Macedonian legislation (the Law on Courts, the Law on Civil Proceedings, and the Law on Enforcement) have been made so far in response to the judgments of European Court of Human Rights finding a violation of reasonable time requirement under Article 6 (1) of the ECHR. In this context, one should underline the

70 Supreme Court of the Republic of Macedonia, Report on work of the Supreme Court of the Republic of Macedonia in 2013, p. 14.
71 Article 125-2, Law on Civil Proceedings (consolidate text), Official Gazette of RM, 7/2011.
72 Article 272, Law on Civil Proceedings (consolidate text), Official Gazette of RM, 7/2011.
73 The report is available at following link: https://wcd.coe.int/com.instranet.InstraServlet?command=com.instranet.CmdBlobGet&InstranetImage=1880251&SecMode=1&DocId=1761942&Usage=2; acceded in January 2015.

role of the Court (impact of its judgments) in the establishment of domestic remedy in respect of the length of the proceedings. The remedy provided by the Law of Courts (as amended in 2008) is effective within the meaning of ECHR: it is designed to accelerate the pending proceedings and to redress a violation of the right to a trial within a reasonable time.

On the other hand, Macedonian authorities have not found a legal solution to the problem related to the repeated re-examination of civil cases (returning the case files to the first instance court) yet. This should be a future challenge for the country because one cannot believe in justice if justice is too late. At the same time, it should be worked on consistent implementation of the legislation concerning judicial proceedings in practice.

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CONDITIONALLY DEFERRED PROSECUTION

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Abstract: Following its introductory part, this paper states that public prosecutors most frequently find out about criminal offenses and their perpetrators from criminal complaints, so it analyzes criminal complaints and the method of their filing. Alternative actions that public prosecutors can undertake in connection with criminal complaints are then presented, and a special stress is laid on the dismissal of criminal complaint, and the possibility of implementing unconditional deferral of prosecution. The most important part of the paper is dedicated to conditionally deferred prosecution, which is described as a specific type of bargaining or a type of agreement between the public prosecutor and the suspect. After a detailed analysis of necessary conditions for the implementation of this instrument, the paper presents both its benefits and disadvantages, suggesting ways in which the observed problems might be solved.

Keywords: mandatory prosecution; discretionary prosecution; conditionally deferred prosecution; deferral of criminal prosecution; criminal complaint; agreement between the prosecutor and the suspect.

INTRODUCTION

Under the principle of mandatory prosecution, as the main principle in criminal proceedings, the public prosecutor must undertake criminal prosecution whenever there are grounds for suspicion that a crime prosecuted *ex officio* has been committed or that a particular person has committed such a criminal offense (Article 6 paragraph 1 of the CPC). In addition to this general principle there is also the principle of discretionary prosecution, which is an exception, because the public prosecutor may, only exceptionally, decide either to defer criminal prosecution or not to undertake it at all, under the conditions provided for by the Criminal Procedure Code (Article 6 paragraph 2).

The criminal procedure legislation of Serbia introduced discretionary prosecution for adults in the 2001 Criminal Procedure Code. The principle of discretionary prosecution of adults was available for criminal offenses punishable by a fine or a prison sentence of up to three years, and two of its forms were envisioned – conditionally deferred prosecution and dismissal of criminal complaint for reasons of fairness. The new provisions of the Criminal Procedure Code introduced in 2009, expanded the scope of applicability of the principle of discretionary prosecution and introduced another one of its forms, so that the conditionally deferred prosecution could apply also to crimes punishable by up to five years of prison if the public prosecutor received the approval of the court. The list of measures under which the application of discretionary prosecution could be made conditional was expanded and the conditional dismissal of charges was introduced as a new type of discretionary prosecution implemented at the trial. The new provisions also made it an obligation for the public prosecutor to examine the possibility of applying conditionally deferred prosecution in the case of crimes punishable by up to three years of prison. This represents an about-turn in the regulation of criminal charges, because for these criminal offenses the principle of discretionary prosecution has become the main principle, rather than a departure from the principle of mandatory prosecution. The 2011 Criminal Procedure Code marked the ending of the trend of expansion of discretionary prosecution – discretionary prosecution at the trial was abolished and the public prosecutor no longer had the obligation to examine whether there was any room for conditionally deferred prosecution for each of the charges, which once again made discretionary prosecution an exception, rather than the main principle which exists side-by-side with the principle of mandatory prosecution.[2]

Likewise, guided by the idea to separate procedural roles, the legislator rightfully left the issue of criminal prosecution and therefore also of its deferral in the sole jurisdiction of the public prosecutor as the participant in the proceedings who is in charge thereof. In fact, the legislator abandoned the solution under which any deferral of criminal prosecution depended on the consent of the injured party. This position is guided by the belief that the public prosecutor, as the state authority in charge of, among other things, looking after the rights of the injured party, will properly protect the interests of the injured party, so here, too, he has been given the possibility to make decisions freely.[3]

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2 Bejatović S. i dr., *Primena načela oportuniteta u praksi, izazovi i preporuke*, Beograd, 2012, pp. 13–14.
3 Ilić G. i dr., *Komentar Zakonika o krivičnom postupku*, Beograd, 2012, pp. 603-604.

Moreover, the public prosecutor most frequently finds out about criminal offenses and their perpetrators from criminal complaints he receives, after which he has at his disposal several ways in which he can act in connection with these findings. Before making the final decision, he may conduct different checks of assertions contained in the criminal complaint, initiate proceedings or dismiss the criminal complaint and, finally, he may resort to the conditional deferral of criminal prosecution.

CRIMINAL COMPLAINTS AND THEIR FILING

A criminal complaint represents an informal document through which the competent authority (primarily the prosecutor, although the complaint may also be filed to the court and the police, who will receive it and immediately send it to the prosecutor) is notified, in an appropriate way, that a criminal offense has been committed, or that the person submitting the criminal complaint has the reason to believe that the criminal offense which represents the subject matter of the complaint has been committed. It represents neither a charging document,[4] nor is it *per se* evidence in criminal proceedings. Although a criminal complaint is an informal document, i.e. although the Code neither stipulates what it must contain, nor defines some necessary or desirable elements of its format, if a criminal complaint is filed by an authorized official person, or a state authority, it will be made in writing and, as a rule, it will have the appropriate formal contents. In practice, criminal complaints are most frequently filed in writing. Because of the very fact that the Code does not regulate its mandatory contents, or any special form, formal shortcomings do not constitute a reason for dismissing a criminal complaint.[5]

State and other bodies, legal and natural persons report criminal offenses which are prosecutable *ex officio* about which they were informed or they learned in other manner, under the conditions stipulated by law or other regulation (Article 280 paragraph 1). It is stipulated by the Criminal Code in which cases a failure to report a criminal offense represents a criminal offense (Article 280 paragraph 2). These are two criminal offenses referred to in Articles 331 and 332 of the Criminal Code: "Failure to Report the Preparation of a Criminal Offense" and "Failure to Report a Criminal Offense and Offender."

The submitter of the criminal complaint will relate details known to him and undertake measures to preserve the traces of the criminal offense, objects on which or by means of which the criminal offense was committed, and other evidence (Article 280 paragraph 3). Unlike the previous legal solution, where only the police or other state bodies had such an obligation, the legislator now expects from all possible submitters of criminal complaints, including ordinary citizens, to state the evidence they know of and undertake measures aimed at preserving the traces of the criminal offense, objects on which or by means of which the criminal offense was committed as well as other evidence together with the criminal complaint. This is an instructive provision, especially in the case of ordinary citizens. Up to a point, they can be expected to present the evidence they know of together with the criminal complaint; this is actually something that goes without saying, because, as a rule, an average citizen would know, or would have to know that if he files a criminal complaint, he certainly must have certain evidence, regardless of whether this particular submitter of the criminal complaint has any idea what evidence is in terms of the criminal procedure law. However, one can hardly expect from citizens, as submitters of criminal complaints, to make active steps in connection with evidence, i.e. to undertake measures aimed at preserving physical evidence in that specific case. Such a thing can primarily be requested from the police and, to an extent, from state authorities in general, especially from those whose competences are similar to those of the police. Ordinary citizens cannot be requested to do so, because they might not know at all what the "traces of the crime" are, or what constitutes "objects on which or by means of which the criminal offense was committed" or, generally speaking "other evidence" in any specific case.[6] Nevertheless, although citizens are not expected to be skillful in collecting traces, which is a feature of authorities specialized for this line of work, the legislator believed that, based on their general and professional experience, they could be expected to undertake measures that prove to be necessary in the specific case (taking photographs of the traces, securing the scene of the crime until the arrival of official persons, etc).[7] Of course, even if citizens fail to do so, they will not suffer any consequences.

A criminal complaint is submitted to the competent public prosecutor, in writing, orally, or by other means (Article 281 paragraph 1). It may be signed or unsigned, anonymous or signed by a pseudonym. A signed complaint may be signed with one's real or false name. If one signs the complaint using a false name, this is not considered to be the criminal offense of forging of an official document, because criminal complaints are neither official documents nor evidence.[8] In practice, there are quite a lot of good and

4 A charging document is an indictment, a motion to indict, a private lawsuit and a motion to pronounce a security measure, but also a term serving as a general expression for an act by the prosecutor containing the elements of the criminal offense or unlawful offense determined by law as a criminal offense (Article 2 paragraph 1 item 10 of the CPC).
5 Škulić M., *Krivično procesno pravo, posebni deo*, Beograd, 2008, p. 9.
6 Škulić M., *Krivično procesno pravo*, Beograd, 2014, p. 299.
7 Ilić G. i dr., *Komentar Zakonika o krivičnom postupku*, Beograd, 2012, p. 597.
8 Sijerčić-Čolić H. i dr., *Komentari zakona o krivičnom/kaznenom postupku u Bosni i Hercegovini*, Sarajevo, 2005, p. 585

well-grounded criminal complaints that are either not signed at all or are signed with a pseudonym (real or false). The fact that a complaint is anonymous or signed with a pseudonym must not serve as a reason for not acting in connection with it.

If a criminal complaint is submitted orally, a transcript will be made thereof and the submitter will be cautioned about the consequences of false reporting (Article 281 paragraph 2), i.e. that false reporting is a criminal offense regulated in Article 334 of the Criminal Code.[9] The submitter of the complaint is cautioned about the consequences of false reporting for two reasons: a) factual reason: to reduce in another way the possibility of submission of false reports, as well as to "pressurize" submitters in some way so as to make them refrain from false reporting, and b) criminal law reason: because this rules out the possibility that the submitter of the false complaint might say that he was acting in an erroneous belief, i.e. he cannot claim that he did not know that false reporting was a criminal offense. However, on its own, the omission to caution the submitter of the complaint about the consequences of false reporting does not result in any special consequences regarding the possibility to subsequently prosecute the submitter of a false complaint. Indeed, he could say that he acted in an erroneous belief that false reporting was not a criminal offense, but in view of the otherwise very restrictive position of our case law regarding the issue of possible justification of the erroneous belief that false reporting is not a criminal offense on the one hand, and the fact that it is generally known that false reporting is a violation, on the other, one could hardly expect the submitter of a false report to have any success with that type of defense.[10]

If the criminal complaint is presented by telephone or other telecommunications media (radio, etc.) an official note will be made, and if the criminal complaint is submitted by electronic mail it will be saved on an appropriate recording medium and printed.

If a criminal complaint is submitted to the police, an incompetent public prosecutor or a court, they will receive the criminal complaint and deliver it to the competent public prosecutor immediately (Article 281 paragraph 3). In practice, citizens most frequently file criminal complaints to the police.

ACTIONS TAKEN BY THE PUBLIC PROSECUTOR UPON RECEIVING A CRIMINAL COMPLAINT

In practice, criminal complaints filed to the public prosecutor are frequently insufficiently substantiated and do not provide a sufficient basis for deciding on further actions. Criminal complaints frequently contain only general assertions of illegal actions, with insufficient corroboration. Moreover, complaints frequently only present ways in which evidence can be collected (witnesses, some documents, etc.), without making any mention of their contents and specific links with the subject matter of the complaint. In such and similar situations, as well as when the public prosecutor "has heard" that a particular crime has been committed, the prosecutor has at his disposal a mechanism for checking the filed criminal complaint or his own findings. This is one of the most important and most effective mechanisms which the public prosecutor has at his disposal in the pre-investigative stage of proceedings and it enables him to be successful in selecting cases to which further time and material resources will be dedicated through an investigation, and to distinguish them from those in which this is not the case.[11]

Once he receives a criminal complaint, the public prosecutor can act in one of four ways: he can a) initiate criminal proceedings; b) collect information in connection with the criminal complaint which is necessary in order to make a decision thereon; c) act in accordance with the principle of discretionary prosecution, either through conditionally deferred prosecution, or unconditionally, where the criminal complaint is dismissed for reasons of fairness; d) dismiss the criminal complaint. If, based on the criminal complaint, the public prosecutor cannot assess if assertions made in the complaint are probable, or if the data provided therein is insufficient for him to be able to decide whether to conduct an investigation, or if he finds out in some other way that a criminal offense has been committed, the public prosecutor may collect the necessary data himself (Article 282 paragraph 1). Also, under the conditions referred to in Article 288 paragraphs 1 to 6 of the Criminal Procedure Code, he may request citizens to provide information. And finally, he may request from public and other authorities and legal persons to provide the necessary information. The prosecutor will decide on the appropriate option on a case-by-case basis.

Namely, after he finds out from the criminal complaint that a crime prosecutable *ex officio* has been committed, or that there is a certain degree of likelihood that such a criminal offense has been committed, he may act in the following ways:

9 The Code envisions a prison sentence of between three months and three years for the basic form of the criminal offense of false reporting, for the more serious form, a prison sentence of between six months and five years is envisioned, while for two less serious forms, the Code envisions a fine or a prison sentence of up to one year.
10 Škulić M., *Komentar Zakonika o krivičnom postupku*, Beograd, 2007, p. 768.
11 Ilić G. i dr., *op. cit*., p. 600.

1) If he assesses, based on the evidence provided together with the criminal complaint or evidence already in possession of the public prosecutor, that there are grounds for suspicion that a criminal offense prosecutable *ex officio* has been committed and that the identity of the suspect is known, but that there is still insufficient evidence for reaching the necessary level of suspicion for filing an indictment, the public prosecutor will issue an order on conducting an investigation;
2) If he assesses, based on the evidence that is already in his possession, that the necessary level of suspicion for filing an indictment against the person who is reported to be the perpetrator has been reached, and that there is no need for conducting an investigation before indicting the perpetrator, the public prosecutor will file an indictment;
3) In the case of criminal offenses for which summary proceedings are applicable, the public prosecutor may file a motion to indict if he assesses that he has sufficient evidence for charging the perpetrator in summary proceedings even without additional collection of evidence during the pre-investigative proceedings;
4) If, based on the criminal complaint, the public prosecutor cannot assess if assertions therein are probable, or if the data in the complaint do not provide sufficient grounds to decide whether to conduct an investigation, or if the public prosecutor finds out in some other way that a criminal offense has been committed, the public prosecutor may: a) collect the necessary data himself; b) request citizens [to provide information], under the general legal conditions that refer to the holding of so-called interviews, i.e. collection of information from citizens; or c) submit a request to public and other authorities and legal persons to provide the necessary information, where they are not authorized to assess how justified the prosecutor's request is and to accept or refuse to act in connection with the request based on their assessment. Also, the public prosecutor has the appropriate mechanisms of legal procedure at his disposal if his requests are not observed, and so, a responsible person may be fined up to 150,000 dinars for failing to comply with the request of the public prosecutor, and if, after being fined, the responsible person still refuses to provide the necessary information, another fine in the same amount may be imposed on him once again. An appeal against the decision imposing the fine is decided by the judge for the preliminary proceedings and the appeal does not stay the execution of the ruling;[12]
5) If he is unable to undertake actions aimed at checking the assertions contained in the criminal complaint by himself, or where the validity of the assertions contained in the criminal complaint cannot be decided upon on the basis of the complaint alone, or where there is insufficient data for deciding on whether to initiate criminal prosecution, or if the public prosecutor himself knows something that needs to be checked about the committed criminal offense, the public prosecutor will request from the police to collect the necessary information and to undertake other measures and actions aimed at uncovering the criminal offense and its perpetrator. The police are required to act in accordance with the request of the public prosecutor and to notify him about the measures and actions they have undertaken not later than 30 days from the date of receiving the request. If the police fail to act in accordance with the request, the public prosecutor has at his disposal some mechanisms of legal procedure aimed at controlling them;[13]
6) In case of criminal offenses for which such a mechanism of legal procedure is possible, the public prosecutor may apply the principle of discretionary prosecution in connection with the filed criminal complaint;
7) The public prosecutor may issue a decision on dismissing the criminal complaint when, either on the basis of the very contents of the criminal complaint, or after checking the assertions contained therein on his own or through the police, assesses that there are legal grounds for the dismissal of the criminal complaint, i.e. that there are no grounds for criminal prosecution in that specific case.[14]

DISMISSAL OF A CRIMINAL COMPLAINT

The public prosecutor will dismiss a criminal complaint by a decision if the complaint itself contains one of the following alternative reasons:

12 The public prosecutor, state and other authorities or legal persons have the obligation, while collecting or providing information, to act carefully, respecting the dignity and good reputation of the person to which this data refers.
13 If the police or other state authority fails to act in accordance with the public prosecutor's request to collect necessary information and to undertake other measures and actions with the aim of uncovering the criminal offense and the perpetrator, the public prosecutor will immediately notify the head of that authority and, if necessary, also the competent minister, government or competent working body of the national assembly, and if within 24 hours from the moment when the authority head has received such information, police and other state authorities do not act in accordance with the public prosecutor's request, the public prosecutor may request the initiation of disciplinary proceedings against the person he deems responsible for the failure to act in accordance with his request.
14 Škulić M., *Krivično procesno pravo*, Beograd, 2014, pp. 300-301.

1) A reason that pertains to the offense to which the criminal complaint refers – if the reported offense is not a criminal offense which is prosecutable *ex officio*; here it should be noted that, regardless of the omission of the legislator to state it specifically, this reason should also include cases where the reported criminal offense is not a criminal offense at all;[15]
2) Reasons that pertain to lasting procedural impediments – if the statute of limitations has expired, or the offense is encompassed by an amnesty or a pardon, or there exist other circumstances which permanently exclude prosecution (e.g. the reported person has been acquitted or convicted for this criminal offense by a final judgment, or the indictment has been rejected by a final decision, or the proceedings have been discontinued by a final decision);
3) Insufficient evidence is the reason - there are no grounds for suspicion that a criminal offense prosecutable *ex officio* has been committed (Article 284 paragraph 1 item 3).

The public prosecutor will notify the injured party within eight days about the dismissal of the criminal complaint and reasons thereof and advise him of his rights (Article 284 paragraph 2). Namely, the injured party is entitled to submit an objection to the immediately higher public prosecutor within eight days of receiving the notification of the dismissal of the criminal complaint, or within three months of the date when the public prosecutor dismissed the complaint, if the former was not notified thereof. Acting on the complaint, the immediately higher public prosecutor will within 15 days of receiving the complaint reject or accept the complaint by a decision against which an appeal or complaint is not allowed. If he decides to uphold the complaint, the public prosecutor will issue a compulsory instruction to the competent public prosecutor to undertake criminal prosecution (Article 51).

Moreover, the public prosecutor has the discretion to decide not to initiate criminal proceeding despite the existence of statutory conditions if this is in the public interest and in the interest of the purpose of criminal proceedings, with the aim of saving resources and ensuring the efficiency of criminal proceedings through the reduction of caseload pertaining to minor crimes, which means that problems resulting from long criminal proceedings and related costs are excluded. This paves the way for a greater engagement and dedication of the prosecution and the court to more complex criminal cases.[16] Also, there is a difference between unconditional and conditional deferral of prosecution, i.e. the principle of discretionary prosecution.

Namely, a criminal complaint may be dismissed (rather than having an obligation, the prosecutor has only the possibility to act in this way) in case of unconditional discretionary prosecution, where the criminal complaint is dismissed for reasons of fairness. Three cumulative conditions need to be met for the implementation of this instrument: a) that this is a criminal offense punishable by up to three years of prison; b) that the suspect, as a result of genuine remorse, has prevented the occurrence of damage or has already indemnified the damage in full; and c) that, in view of the circumstances of the case, the public prosecutor finds that pronouncing a criminal sanction would not be fair. If the public prosecutor uses this possibility and dismisses the criminal complaint, the injured party does not have the right to complain to the immediately higher public prosecutor. This solution could be criticized, because if the prosecutor, for example, thinks that the reported criminal offense is not a criminal offense at all, the injured party has the right to complain, and if the prosecutor believes that a criminal offense has been committed, but does not want to initiate proceedings for reasons of fairness, the injured party does not have this right. It is debatable why, in one case, the injured party is allowed to complain and thus initiate the control procedure, i.e. request the decision of the immediately higher prosecutor, while in the other, similar situation (when on top of that the competent prosecutor believes that a criminal offense has been committed), such a possibility does not exist. A better solution would be if the legislator, in order to protect the rights of the injured party, which is the intention of modern procedural codes, allowed the injured party the right to complain in this situation as well.

DEFERRAL OF CRIMINAL PROSECUTION

The deferral of criminal prosecution is one of the forms of departure from the principle of mandatory prosecution. The principle of discretionary prosecution is the opposite of mandatory prosecution – in it, instead of having the obligation to prosecute all perpetrators of criminal offenses prosecutable *ex officio*, the public prosecutor has the possibility to assess whether the criminal prosecution is justified. The need to avoid long and expensive criminal proceedings for less serious criminal offenses lies in the core of this instrument, as does the belief that, especially in the case of these criminal offenses, restorative mechanisms should prevail over those which are primarily retribution-oriented. Namely, instead of criminal proceedings and a sanction, the defendant is offered the possibility to perform some kind of community service,

15 *Ibid.*, p. 301.
16 Vučković B., "Oportunitet krivičnog gonjenja i optuženje", *Optuženje i drugi krivičnopravni instrumenti državne reakcije na kriminalitete*, Zlatibor, 2014, p. 371.

and in return get, initially, the deferral of criminal prosecution, and, eventually, the dismissal of charges if he fulfills the undertaken obligations.[17] In fact, this instrument is based on the idea of rationalizing the criminal judiciary, reducing the caseload of courts, and finding more efficient and humane measures of social and legal reaction towards some perpetrators.[18] It represents a hybrid, and, according to its character, a mixed instrument of criminal procedure, which has elements of both the classical non-initiation of criminal proceedings for the lack of purpose, and the elements of pardon granted to a perpetrator if he fulfills certain obligations and thus deserves this specific type of abolishment. In view of the character of these obligations, which are similar to an extent to some criminal sanctions, this instrument can also, up to a point, achieve the purpose of criminal punishment without the imposition of a formal punishment, without some usual detrimental consequences of a sentence, and without the stigmatization of convicted persons.[19]

The public prosecutor may postpone criminal prosecution for criminal offenses which are punishable by a fine or a sentence of up to five years of prison if the suspect accepts one or more of obligations that may be divided into four groups according to their nature: 1) reparation-oriented/restorative obligations; 2) humanitarian obligations; 3) medical/psychological obligations; and 4) a mixed obligation. Based on this division of obligations that are imposed on the suspect in the case of deferral of prosecution, and with their contents as the criterion, one can conclude that, in terms of their contents, these obligations are very similar to some criminal sanctions, or court decisions, and so: 1) obligations of the reparation-oriented/restorative character are similar to restitution; 2) obligations of the humanitarian character resemble certain types of punishment – payment of an amount in favor of a humanitarian organization, fund or public institution is similar to a fine, while community or humanitarian service resembles the punishment of labor in the public interest; 3) medical/psychological obligations are similar to the security measures of medical character; 4) only the mixed obligation cannot so easily and straightforwardly resemble a particular criminal sanction, or court decision, but its part that refers to the observation of limitations imposed by a court decision also resembles some security measures.[20]

Such a great resemblance between obligations accepted by the suspect, on the one hand, and criminal sanctions, on the other, constitutes a basis for the claim that the perpetrator of a criminal offense is thus still sanctioned in a way. In connection with this, the conditionally deferred prosecution in the case of which the prosecutor will dismiss charges if the suspect fulfills some obligations, represents some kind of bargaining, i.e. an agreement between the public prosecutor and the suspect. Namely, the agreement is reflected in the fact that the suspect should agree with the order of the public prosecutor, i.e. accept to fulfill the imposed obligation, where he is completely free to decide whether to accept and then also whether to fulfill the relevant obligation or not. Based on the wording of the code, it is evident that this is a specific agreement, because the legislator, for example, says that the public prosecutor will define a time limit during which the suspect must fulfill the *undertaken* obligations. Therefore, if one is undertaking obligations, it goes without saying that they have accepted, or agreed on the undertaken obligations. If the suspect does not agree, that is, if he does not accept the "agreement", or "bargain" with the public prosecutor, and if he refuses to fulfill the obligation referred to in the order issued by the public prosecutor, this instrument will not be applied and the public prosecutor will initiate criminal proceedings. Since this is a criminal offense punishable by a fine or a prison sentence by up to five years, summary proceedings will be held. Although conditionally deferred prosecution represents some kind of agreement between the public prosecutor and the suspect, one must stress that - strictly formally and in the context of the wording used in the Criminal Procedure Code - this instrument, nevertheless, does not belong to the agreements concluded between the public prosecutor and the defendant, which are divided into: plea agreements (Art. 313-319),[21] agreements on testifying of defendants (Art. 320-326)[22] and agreement on testifying by a convicted person (Art. 327-330).

However, despite the observation that this is not a plea agreement, one must take note of the fact that the public prosecutor must hold a conversation with the suspect, in which the two should agree on the implementation of this instrument. During those "negotiations" the suspect does not have to have a defense counsel, which might be rightfully criticized, that is, it would be good to envision mandatory defense in the case of this instrument, too. Namely, although, formally speaking, we are not talking about the admission of a criminal offense, and proceedings are not initiated, the suspect indirectly admits that he has committed the criminal offense, because, if he were not admitting, the question would be, for example, why is he agreeing to remove the detrimental consequence which occurred as a result of the criminal offense which he did not commit or to pay the incurred damage. If he were not "admitting" the commission of the criminal offense, it would be logical for him to refuse to accept or to refuse to fulfill one or several obligations that the public prosecutor wishes to impose on him in connection with the crime he did not commit. One of

17 Ilić G. i dr., *op. cit*., p. 603.
18 Grubač M., Vučković B., *Komentar Zakonika o krivičnom postupku Crne Gore*, Tivat, 2010, p. 656.
19 Bejatović S. i dr., *op. cit*., pp. 32-33.
20 Škulić M., *op. cit*., pp. 302-303.
21 More in: Delibašić V., "Plea agreement", *Archibald Reiss days*, Volume III, Belgrade, 2014, pp. 263-278.
22 More in: Delibašić V., "Sporazum o svedočenju okrivljenog", *Reforma krivičnog prava*, Kopaonik, 2014, pp. 213-233.

the main motives for the suspect's acceptance of the obligation proposed to him by the public prosecutor despite the fact that he did not commit the crime of which he is charged is the fear of possible initiation and holding of criminal proceedings, or of its outcome. The suspect might not want to run any risks and fight for acquittal in court proceedings; also, he might not want to go through the agony and all other embarrassments brought by court proceedings (e.g. neighbors' distrust of the person against whom criminal proceedings are being held, etc.). By accepting the obligations from the order, though, the suspect can avoid the consequences of criminal proceedings, such as, for example, that he will not be able to get a job with a particular employer or that he will not be able to get a particular job. Finally, the suspect can also make a pragmatic decision, because he believes that it would be cheaper for him to accept the ordered obligation than to venture into a trial in which, among other things, he would have to bear the costs of defense (expenditures and fees of the defense counsel and professional consultant, costs of expert examination, etc.), i.e. that it would be wiser for him to spend far less time and energy on fulfilling the obligations from the order than to participate in an exhausting trial. Because of these and other possibilities as a result of which an innocent person might "admit" a criminal offense he did not commit,[23] and in order to protect such persons it would be good to prescribe mandatory defense whenever this instrument is applied.

The problem with the acceptance of obligations by a suspect who did not commit the crime of which he is charged is also reflected in the fact that the relevant criminal offense is thus considered to be solved, while the real perpetrator remains undetected and therefore also unprosecuted, which additionally complicates the implementation of this instrument.

In line with the above mentioned division of obligations into four groups, the specific obligations are defined as follows:

a) Reparation-oriented/restorative obligations, which include: 1) rectifying detrimental consequences caused by the commission of the criminal offense or the indemnification of the damage caused, and 2) the payment of payable alimonies.[24]

b) Humanitarian obligations, which include: 1) payment into the account designated for the payment of public revenues of a certain amount of money, which will be used for humanitarian or other public purposes. These funds are awarded to humanitarian organizations, funds, public institutions or other legal or natural persons, after a public call issued by the ministry in charge of judicial affairs. The public call procedure is implemented by a commission, which is established by the minister in charge of judicial affairs. As an exception only, the commission may, at the request of a natural person and without the issuance of a public call, propose that such funds be used for the treatment of a child abroad, if the funds for the treatment of that child have not been secured by the Republic Health Insurance Fund. The implementation of the public call, criteria for the distribution of funds and the composition and method of work of the commission, are regulated by a document issued by the minister in charge of judicial affairs, while the decision on the distribution of funds is adopted by the Government of the Republic of Serbia.[25] 2) Performing certain community service or humanitarian work.

c) Medical/psychological obligations, which include: 1) the submission of the suspect to an alcohol or drug treatment program, and 2) the submission of the suspect to psychosocial treatment for the purpose of eliminating the causes of violent behavior.

d) The mixed obligation, which would also most frequently be of restorative nature in practice, which is the fulfillment of an obligation imposed by a final court decision, or the observation of a restriction imposed by a final court decision. For example, this would be the case with one type of the criminal offense of abduction of an underage person (Article 191 paragraph 2 of the Criminal Code), which exists when a parent to whom the custody of the child was given after the divorce prevents contact between the child and the other parent or persons close to the child, by preventing "the enforcement of a decision of the competent authority setting out the manner of maintaining personal relationships between an underage person and a parent or other relative". [26]

Hence, these are different obligations whose fulfillment may be requested by the public prosecutor depending on the specific case and taking into account the objectives of this instrument. Although it would be very difficult to make any rules in that sense, still, in view of the nature of the already mentioned obligations, it would be appropriate if the suspect were obliged primarily to rectify the detrimental consequence or indemnify damage, if some damage was caused to the injured party. Other obligations might be imposed as either primary or secondary obligations, depending on each specific case. [27]

23 On the possibility and reasons why an innocent person might admit the commission of a criminal offense, see: Škulić M., Ilić G., *Reforma u stilu "jedan korak napred - dva koraka nazad"*, Beograd, 2012, pp. 93-98, and Simonović B., Turanjanin V., "Sporazum o priznanju krivice", *Kriminalistički i krivično procesni aspekti dokazivanja*, Banja Luka, 2013, pp. 27-28.

24 This obligation may be imposed only in case of the criminal offense of Failure to Provide Maintenance referred to in Article 195 of the Criminal Code

25 Škulić M., *op. cit*., p. 303.

26 *Ibid*.

27 Ilić G. i dr., *op. cit*., p. 604.

The public prosecutor decides on the deferral of criminal prosecution by an order. In the order on deferring criminal prosecution the public prosecutor will set a time limit during which the suspect must fulfill the obligations undertaken, with the proviso that the time limit may not exceed one year. Oversight of the fulfillment of obligations is performed by an officer of the authority in charge of the execution of criminal sanctions, in accordance with a regulation issued by the minister in charge of the judiciary (Article 283 paragraph 2). The implementation of this provision means that the public prosecutor has to carry out certain activities aimed at cooperating with the injured party and the suspect in order to determine whether the obligations have been fulfilled. [28]

The deferral of criminal prosecution is just a transitional phase in these proceedings. The final goal is that the suspect fulfills the undertaken obligations and that charges be dropped.[29] If the suspect fulfills the imposed obligation within the time limit within which the criminal prosecution may be deferred and which is set in the order of the public prosecutor, the public prosecutor will dismiss the criminal complaint by a ruling and notify thereof the injured party (Article 283 paragraph 3), who does not have the right to file a complaint to the immediately higher public prosecutor. Such a solution might be criticized, because the injured party may be dissatisfied with the prosecutor's decision, or might believe, for example, that the suspect did not fulfill the undertaken obligation completely and, for the purpose of protection of the rights of the injured party, the possibility should be given to the injured party to file a complaint to the immediately higher public prosecutor. In connection with the injured party, one should also say that the only thing remaining for him is to initiate civil proceedings in order to get restitution if he was not completely or partly indemnified by the suspect despite the implementation of mechanisms envisioned by this instrument.

A partly disputable issue might be whether this instrument may be implemented, or whether the public prosecutor will dismiss the complaint if the suspect only partly fulfills the undertaken obligation. The question would be completely warranted in a situation where the suspect did not fulfill the undertaken obligation for objective reasons. For example, the suspect may agree to pay a particular amount in favor of a humanitarian organization within a year, but six months later, after paying half of the agreed amount, he might lose his job and therefore also the possibility to fulfill the undertaken obligation. Although such and similar situations would justify the existence of a possibility of changing, or correcting the undertaken obligation, the legislator has not envisioned such a possibility, which means that the public prosecutor would have to initiate criminal proceedings even if the suspect did not fulfill the undertaken obligation for justified reasons. Since the traces of the initiated implementation of conditionally deferred prosecution, where the suspect, by partly fulfilling the undertaken obligation, conditionally speaking, has indirectly admitted the criminal offense he is charged with, would still exist in that case, it would be good if an obligation was imposed on the prosecutor to destroy the order and all related documents, in order to let the suspect be completely free to choose his method of defense and to prevent these documents from compromising the suspect's possible denial of the criminal offense during criminal proceedings. Likewise, the issue of the amount partly paid by the suspect under the order on conditional deferral of prosecution has not been solved in the case when the public prosecutor initiates criminal proceedings because only part of the undertaken obligation has been fulfilled. In that case, the acceptable solution would be to return this amount to the suspect, and the issue of possible punishment and indemnification would certainly be resolved during criminal proceedings.

Finally, one should say that the public prosecution has taken rather debatable positions in connection with the deferral of criminal prosecution for some criminal offenses. Therefore, for example, in connection with the criminal offense of illegal keeping of narcotics (Article 246a of the Criminal Code), despite the relevant legal provisions, this instrument was not implemented until February 24, 2011, when the Republic Public Prosecutor issued a recommendation on this criminal offense.[30] In this recommendation the Republic Public Prosecutor took the position that it would be justified to implement this instrument also on the criminal offense of illegal keeping of narcotics if, in addition to other conditions, the condition of the quantity being up to five grams of marijuana were fulfilled.

This position of the prosecution could hardly be defended using valid arguments. Namely, that the prosecution does not implement one of the provisions of the Criminal Procedure Code is unacceptable, but it is even less acceptable for them to explicitly rule out the implementation of an instrument regulated by the procedural law and thus change the will of the legislator. This could be partly understandable if the quantity of narcotics on which prosecutorial discretion may be applied were defined, but the reason for defining a specific type of narcotics is completely unclear. In connection with this, the question is why this instrument should be applied if the perpetrator has five grams of marijuana for personal use, on the one hand, while on the other, why it should not apply when the perpetrator for example possesses one gram of cocaine or a quarter of a gram of heroin for personal use.[31]

28 Radulović D., *Krivično procesno pravo*, Podgorica, 2009, p. 262.
29 Ilić G. i dr., *op. cit*., p. 604.
30 Preporuka Republičkog javnog tužioca A broj 478/10 od 24. februara 2011. godine.
31 Delibašić V., *Suzbijanje zloupotreba opojnih droga sa stanovišta krivičnog prava*, Beograd, 2014, p. 219.

Likewise, in the case of deferral of prosecution for the criminal offense of illegal possession of narcotics, the First Basic Public Prosecutor's Office in Belgrade has taken the position that the monetary amount which the suspect should pay must not be lower than 50,000 RSD, and that this amount can go up to 80,000 dinars depending on the quantity of marijuana possessed by the suspect and his personal circumstances.[32] The determination of the minimum amount that must be paid is justified, but it is unclear why the maximum amount that should be paid under the law has been thus limited.[33]

CONCLUSION

The principle of mandatory prosecution is the main and general principle of criminal procedure, while the principle of discretionary prosecution, which represents one of the ways of departing from the principle of mandatory prosecution, is an exception, because the public prosecutor may decide only exceptionally to defer or not to undertake criminal prosecution, under the conditions regulated by the Criminal Procedure Code. In the case of deferral of criminal prosecution, instead of criminal proceedings and sanctions, the suspect is offered the possibility to do some community service and in return get the deferral of prosecution at first and then, eventually, the dismissal of charges, if he/she fulfills the undertaken obligations. The need to avoid long and expensive criminal proceedings in the case of less serious crimes is the basis of this instrument, as well as a belief that, especially in the case of these crimes, restorative mechanisms should prevail over primarily retribution-oriented ones. The idea in the core of this instrument is actually aimed at rationalizing criminal judiciary, reducing the caseload of courts and finding more efficient and humane measures of social and legal reaction to some crime perpetrators. These reasons completely justify the existence and implementation of this instrument.

Great likelihood of the obligations undertaken by the suspect, on the one hand, and criminal sanctions, on the other, creates a basis for the claim that the perpetrator is thus still sanctioned in some way. In connection with this, the deferral of criminal prosecution in the case of which the suspect must fulfill a particular obligation in order for the prosecutor to dismiss charges represents a type of bargain, or agreement between the public prosecutor and the suspect. Namely, the agreement is reflected in the fact that the suspect should agree with the order of the public prosecutor, i.e. agree to fulfill the imposed obligation, where he is completely free to decide whether or not he will accept and then also fulfill this particular obligation. The wording of the law indicates that this is a specific agreement, because the legislator, for example, says that the public prosecutor will set a time limit within which the suspect must fulfill the undertaken obligations. So, if someone undertakes obligations, it means that this person has accepted the undertaken obligation or agreed to it. If the suspect does not agree, i.e. does not accept the "agreement" or "bargain" with the public prosecutor, and refuses to fulfill the obligation set out in the order of the public prosecutor, this instrument will not be applied and the public prosecutor will initiate criminal proceedings.

Because this is a specific agreement between the public prosecutor and the suspect, and because the rights of the suspect should be protected, it would be good to envision mandatory defense in the implementation of this instrument. Also, since the injured party does not have the right to file a complaint to the immediately higher public prosecutor either against the order to the suspect to fulfill certain obligations, or against the decision on dismissing the criminal complaint because the suspect has fulfilled the undertaken obligation, and for the purpose of protecting the rights of the injured party, the law should envision the right of the injured party in such cases to file a complaint to the immediately higher prosecutor in order to still have control of the implementation of this instrument.

Despite some minor technical and legal shortcomings, one should stress that this instrument is completely justified and that it should be implemented whenever the circumstances of each specific case allow so.

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CHINA'S WAR ON TERROR AND PUBLIC SECURITY ORGANS' COUNTER-TERRORISM STRATEGY

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Abstract: There has been an upsurge in terrorism and sabotage activities in China and China's national security is under threat. Based upon the statistics of the serious terrorist activities on China soil in the last two years and the alleged terrorists on the first three name lists published by the Ministry of Public Security, this study conducted a relatively empirical research on the features of terrorist activities in China and the results showed in the section on findings can be summarised as follows: more and more relatively younger and less educated terrorists get involved in the terrorist activities; the number of female terrorists is growing; dangerous articles and explosives such as controlled knives etc. are frequently used in terrorist attacks; government work locations like government departments below county level, township governments and village committees, especially public security organs, are the main targets; government officials, police, civilians and patriotic religion leaders are the main attack targets; the terrorists tend to carry out terrorist activities during National Holidays and important, sensitive periods, attempting at triggering social panic. The main factors that hindered China's counter-terrorism were then put forward including lack of profound understanding of China's war on terror, lack of counter-terrorism legislation and interagency information sharing deficiency. Given the current situations of China's fight against terrorism and in order to resolutely suppress the terrorists' rampant momentum, this study urged to raise awareness, construct a sound legal system of anti-terrorism, set up and develop intelligence sharing mechanism and propose the front line of counter-terrorism to take the initiative and pre-emptive strikes. In accordance with police day-to-day operations, this study stressed how to strengthen the fight against terrorism by enhancing 'People, Venues, Items' Control in the following aspects: strengthen terrorism-related people control and construct a terrorism-related key population database; strengthen hotels and venues control and implement the Hotel Guest Registration System; impose strict control over dangerous articles and explosives, especially the controlled knives and flammable and explosive materials etc. Public security organs need to constantly improve their law enforcement capacity and standards to safeguard social stability.

Keywords: fight against terrorism, police work, work strategy, intelligence and information.

CURRENT SITUATIONS OF CHINA'S WAR ON TERROR

Since 'July 5 incident' in Xinjiang, the terrorist activities in China have been active and proliferating. 'Three Evil Forces' in Xinjiang have carried out a series of terrorist attacks in many provinces in the Mainland China and China is facing increasingly serious terrorism threat. Public security organs have taken effective countermeasures, the current security situation in China is calm and stable and China maintains its social harmony, stability and development. However, the terrorist threat still exists, which can be elaborated in the followings.

1) Associated with the 'Three Evil Forces' of extremism, separatism and terrorism, the 'East Turkestan' terrorist forces, especially the 'East Turkestan Islamic Movement' (ETIM) constantly plotted and carried out terrorist attacks against the targets inside and outside China. Under such influence, a few groups were constituted by domestic terrorists, attempting to carry out terrorist attacks against government targets and even civilian. It has shown that the 'East Turkestan' terrorist forces, especially 'East Turkestan Islamic Movement' (ETIM) which collaborated with international terrorist organisations to sponsor, recruit and train terrorists and masterminded the terrorist activities within the territory of China, are the greatest terrorist threat facing China. Although most of the 'East Turkistan' terrorist attacks occurred inside China, they were affected by myriad international factors, of which 'Pan-Islamism' and 'Pan-Turkism' ideology (hereinafter referred to as the 'Dual-Pan') as well as hos-

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tile Western forces providing material and spiritual support, and complex situations in Central Asia, are the main drivers to push the 'East Turkistan' terrorist forces into terrorist activities.

2) The terrorist activities in the neighbouring areas of China spilled over, the infiltration of religious extremism into China has been without cease, which have threatened the security and stability in Xinjiang and other provinces and cities in China. The terrorist crimes occurring in China's Xinjiang and other regions have given rise to great concern both at home and abroad in recent years. Some scholars pointed out that the ethnic separatist forces that were proliferated abroad and infiltrated into China have become major hidden dangers to China's national security. According to the statistics of Xinjiang Public Security Department, more than 190 violent terrorist attacks were logged in Xinjiang in 2012, which increased dramatically compared to 2011, and the number of 'Lone Wolf' violent acts seemed to be on the rise[3]. In 2013, more than 100 terrorist groups were cracked down on in Xinjiang, 107 audio and video materials of 'East Turkestan Islamic Movement' propagating violent terrorism were confiscated[4]. The Tiananmen Square Jinshui Bridge 'October 28' incident of 2013 signified that the terrorist activities in China will not end for a long time, the terrorist attacks have been of normalisation and the challenges of counterterrorism faced by the Mainland China are increasing. The 2014 Kunming Railway Station 'March 1' incident marked the serious spillover of terrorist activities in China and their spread throughout the country. The following table of statistical information is a guide to some terrorist acts all over the country, especially in Xinjiang since 2013 (Table 1).

Table 1 *Serious Terrorist Activities On China Soil In 2013 And 2014*

Date	Location	No. of Terrorists	Weapons & Tactics	Targets	Casualties of Terrorists	Casualties of Police officers & civilians
Apr.23,2013	Seriqbuya, Bachu County, Kashgar, Xinjiang	25	Billhook knife, Gasoline	Social workers & Police officers	6 shot dead, 8 apprehended, 11 in a manhunt afterwards	15 killed, 2 wounded
Jun.26,2013	Luke ooze, Turpan shanshan county, Xinjiang	17	Broadsword, Gasoline	Local police station, Patrol Special Police, Township government, Construction site	11 shot dead, 4 wounded & apprehended	24 killed (including 2 police officers), 21 wounded including police & civilians
Oct.28,2013	Jinshui Bridge, Tiananmen Square, Beijing	3	Car crash then on fire, also backup of Billhook knife, Gasoline etc.	Tiananmen Square	3 dead in the car crash, 5 in a manhunt	2 killed, 38 wounded (including aliens)
Feb.14,2014	Uqturpan County, Xinjiang	12	Car crash, Billhook knife, Explosive Devices	Police patrol vehicles	8 shot dead, 1 apprehended, 3 dead of suicide bombing	2 police officers wounded, 2 civilians wounded
Jun.21,2014	Yecheng County, Kashgar, Xinjiang	28	Car crash, Explosive Devices	Office building of Yecheng County Public Security Bureau	13 shot dead	3 police officers wounded
Mar.1,2014	Kunming,Yunnan	8	Billhook knife	Train station	4 shot dead, 1 wounded & apprehended, 3 in a manhunt	31 civilians killed, 141 civilians wounded (40 in serious conditions)
Apr.30,2014	Urumuqi,Xinjiang	2	Explosive Devices	South train station	2 dead of explosion	1 civilian killed, 79 civilians killed

3 More than 190 violent terrorist incidents were logged in Xinjiang last year. [EB/OL]. http://club.china.com/data/thread/1011/2765/96/19/7_1.html.

4 Xinjiang Public Security Department interpreting 'Cracking Down On Violent Terrorist Activities In Accordance With Law Notice'. [EB/OL]. http://news.xinhuanet.com/legal/2014-05/26/c_126547764.htm.

May 22,2014	Urumuqi,Xinjiang	5	Car crash then on fire	Saybagh District Park	4 killed, 1 in a manhunt	31 civilians killed, 90 civilians wounded
Jul.28,2014	Shache County, Kashgar, Xinjiang	group	Billhook knife, Gasoline, Explosive Devices	Local police station, Township government, Village committee	59 shot dead, 215 apprehended	37 civilians killed, 13 civilians wounded
Jul.30,2014	Kashgar, Xinjiang	3	Brutally stabbing	Id Kah Mosque	2 shot dead, 1 apprehended	Juma Tayier Mullah killed
Oct.10,2014	Pishan, Hotan, Xinjiang	2	Daggers	Nearby County Public Security Bureau	2 apprehended	A policewoman with 2 months pregnancy killed
Nov.28,2014	Shache County, Kashgar, Xinjiang	group	Billhook knife, Explosive Devices	Shache County food street	11 shot dead	4 civilians killed, 4 civilians wounded

**All information in the above table was collected and summarised from in open-source reports of terrorist attacks. Open sources include XinhuaNet, CCTV.com, Xj.chiannews.com.cn, People.com.cn, Chinanews.com etc[5].*

FEATURES OF TERRORIST ACTIVITIES IN CHINA

Younger and low educated terrorists getting involved in the terrorist activities

The terrorists are mainly composed of the 'Three Evil Forces' inside and outside China and their blind followers, and there is a trend that relatively younger and low educated terrorists engage in the terrorist activities based upon the statistical analysis of data collected from those who conducted the recent terrorist activities.

There were three groups, a total of 25 terrorists identified successively by the Ministry of Public Security (MPS) in 2003, 2008 and 2012. A list of the first indentified alleged terrorists was released in December 2003[6]. There were 11 terrorists on the first list, among whom the youngest was 44 years old, the oldest was at the age of 64 and their average age was 50.6 by 2014; some of them had been engaged in terrorist activities as early as 1991, while some, at the latest, since 1997; as for the age when they began to engage them in terrorist activities, the smallest was 26-year-old, the oldest was 46 and the average age was 31.6 years old. The second name list of the indentified alleged terrorists was published in October 2008[7]. There were another 8 terrorists on the list, among whom the youngest was 37 years old, the oldest was 49 and their average age was 40.7 by 2014; some had been engaged in terrorist activities as early as 1996, while some, at the latest, since 2006; as for the terrorist activities starting age of these 8 alleged terrorists, the youngest was 21-year-old, the oldest was 31 and the average age was 25.8 years old. The third alleged terrorist list was released in April 2012[8]. Another 6 terrorists were indentified, among whom the youngest was 31-year-old, the oldest was at the age of 49 and their average age was 38.5 by 2014; some of them had been engaged in terrorist activities as early as 1994, while some, at the latest, since 2009; as for the age when these 6 terrorists began to engage in terrorist activities, the smallest was 26, the oldest was 37-year-old and the average age was 27.1 (Table 2).

5 Police cracked the case of '10·28' violent terrorist attack.[EB/OL].http://news.xinhuanet.com/legal/2013-10/30/c_117938784.htm. Case of Bachu County '4·23' serious violent terrorist attack in Xinjiang was cracked.[EB/OL]. http://news.xinhuanet.com/legal/2013-04/29/c_115594447.htm. Trial of first instance of Turpan Shanshan County '6·26' violent terrorist attack case in Xinjiang was adjudged.[EB/OL].http://news. cntv.cn/2013/09/12/ARTI1378996154745465.shtml. Case of Bachu County '4·23' serious violent terrorist attack in Xinjiang was cracked.[EB/OL].http://news.xinhuanet.com/legal/2013-04/29/c_115594447.htm. Trial of Shache County '7.28' violent terrorist attack in Xinjiang was adjudged.[EB/OL].http://www.xj.chinanews.com/html/V69/2014 /10/14/4732924390.htm. Case of Kunming '3·01' violent terrorist attack was cracked.[EB/OL].http://cpc.people.com.cn/n/2014/0304/c83083-24519260.html. Li Keqiang instructed: violent terrorist attack in Urumuqi was heinous, catch the terrorists as soon as possible.[EB/OL].http://www.chinanews.com/gn/2014/05-22/6201401.shtml. Two motorcycle-mounted thugs used sharp weapons to stab to death a policewoman in Xinjiang.[EB/OL].http://news.china.com/dom estic/945/20141013/18851653.html.

6 A list of the first identified 'East Turkistan' terrorist organisations and 11 alleged terrorists.[EB/OL].http://www.mps.gov.cn/n16/n9830 40/n1988498/1988553.html.

7 The Ministry of Public Security published the second list of the identified 'East Turkistan' alleged terrorists.[EB/OL].http://www.gov.cn/xwfb/2008-10/21/content_1126352.htm.

8 The Ministry of Public Security published the list of the third identified alleged terrorists.[EB/OL]. http://www.gov.cn/gzdt/2012-04/06/content_2107385.htm.

Table 2 *Alleged Terrorists On The First Three Lists Issued By The Ministry Of Public Security (MPS)*

Group Criteria	First (11 Alleged Terrorists)	Second (8 Alleged Terrorists)	Third (6 Alleged Terrorists)
Youngest by 2014 (Age)	44	37	31
Oldest by 2014 (Age)	64	49	49
Average age by 2014	50.6	40.7	38.5
Earliest year of engaging in terrorist activities	1991	1996	1994
Latest year of engaging in terrorist activities	1997	2006	2009
Smallest age to begin to engage in terrorist activities (Age)	26	21	26
Oldest to begin to engage in terrorist activities (Age)	46	31	37
Average age to begin to engage in terrorist activities	31.6	25.9	27.1

With regard to the age of alleged terrorists when they began to engage in terrorist activities, based upon the date collected from the first three groups of the terrorists indentified by the MPS (Table 2), it can be found that there is a trend that relatively younger terrorists get involved in the terrorist activities, which can be illustrated in the chart below (Chart 1).

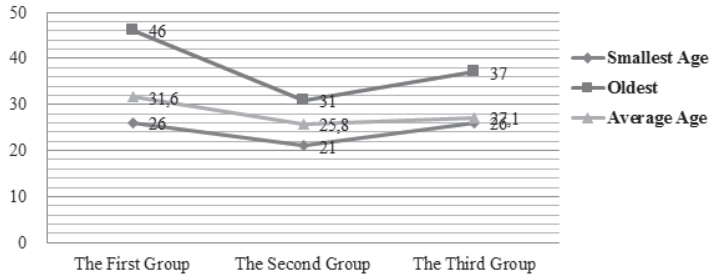

Chart 1 *Terrorist Activities Starting Age of the Alleged Terrorists on the First Three Lists Released by MPS*

As for education level, based upon the date of the alleged terrorists on the first three lists issued by the MPS, it was found that 6 terrorists finished primary school, 8 attended middle school, 2 completed technical secondary school, 4 went to high school, 2 attended university and the education level of another 3 was unknown (Chart 2). It can be seen that those terrorists are relatively low educated.

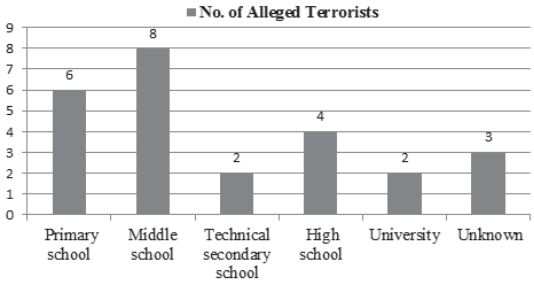

Chart 2 *Statistics of the Education Level of Alleged Terrorists on the First Three Lists Released by MPS*

Growth in the number of female terrorists

The number of female terrorists is increasing, which is another significant trend in the terrorist activities in recent years. According to the criminology research results, the number of male offenders is higher than female's in general, especially in violent crimes, of which the majority of criminals are male. It was also evident in the first three groups of 25 terrorists identified by MPS, whose gender is all male. However, the

number of female terrorist suspects has been in an apparent growth in the 'East Turkistan' terrorist activities in recent years. On March 7 2008, Guzalinur Turdi, a female terrorist suspect who was incited by the 'East Turkistan' terrorist organisations abroad, took China Southern flight CZ6901 from Urumqi to Beijing attempting to commit a suicide attack by igniting a soda can filled with gasoline[9]. On July 8 2008, police busted 2 violent terrorist groups successfully in clandestine terror dens in a residential community in Urumqi, arrested 10 terrorist group leaders and 35 terrorist suspects including 5 female members[10]. 2 women were involved in the serial bombings in Kuqa on August 10 2008[11]. From June to August 2013, the public security organs in Xinjiang tracked down more than 470 terrorists in total, among which women accounted for a significant proportion[12]. In Beijing Tiananmen Square Jinshui Bridge 'October 28' incident in 2013, 4 females participated in the terrorist attack including two women conducted the suicide attack directly[13]. In 2014 Kunming Railway Station 'March 1' violent terrorist incidents in Yunnan, there were a total of 8 terrorist suspects, among which 2 females were involved[14].

Frequent use of dangerous articles and explosives like controlled knives etc. in the terrorists attacks

Researchers have shown that the terrorists generally have the experience of receiving religious extremist 'brainwashing' by watching 'Jihad' videos, learning how to use matches, gasoline, and modified gas cylinders etc. to make explosive devices. In addition, the terrorists often use controlled knives such as broadsword and daggers in the terrorist acts. On March 1 2014, the terrorists used modified iron containers to make explosives and conducted explosion test by imitating the processes taught in the terrorism videos before they implemented the Kunming Railway Station terrorist attack in Yunnan; on the site of the attack, violent terrorists carried a few broadswords to conduct the serious terrorist crime. Moreover, it can be found in the statistic data shown in the Table 1 that controlled knives, gasoline and Improvised Explosive Devices (IEDs) were used in the 11 out of 12 terrorist activities, and the investigations also revealed that a large quantity of explosive substances were purchased and stored before these attacks. It is shown that public security organs had serious loopholes and blind spots of dangerous articles and explosives control.

Targeting State agencies and crowed public places

It was shown in the Table 1 that the terrorists mainly attacked government work locations, especially government departments below county level, public security organs, township government and village committee, in addition, crowded places such as parks and train stations and the like are the main attacking areas. The terrorist attacks that are conducted at such places are with very strong sense of declaration and pertinence, which are more likely to generate social panic.

Targeting government officials, police, civilians and patriotic religion leaders

Regarding the attack targets, government officials, police and civilians are the main targets. For instance, a policewoman was cruelly killed near a public security organ in October 2014, who was two months pregnant[15]. The reason why the State agencies and government officials are the main targets is that the terrorists take the State agencies as the significant symbol of state power and government officials as the backbone force against them. Terrorists choose to attack civilians with attempts of triggering social panic among the public and put the pressures on the governments. Besides, patriotic religion leaders are targeted as well. Juma Tayier Mullah was brutally killed by the terrorists in the '7·30' terrorist attack.

9 Gulazat•Tursun. On Individual Features of 'Eastern Turkistan' Terrorism and Its Future Developments [J].Contemporary International Relations, 2014, (1): 57.
10 Gulazat•Tursun. On Individual Features of 'Eastern Turkistan' Terrorism and Its Future Developments [J].Contemporary International Relations, 2014, (1): 58.
11 Make full efforts into tracking down the suspects of Kuqa bombing in Xinjiang.[EB/OL]. http://news.sohu.com/20080811/n258758088.shtml.
12 Gulazat•Tursun. On Individual Features of 'Eastern Turkistan' Terrorism and Its Future Developments [J].Contemporary International Relations, 2014, (1): 58.
13 Trial of Beijing Tiananmen Sauare Jinshui Bridge '10 · 28' violent terrorist attack sentence.[EB/OL]. http://www.guancha.cn/FaZhi/2014_06_16_238201.shtml.
14 Kunming violent terrorist crime was solved: a group of 8 terrorists, 4 killed, 4 arrested[EB/OL]. http://news.takungpao.com/mainland/focus/2014-03/2319574.html. Kunming Railway Station violent terrorist crime was indicted: 3 executed, the female life sentence. [EB/OL]. http://news.takungpao.com/mainland/focus/2014-09/2728451.html.
15 Kun Two motorcycle-mounted thugs used sharp weapons to stab to death a policewoman in Xinjiang.[EB/OL].http://news.china.com/domestic/945/20141013/18851653.html.

Conducting terrorist activities in National Holidays and important sensitive periods

In regard to the timing, the terrorists tend to carry out terrorist activities in National Holidays and important sensitive periods. For instance, Kunming Railway Station terrorist incidents occurred on the period of the National People's Congress and the Chinese Political Consultative Conference (NPC & CPPC).

MAIN FACTORS HINDERING CHINA'S ANTI-TERRORISM

The violent terrorist incidents have been made frequent in China at present, which wreck havoc and have had a huge impact on society, and the reasons that led to the situations mentioned above are various.

No profound understanding resulting in the lack of precaution

There are three phases in the development history of terrorist activities in China. The understanding of each stage apparently cannot keep pace with the time.

In the first phase, because of lack of propaganda before 2000, many people did not think that serious terrorist activities would occur in China, even after '9/11' attacks in the U.S., a great number still uphold an opinion that China is untouchable by terrorism.

The second phase is the period of 2000 to 2010, many believed that the 'Three Evil Forces' sabotage activities existed only within the western regions of China and would not pose a threat to the whole country, although they recognised the great threat imposed by the 'East Turkestan' separatist forces to Xinjiang's security.

In the third phase, it is after 2010 that people were still not fully aware that terrorist groups had engaged in planning and preparations for possible acts of terrorism in not only the western but also the central regions of China. The Tiananmen Square Jinshui Bridge 'October 28' incident of 2013 was like a thunderbolt out of clear sky, as many people had no idea that terrorists could even conduct terrorism and sabotage activities in Beijing.

On the whole, a lack of profound understanding of terror crimes' evolvement and development resulted in the significantly inadequate preparation for the fight against terrorism, which consequently got China into a passive anti-terrorism.

Lack of counter-terrorism legislation and current regulations scattered throughout different laws

The Anti-terrorism Law of the People's Republic of China (Draft) has been released in November 2014. There was basically no anti-terrorism legislation in China formerly and only conventional external security issues like 'against espionage sabotage acts' is covered in 'National Security Law', which is not referred to deal with terrorism. Although the Ministry of Public Security designated and published three name lists of alleged terrorists and terrorist organisations, which have provided policy guidance pertinent to counterterrorism, strictly speaking, designation confirmation is not legal norm.

Imperfect intelligence sharing mechanism

Regarding the terrorist activities that have occurred, the public security organs had limited capability of obtaining effective intelligence and information beforehand to prevent the hits. It is without doubts that how crucial it is to get timely access to effective information in the fight against terrorism, however, the 'fragmented' system of public security organs contribute to the 'information silos'. Different public security departments like Counter-terrorism, State security and Public order and so on and the agencies at different levels of same departments all have some information about key population who are likely to engage in terrorist activities. Due to the lack of sound information sharing mechanism and the division of jurisdiction, the interagency information sharing is deficient. Moreover, this is also the case between the public security organs, military forces and other state authorities that share the responsibilities of anti-terrorism.

Low awareness of 'People, Venues, Items' Control as the first line of defense against terrorism

We used to attribute those to terror crimes' tremendous destructiveness and so on, while incapable of realising that 'People, Venues, Items' Control is the first line of defense against terrorism, and it is this reason that is the primary cause of the passive fight against terrorism. In May 2014, the Ministry of Public Security held a work meeting on special counterterrorism operations for all nationwide public security organs, instructing to carry out the essential work such as key population screening and dangerous articles and explosives check and control. Since then, the public security organs across the country inspected and found out nearly 280,000 houses for rent that were used for terrorism-related activities and more than 17,000 shops where terrorists might be hidden, screened the key population of nearly 50,000, discovered and eliminated a large number of suspicious clues and seized the dangerous articles including firearms and ammunitions etc. in quantity, therefore, all provincial public security organs gained the understanding of current situations[16] in general. However, '3·01' incident in Kunming once again showed that the essential police work was not well done, there were still a lot of loopholes and weak links. The important revelation from this event for the fight against terrorism is that public security organs must make adjustment to police anti-terrorism work, propose the front line of defence, take 'People, Venues, Items' Control as a first line of defence to the fight against terrorism and let 'People, Venues, Items' Control and other operations give a full play to combat terrorism.

PUBLIC SECURIY ORGAGANS' WORK STRATEGY ON COUNTER-TERRORISM

Raise Awareness and step up vigilance

Given the current situations of the fight against terrorism in China, it urges to raise awareness, set up vigilance for possible future acts of terrorism and take the initiative and pre-emptive strike. In April 2014, President Xi Jinping made the remarks during his inspection tour to Xinjiang and urged to resolutely crack down on violent terrorist acts with high intensity, take pre-emptive actions, strike the terrorism fiercely in advance and take decisive actions by a strong hand to inflict swift and devastating blow on terrorism and resolutely suppress the terrorists' rampant momentum[17]. This symbolised that China's anti-terrorism strategy is undergoing a change from passive response to active attack and pre-emptive strike.

Build the legal system of national security

In regard to the legislation, it urges to make the administrative regulations and department rules that are compatible with the Anti-terrorism Law so as to construct a sound legal system of anti-terrorism. In the Decision of the 4th Plenary Sessions of the 18th Central Committee of the Chinese Communist Party, it was pointed out to implement the concept of 'overall national security', advance the legal construction of national security, introduce the laws in urgent need including anti-terrorism law as early as possible, promote the public security under the rule of law and build up the legal system of national security[18].

At present, the Anti-terrorism Law (Draft) is for public comment. Drawing on the experiences of western countries on counterterrorism and in accordance with China's basic national conditions, the Draft specifies the elements of terrorism responses and so on comprehensively, which will provide China's war on terrorism with strong legal guarantee once it comes into force. However, the fight against terrorism cannot rely on the Anti-terrorism Law solely and it must be carried out under the legal system that is based upon the Constitution, guided by the Anti-terrorism Law and supplemented by a number of administrative regulations and department rules.

16 Cracking down on violent terrorist activities, the Ministry of Public Security instructed to carry out the special operations in the Mainland China. [EB/OL].http://news.xinhuanet.com/legal/2014-05/25/c_1110848376.htm.
17 Expert's analysis of President Xi Jiping's inspection tour to Xinjiang: Higher demands to counterterrorism.[EB/OL]. http://military.people.com.cn/n/2014/0505/c1011-24977820.html.
18 Decision made in the 4th Plenary Session: Introduce the laws in urgent need including anti-terrorism law as early as possible.[EB/OL]. http://news.ifeng.com/a/20141028/42318845_0.shtml

Set up and develop anti-terrorism intelligence system

As to the anti-terrorism intelligence and information system, it is needed to overcome the obstacles of organisational fragmented system, integrate information resources, improve intelligence gathering and the sharing of information across government departments and enhance international cooperation. In accordance with the Anti-terrorism Law (Draft), it is going to set up a national anti-terrorism intelligence gathering centre to coordinate and streamline intelligence gathering in the field, set up a unified anti-terrorism intelligence and information sharing platform and construct a terrorism-related key population database.

Enhance 'People, Venues, Items' Control

As far as police day-to-day operations are concerned, this study was conducted to stress how to strengthen the fight against terrorism by enhancing 'People, Venues, Items' Control and proposing the front line of counterterrorism, which covered the issues including population management, hotel management and dangerous articles and explosives control etc. In order to unite the efforts against terrorism and eradicate the breeding ground of terrorist activities, the public security organs must put onus on implementing 'People, Venues, Items' Control as the first line of defence against terrorism.

1) Strengthen key population control. Key population is referred to as those who are suspected of endangering state security and social order, but not yet implementing actual jeopardizing acts, thus the public security organs need to carry out special management correspondingly. The possibility of key population's committing crimes was significantly higher than general population's, therefore, it is crucial to strengthen key population management for the fight against terrorism.

2) It is shown that there are serious loopholes of key population management at present. In accordance with the 'Regulation of the Ministry of Public Security on the Control of key population', there are 5 categories of key population covering 20 items, of which the majority are only those who intentionally set out to commit a crime and are released after serving their sentences or lifted from 'Re-education through Labour' no more than five years, and have a history of drug abuse and injecting drugs. Those who are suspected of endangering state security or serious felonies are unlikely to be put under the control. However, it is those who are not under the control as mentioned above, have not been cracked down and handled, blend themselves deeply into the public and are suspected of jeopardizing state security that are more likely to engage in terrorist activities. Therefore, the public security organs must put the suspicious personnel under the strict control, examine and verify each of them in the database of terrorism-related key population and implement strict management.

3) Strengthen hotels and venues control. To strengthen the fight against terrorism, enhancing hotels and venues control is to extrude the terrorists and make an all-out effort to leave no hiding space for them. According to the information released by the Ministry of Public Security, before Kunming 'March 1' incident, the violent terrorist group travelled Yunnan province including Honghe prefecture and other places in January 2014 and stayed in many small and medium-sized hotels planning on the terrorist attack. Half a month prior to implementing Beijing Tiananmen Square Jinshui Bridge terrorist incident, the violent terrorist group had already arrived in Beijing staying in some small and medium-sized hotels and the houses to rent early or late. The above two serious terrorist activities revealed that not only the intelligence capacity of public security organs is deficient, but also public security organs' control on hotels is ineffective and the venues are seriously less controlled, which is also one of the main failures why the violent terrorist attacks were able to be implemented eventually. As far as volume crime is concerned, according to the relevant data since 2012, 9773 fugitives have been arrested throughout the country via Hotel Management Information System of public security organs, 27,000 public order-related cases taking place in hotels have been investigated, 5924 criminal cases have been cracked and 34,000 suspects have been apprehended[19].

4) The focuses of this work are as follows. Firstly, the public security organs need to cooperate with related organisations within the same jurisdiction areas to conduct thorough examination and screening on key venues on a regular basis and carry out the dynamic hotel management of establishing Hotel Guest Registration System and Information Input System. Secondly, it is needed to strengthen the hotels inspection with special focus on the small and medium-sized by means of thorough investigations and so on to implement Passenger Identity Verification System, Hotel Guest Registration and Information Transmission System and Suspicious Personnel and Materials Timely Reporting System, resolutely put an end to use others' or forged identity documents to check in, check in with one guest's registration indeed of each guest's, the person registered different to the one staying in and implement Guest Visiting System strictly. The public security organs need to set up special groups to

19 Liu Zhenhua. The Dilemma and Social Management Innovation of Public Security Administration of Hotel Industry in Hunan Province [J].Journal of Hunan Police Academy,2012,24(4):51-55

carry out extensive training and education to the hotels under their jurisdictions, handle the relevant cases in strict accordance with the law once the business is found not to comply with the regulations or laws during thorough investigations, in severe cases, order the organisations to stop business for rectification or revoke their Special Trade License issued by the public security organs etc. according to law.

5) Strengthen dangerous articles and explosives control including dangerous materials and controlled knives. Targeting terrorists' M.O. of frequent use of dangerous articles and explosives in the terrorist activities, the public security organs need to make some improvements as follows.

6) Firstly, it is management system innovation. According to the current situation, the public security organs need to carry out dangerous articles and explosives control system innovation, take effective measures to conduct strict control. In order to strengthen the control on the controlled knives in Beijing, for instance, Public Order Administration Department of Beijing Municipal Public Security Bureau formulated the aiming at control the fountainhead of controlled knives. So-called '3 Forbidden and 2 Reported Regulation' is that it is forbidden to sell knives to the person with abnormal behaviours or mental disorder or the minors; in business activities, it is obliged to report the person who purchases knives but is found to have abnormal behaviours or mental disorder to local public security organs immediately.

7) Secondly, it is to strengthen dangerous articles and explosives safety supervision and management. It is needed to strengthen the safety supervision and management of hazardous chemical materials such as fireworks and matches in large quantity etc., implement suspicious situation report system and set up special teams with capable personnel in accordance with the principle of territorial jurisdiction to carry out special operations, which aims to know the thorough situation of dangerous materials within their jurisdictions. It is reported that more than 200 pieces of all sorts of explosive devices have been seized by the public security organs of Hotan, Kashagar and Aksu prefectures in Xinjiang since May2014[20].

8) Thirdly, it is to develop a coordination mechanism for different police departments working together. The Command centres need to give full play of the advantage of information, gather and handle with the explosives-related clues and personnel without delay; criminal investigation departments need to enhance their solving explosives-related cases and severely cracking down on explosives-related criminals; police legal departments need to collect and analyse related laws and regulations and provide legal supports for other police departments; SWAT forces need to be well prepared for emergency and ensure their prompt response and timely handling once terrorism-related or explosives-related incidents occur; grassroots police stations need to carry out the daily management of explosives-related organisations conscientiously, supervise and implement organisation internal safety management system. It is needed to develop a policing coordination mechanism, always crack down on terrorism-related activities with high intensity, set up special groups to target organisations or individuals involved in illegal explosives-related acts and strike them as severely and quickly as possible.

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342.72/.73

CONTROLLING THE POLICE THROUGH THE FORM OF COMPLAINT PROCEDURE TO PROTECT AND ASSERT THE RIGHTS AND FREEDOMS OF CITIZENS[1]

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Abstract: It is well known that the process of controlling the police and the conduct of its members is based on the use of numerous mechanisms and measures, but probably none of them is plagued by so many problems and limitations in its implementation as it is the case with citizens' complaints. These authors' aim is, by providing a more detailed insight into the features of this form of control of the police and its performance characteristics in our conditions, to attempt to identify the key challenges and problems in implementing the complaint procedure, thereby giving a modest contribution to improving the efficiency and effectiveness of this segment of controlling the police in the future, as well as to the efforts which are undertaken in the area of establishing a system of policing based on the rule of law and in the function of preserving the rights and freedoms of all citizens.

Keywords: police, control, complaints, citizens, rights and freedoms, the rule of law.

INTRODUCTION

First of all, it is worth noting that there are assemblies within the state administration which are specifically responsible for maintaining the security and protection of fundamental rights and freedoms of citizens. For this purpose the members of these assemblies, which primarily refer to the authorized police officials (OPO), give the right to the use of different powers, including the use of the means of coercion. It is important to stress that these powers have a legal character and that they are, consequently, different from illicit (illegal) behavior, which is as such criminalized by the law. In other words, police powers are determined by law, and their use is regulated by legal basis. Accordingly, members of the police should only utilize the given authorizations as the means to carry out the assigned role.

However, despite them being conditioned and predetermined by law, it is certain that the police conduct may go beyond the prescribed framework. More specifically, in police practice there are cases of excessive use of, and even the abuse of, authority, which procure serious consequences at the social, but also at the individual level. In order to sanction the above practices, or more preferably prevent them, certain mechanisms of control of the police and its members' responsibilities have been established. In fact, the reasoning behind establishing these control mechanisms, regardless of which type of control it refers to, is to ensure responsible and professional supervision of police activities and tasks, as well as taking the necessary measures against those individuals who have violated the relevant regulations, i.e. violated or breached fundamental freedoms and rights of citizens.

More broadly, addressing issues of police accountability is of a paramount importance for the establishment and functioning of the rule of law in the society. In other words, the existence of a responsible and law-based police conduct as a necessary condition to conform the police work to the principle of legality has been achieved, this being an essential principle of the rule of law.[4] However, the real question, and also the key problem of today's democracies, is how to make the police work subordinated to the legal control, while at the same time preserving the performance and efficiency of the police role. [5]

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2 darko.bikarevic@yahoo.com
3 zoran.kesic@kpa.edu.rs
4 D. Simovic, R. Zekavica: *Police and Human Rights*, Belgrade, 2012, 155.
5 See R. Zekavica, Z. Kesić: "The Main Problems and Challenges in the Establishing the Legal Accountability of Police" –in: *Archibald Reiss Days*, Volume 3 (ed. G. Milošević), Belgrade 2014, 211-219.

Although it seems that the positive law has long established the mechanisms for achieving this objective, the issue of a responsible and legal principle based police conduct has recently re-immerged in importance in light of the new challenges and threats, especially those generated by criminal and terrorist organizations. Normally requiring a swift and efficient response by the state, and even more so by the police as an inherent holder of the security maintenance function, facing these threats has indirectly created a climate in which the fundamental rights and freedoms have been placed in the background. In fact, more and more we are witnessing the rights and freedoms becoming increasingly subordinated to the need of ensuring a sense of security. In such circumstances, performing standard forms of supervision over the police work and the use of traditional measures and mechanisms are being seriously under threat, while some forms of control are now practically redundant.

In this new social environment, it seems that the internal control of the police that resolves citizens' complaints has suffered perhaps the strongest impact, which, by the way, stands for one of the least functional and most difficult to control forms of police. Therefore, we found it appropriate that this memo should address primarily this form of control of the police force. The aim of authors is to analyze the current situation in this segment of control over the work of Serbian police in order to diagnose some of the key problem areas in its operations and also come up with some suggestions on how to possibly solve these problems or at least reduce their effect in the future.

GENERAL CHARACTERISTICS OF CONTROLLING THE POLICE

The essence and purpose of controlling the police

First, we shall underline the fact that one big contradiction inhabits the core of policing. On the one hand, we can say that the police, because of their essentially authoritarian activity, are an anomaly within a free society, because they interfere with the sphere of human rights, while, on the other hand, their existence is inevitable, because they ensure the administering of the very same human rights. For this very reason, it is necessary to provide such control mechanisms toward the police force, which would be primarily aimed at the preservation of the citizens' fundamental rights and freedoms.

In this regard, it is worth mentioning that in 1999 the Parliamentary Assembly of the Council of Europe adopted a "Recommendation on control of internal security forces of the Member States", in which, among other things, the following is recommended: • all internal security services must be organized and must operate on a statutory basis, with the sole mission to protect national security and the democratic order of the state and its society; • operational activities of all security forces should be subject to judicial authorities and used only when clear signs of crime are recognized; • control of internal security forces must be organized through three traditional levels of government (legislative, executive and the judiciary); • As an adjunct to the traditional form of control of police, a civil control and funding transparency of police operations is recommended. [6]

In addition to its principled considerations, the purpose of the control of police can be observed on a practical level where it usually comes down to the process of **control of legality** in the implementation of concrete measures and actions. The importance of controlling the legality of police work Mr. Stevanović sees in the presence of the two facts. The first one relates to the mission of the police, which can generally be defined as law enforcement, and the second one relates to numerous police powers, including the use of force. [7] The existence of these two peculiarities of police work indicates a high level of police accountability for the consistent implementation of the law with a need to respect the principle of legality when exercising the police powers.

This further implies the conclusion that the control of the legality of the police work is primarily intended to prevent the abuse of police powers, or in case it has already happened, to process any such instance. This is also the reason why this segment of control of the police is institutionalized, establishing special control authorities and bodies for this purpose (our Internal Control of Police Department), while at the same time establishing the specific procedures for certain types of control of legality as *ad exemplum*, the control realized upon citizens' complaints.

6 A. Recasens, "The Control of Police Powers", *European Journal on Criminal Policy and Research* 3/2000, 265-6.
7 O. Stevanović, *Security Management*, Belgrade 2012, 281.

Forms and mechanisms of controlling the police

In the scientific and professional literature there are different classification and systematization of forms and mechanisms of control of the police force [8]. It is notable that most of the authors take **placement** of funds and control bearers in relation to the police institution as a criterion of their classification, distinguishing between *internal* and *external* control. Another frequently used criterion of division is the **legal basis** of the control function, according to which all the forms and mechanisms of control can be divided on the *formal* – where the control is performed by legally authorized bodies (e.g. disciplinary bodies, courts) and *informal* – where the control is conducted by other social subjects (e.g. media, interest groups, public opinion). Some authors in their classifications sublimate these two criteria. [9] Using this approach, all the forms and mechanisms of control of the police are presented in the below table as follows: [10]

FORM OF CONTROL	INTERNAL	EXTERNAL
FORMAL	hierarchical	civil
	jurisdictional	political
	disciplinary	court
	internal investigations	independent investigation
INFORMAL	self-control	public and public opinion
	interpersonal	media
	union	interest groups and pressure groups
	internal socialization	political parties

CONTROL OF THE POLICE WORK IN THE REPUBLIC OF SERBIA WITH SPECIAL REFERENCE TO CONTROL BY HANDLING COMPLAINTS

Carrying out the duties within the jurisdiction area of the Ministry of Interior of the Republic of Serbia is regulated by the national standards of police conduct, then by the requirements laid down in laws and other regulations and acts of the Republic of Serbia, as well as international treaties and conventions adopted by the Republic of Serbia. [11] Nevertheless, the control of the police work has its ground on the legislative basis and is specifically defined by the provisions of the *Police Act*. [12] In this sense, both external and internal controls are proposed, with the latter being institutionalized in the Internal Control of Police Department and by the control through resolving complaints. Furthermore, it should be noted that the *Law on Public Administration* [13] also provided for the possibility of filing complaints on their own and their personnel's work, which is also binding in relation to the police, as part of the state administration. In fact, the above provisions relate to the entire Public Administration sector and are not concretized in relation to the filing of complaints against the police. Since the Police Act is *lex specialis* in relation to other laws that police officers apply, we will look into the control of the police by handling complaints that is proposed by this law. However, it should be noted that the support for the legal regulation of

8 See L. Stajić, *Control of the police and security services,* Novi Sad 2012, 67-68; S. Miletić, *Police Ethics*, Belgrade 2003, 15-17; D. Mihajlović, "Control of the police and the security services of the Service for the internal control of the police, a brief comparative legal representation", *SSP – Science, Security, Police* 3/2007, 101; C. Davids, *Conflict of interest in policing*, London 2008, 262-3; L. Anderson, Internal control - in: *Guidelines for the preservation of the integrity of the police*, Geneve 2012, 160; H. Born, *et al*., External monitoring and control –in: *Guidelines for the preservation of the integrity of the police*, Geneve 2012, 184; D. Vasiljević, *Legality of administration and discretion*

ary evaluation, Belgrade 2012, 131-2; R. Roberg, J. Crank, J. Kuykendall, *Police and society* (second edition, New York, 2000, translated by: Dalibegović M.), Sarajevo 2004, 416.

9 See D. Bailey, *Patterns of Policing – A Comparative International analysis*, New Brunswick 1990, 161; B. Milosavljević, *Police Science*, Belgrade 1997, 308.

10 adapted after: B. Milosavljevic, 308.

11 Article 12, paragraph 1, of the Police Act (PDO), Official Gazette of RS, No. 101/2005, 63/2009 – Constitutional Court verdict 92/2011.

12 See Aricle 170-181 of Police Law.

13 In Article 81 of this law it is noted that the state administration authorities are obliged to provide everyone with a convenient way to file complaints on their work and their personnel, that the complaint filed by the state administration should receive a response within 15 days of the receipt of the complaint if the complainant requests a response, and that the state administration authority shall, at least once in 30 days, discuss the issues stated in complaints; *Official Gazette of the Republic of Serbia*, No. 79/05, 101/07, 95/10 and 99/14.

control of the police substance is provided by the constitutional provision, [14] which through the right to petition includes, among other things, the right of citizens to address state authorities. [15]

Introduced in 2005 by the Police Act, the Control of the police by resolving complaints is really a novelty. In this way, the practice of acting in relation to addressing those people who believe that their rights and freedoms have been violated by the police staff has been considerably improved. Nevertheless, the period to file complaints on the actions of the police staff and the procedures required to check their allegations can be divided into two parts: 1) *the period before 2005* - the process of checking the allegations was being implemented without the legislative support, according to internal documents of the MUP (Ministry of Internal Affairs) and 2) *the period after 2005* – the control of the police by resolving complaints has received a legislative support. In the first period, "applications" was used for the citizens' complaints and in the second period "complaints." The diverting point is represented by the legal definition of control of the police work. In addition to the Police Act, the procedure for the citizens' complaints has been more specifically prescribed within the Regulations on the conduct of resolving the complaints, [16] which has been enacted by the Minister of Internal Affairs in accordance with the provisions of the Police Act.

The adoption of the Police Act and the Rules of Procedure of resolving complaints presented a legally supported assumption that the effectiveness of complaints against police officers is incomparably greater than before, when the complaints submitted by citizens were dealt in segments and according to internal rules. This solution has achieved two goals - the manner of exercising the right to petition has been defined, in conformity with Article 58 of the Constitution, and an effective form of control of police force has been introduced through solving filed complaints against the police officers. [17] After acknowledging certain problems and difficulties in the implementation of the provisions of the Police Act relating to the complaints procedure and the Rules of Procedure of resolving complaints, and in order to minimize and overcome them in order to achieve a certain degree of uniformity of treatment when checking the complaints, the representatives of the Bureau for complaints and petitions, the Police Directorate, Internal Affairs Department, Ministry of Internal Affairs of the Secretariat and the person authorized to supervise the work of the Commission, have adopted the Instruction on the application of the rules of appellate procedure. [18]

Furthermore it should be noted that citizens can file their complaints on both illegal and irregular actions of the police staff if they believe that their rights and freedoms have been violated.

Also, as noted, the process of monitoring the accuracy of the work can itself be subject to the procedure review if a complaint has been filed, and involves determining the possible deviations from the legal guidelines and operational-tactical rules that define the police conduct. In particular, the provisions Article 180 and 181 of the Police Act define who, to whom and in what time frame can file a complaint concerning the police staff work. Also, an explanation shall be made in a fashion that the complaint is handled by the Head of the organizational unit, as well as the Commission, and the terms in which their investigations must end are defined, with a remark that the complainant has access to all legal and other means to protect their rights and freedoms. It also states the duty of confidentiality of the data.

The positive side of this is that a subject matter of controlling the police by addressing complaints has for the first time received its basis in the *lex specialis*. Arbitrariness, both of citizens and of police officers in respect of this area are kept to a minimum, and their performance is determined by the legal framework. Legal solution in the process of verifying the allegations thus provides two instances. In the first instance, the process begins with a head of the organizational unit in which the police officer to whom the complaint relates is employed, or a police officer authorized by him, while further proceedings of resolving complaints is conducted by the Commission. Also, a presence of the public is provided in the second instance, thus ensuring the objective and democratic process, but also an active participation of the complainant throughout the entire process.

Logically, one might assume that in relation to the period before 2005, legal novelties have increased the level of the police officers' responsibility during the undertaking of tasks, because they are aware that their actions are now subject to the control of citizens in accordance with the legal norms. We could also argue that the level of responsibility of the police officers who carry out verification of the allegations in the complaint has seen a significant increase, because their acting is now precisely defined and time limited (making the record, confirmation, delivery calls), without the possibility of any kind of improvisation and

14 Article 56 of Constitution of the Republic of Serbia, *Official Gazette of RS*, No. 98/06..
15 M. Pajvančić, *Comment of the Constitution of the Republic of Serbia,* Belgrade, 2009, 77.
16 Regulations on the procedure for resolving complaints detail the procedure for resolving complaints brought against police officers by individuals and, in relation to this, data protection, recording, monitoring and reporting, *Official Gazette of the Republic of Serbia*, No. 54/2006.
17 S. Miletić, *Comment of the Police Act,* Belgrade, 2009, 346.
18 Instruction on the application of the rules of appellate procedure consists of seven units, who may file a complaint; the deadline for filing the complaint; submission and content of the complaint; when it is not to act upon the complaint in appellate proceedings; first instance proceedings; proceedings before the Commission; supervision of resolving complaints, internal act MIA (Ministry of Internal Affairs) passed Aug. 17,2009

arbitrariness. It should be additionally noted that citizens now have some confidence that this process will be thoroughly enforced, as they find a guarantee in the legislation. The above stated should have as a result a more professional attitude of police officers while performing police duties and tasks, therefore a higher level of protection and a decreasing number of cases where fundamental human rights and freedoms have been violated.

However, even with that, there is a noticeable intention to further revise the subject area and to set clear rules in order to best regulate the proceedings upon complaints of citizens and thus encourage citizens to complain about the illegal and improper conduct of police officers, all in order to achieve the protection and preservation of human rights and freedoms. These actions clearly show that there are still some problems in the particular area and it is therefore necessary to take additional measures in order to improve the situation. Accordingly, we consider increasing the transparency of the functioning of the control of the police through filing a complaint to be particularly important.

Here we should point out to one of the core deficiencies of the control of police procedure. Specifically, in addition to active participation in appellate proceedings, which is manifested through the expenditure of time and material resources, a citizen does not exercise his legal interest, regardless of the justification of the merits of the complaint filed. Except for the general prevention, the outcome of the procedure has no effect and relevance to citizens in relation to those whose rights and freedoms have been violated. Apart from the conclusion that a police officer has committed an infringement of the rights and freedoms of citizens, and taking accountability measures towards the police officer, nothing is being done to compensate a citizen for the damage done by unlawful or improper conduct of a police officer. For this reason a citizen has not exercised his rights because consequences that had occurred due to improper or illegal conduct of a police officer have not been removed. Moreover, they continue to produce certain effects detrimental to the citizen, which must be rectified in additional court proceedings, which again requires an active participation of a citizen.

COMPLAINTS TO WORK OF POLICE OFFICERS FROM 2011 TO 2013

As part of this discussion, it is worth to recall the widely known fact that the police function and specificity of their role in the society imposes the imminent contacts between citizens and police officers on various grounds. In addition, quite a number of official acts and powers of the police in its essence implies a restriction or invasion of the rights of citizens (e.g. tracking, interception, arrest, detention, use of coercive measures). Hence, it is only logical to expect that certain police actions and procedures are due to initiate complaints of citizens that point to violation of the equality of citizens before the law and violations of human rights and civil liberties.

In the table below, we will try to illustrate to what extent the complaints are actually being filed against the Serbian police and what are the outcomes of the proceedings, noting that these are the data from the MUP database:

	Complaints received	**decided on the merits**	**unmeritorious**	**meritorious**	**% meritorious**
2011	2241	1752	1574	178	10.16
2012	2276	1558	1402	156	10.01
2013	1948	1444	1316	128	8.86
∑	6465	4754	4292	462	9.72

To this it should be added that out of a total of 6,465 complaints received, 1,711 (26.47%) proceedings have been completed without debating the merits, in accordance with Art. 4 no. 3 (incomplete or incomprehensible complaint) and Art. 7 no. 1 (complainant given up on complaints and gave a written or oral statement for the record, verdict has already been made on the complaint in the process of resolving the complaint; on the substance of the claim that is the subject of complaint has already been validly decided before other authority; complaint has been filed too late; complaint filed by an unauthorized person) of the Rules of Procedure for resolving complaints.

The fact that a significant number of citizens' complaints end up being rejected, whether because of being unmeritorious or because of the unsupported evidence allegations, should not be taken lightly. It is certain that such a small percentage of meritorious complaints influences a popular opinion in the public that the police in this case actually seeks to take advantage of the opportunity and refuse or avoid the obligation to punish itself, which automatically reduces the citizens' willingness and readiness to exercise their rights in this way, even in cases where there is a clear evidence of violation of their rights.

However, in order to prevent the mere speculations, it is necessary to conduct an extensive scientific research of the internal complaint procedures, with the aim of determining the key reasons why so many filed complaints become unmeritorious. At the same time, it is necessary to encourage citizens to continue filing complaints, but noting that they should do it only when they have an undeniable proof. Otherwise, it is illusory to expect that their complaint will achieve concrete results at the individual level – which is to result in punishing the defending officer, but also on the social level - to reduce the irregularities and illegalities in policing, as well as to prevent any future conflicts between the Police and citizens, and thereby improve their relationship.

On the other hand, the police authorities themselves need to invest enormous efforts toward reducing the number of justified complaints, and generally in creating such public sentiment about police work that will reduce the cause for citizens' complaints. At the same time, decisive measures of repression need be taken against those police officers whose unlawful or improper actions violate and endanger citizens' rights and freedoms. Here, however, we should point out the fact that police officers are not protected against malicious and fraudulent petitions and complaints. Namely, when such situations are identified, only admonitive measures toward the complainant are applied. Consequently, a concrete measures to address this problem should be considered. By comparison, the police officers in the Republic of Croatia and the Republic of Srpska have some sort of protection from the citizens who filed unmeritorious, malicious, fraudulent or abusive petitions, where certain actions against the author of such petition i.e. complainant can be initiated ex officio[19].

Finally, we want to point out that the current MUP records on the submitted citizens' complaints and implementation of procedure checks of such allegations are not at a satisfactory level. To be exact, the content of such records is not centralized and unified, and consequently does not enable the citizens' complaints and appellate proceedings to be filtered out and compared under some very important variables such as: the reason for filing the complaint (illegality or irregularity in the line of duty; • to application of which police powers has the alleged incident been related to; • information about the complainant (gender, age, occupation, any previous complaints filed and how many, how where they resolved); • complainant data (gender, rank or title, workplace, work history, whether there were complaints against a police officer previously filed and their reasons, how were the proceedings finalized); • circumstances under which the alleged incident occurred (time, place/location, whether the police officer was on duty); • measures taken toward police officers.

Accordingly, we consider it desirable that the authorities resolve not only this deficiency in a timely manner, but also a number of other limitations and deficiencies in recording the raw statistical data, which would surely facilitate future scientific research, but would also benefit the professional services for the analysis of concrete occurrences within the MUP.

CONCLUSION

In a contemporary society, which is based on the ideas of human rights and the rule of law, it is necessary that an organization that has such an important role in the society and whose members possess such powers and authorities that enable them to, on the legal grounds, suspend and restrict human rights and freedoms, is being tested against the law. In fact, the goal of every democratic government is to maintain the police within the limits of the law in order to enforce their constitutional and legal responsibilities in accordance with the provisions of applicable regulations, along with a special duty materialized in the protection of fundamental human rights and freedoms. In order to achieve that, certain mechanisms of control of the police are being established, and one of them is a control of resolving complaints.

With the Police Act of 2005 coming into force, this segment of control of the police in our country has become obligatory, i.e. it has won a legislative power and support, whose norms have binding and determining effect equally on police officers and the citizens. Under the authority of this Act, an Ordinance on the complaints system procedure has been enacted which prescribes in details the procedure for resolving complaints. However, due to the identification of certain aporia and disparities in the implementation of appellate proceedings in practice, MUP has established the Instruction on the application of the rules of appellate procedure, with the aim of achieving a certain level of uniformity of procedure when conducting the complaint procedure. By adopting these regulations, the appellate procedure is now strictly formalized and determined, from the moment of submission i.e. receipt of the complaint, until a meritorious verdict has been reached.

However, the problems in functioning of this form of control of the police continue to exist. Some of these problems are of practical, and others of a conceptual nature. A serious problem poses the fact that

19 Vid. D. Bikarević, Specificalities and tasks of the internal control of the police in some countries of South East Europe, pre-doctorate work, Novi Sad, 2014, 57. and 61.

citizens, upon completion of the complaint procedure, and an active participation in it (filing complaints, responding to invitations, investing economic resources and time) still do not exercise their legal interests, regardless of the conclusion that the complaint was assessed as acceptable and justified. Furthermore, the fact that the allegations of the complaint and the specific procedures of police are being analyzed by the officials who themselves are the members of the police community, a doubt is automatically being raised about the fairness of the appeal process and objectivity of the made verdicts.

In order to achieve a greater citizens' confidence in the police, and thus in treatment of the complaint procedures, we believe that citizens should be constantly updated about the police work as well as the complaints filed against them and their merits. In addition, it is necessary to refer citizens to exercise their legal rights and freedoms by continuously educating them in order to ultimately significantly reduce the police misconduct and abuse occurrences. The fact that a significant number of complaints are being rejected due to incompleteness leads to a conclusion that many citizens have an obvious problem to formulate their appeal in such a way that clearly and unequivocally confirms their evidence. Therefore, a special attention should be paid in the future to further educate the citizens about filing a complaint.

However, despite all this, one should not expect too much from the control of the police handling complaints because it is just one of the mechanisms of control of police work across the spectrum of control mechanisms that are directed towards the police. At the same time, it is not to be expected to see an agile citizen participation in the implementation of the complaint procedure just in order to achieve a general deterrence, without citizens believing that their personal legal interests will also be satisfied.

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INTERNATIONAL LAW REQUIREMENTS IN REGARD TO CRIMINAL LEGISLATION FOLLOWING THE DEVELOPMENTS IN BIOMEDICINE

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Abstract: This article investigates whether national legislations which preclude *in vitro* embryos from protection against ownership conduct could meet international law standards which are set up through human rights, anti-trafficking and anti-slavery instruments. In that end, it was explored whether the accepted elements of trafficking crime are fulfilled when ownership acts over *in vitro* embryos are asserted. Such an exercise of ownership rights was also analyzed from the aspect of anti-slavery instruments. The result of the research confirms that the states need to criminalize all acts attached to the ownership powers over *in vitro* members of the human race in order to meet their obligations which refer to prevention of trafficking, combat slavery, and protection of victims.

Keywords: human rights, trafficking, slavery, positive obligations, victims.

INTRODUCTION

The first section of this article refers to general human rights requirements in regard to trafficking legislation. Meeting points of those two branches of law were examined from the aspect of combined protection of right to life and the right to health, liberty and security of person, the prohibition of torture or inhuman or degrading treatment and the right to privacy. In this regard, it was examined whether human rights instruments present the international standards which must be incorporated into national definition of crime. Following this discussion, the investigation briefly addresses different procedural human rights requirements in the field of trafficking.

In the second section it was examined whether general requirements reflect specific circumstances which arise out of the developments of techniques for artificial reproduction. In that end, status which is granted to *in vitro* form of human life under the human rights instruments was briefly presented. After examining formal human rights requirements in regard to *in vitro* embryos recognition under anti-trafficking instruments, the discussion shifts to the examination of their actual features common to all members of human race which calls for operation of anti-trafficking and furthermore anti-slavery instruments.

In the subsection which refers to elements of the trafficking crime in the context of new circumstances and modern sources of slavery, it was addressed whether the exercise of ownership powers over *in vitro* embryos could meet the accepted legal definition of human trafficking. Furthermore, such acts were examined from the aspect of binding legal standards of anti-slavery instruments. In this regard, it was discussed whether the purpose of those acts and time when they occur could be relevant for their possible decriminalization.

GENERAL HUMAN RIGHTS REQUIREMENTS IN REGARD TO HUMAN TRAFFICKING LEGISLATION[2]

Considering human rights perspective, trafficking may violate right to life and the right to health, sex discrimination,[3] liberty and security of person, the prohibition of torture or inhuman or degrading treatment, the prohibition of slavery and the right to privacy. The first point when analysing interrelations be-

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2 The author of this section is Ivan Kleimenov, PhD candidate, *Constitutional Court of the Russian Federation*, Advisor.
3 CEDAW General Recommendation No. 19, UN Doc. A/47/38, para. 24(g) and (h); The UN Human Rights Committee General Comment No. 28: Equality of Rights between Men and Women (Article 3), UN Doc. CCPR/C/21/Rev.i/Add. 10, para. 12.

tween human rights and trafficking is to see whether some can claim human rights requirements in regard to national definition of crime. In this sense, definitions of trafficking which were introduced in national legislations of the states differ from each other. Therefore, it is quite sensible to start with consideration that Convention does not requires uniformed definition which qualifies national legislation to be compliant with human rights guarantees. In this light it is crucial to exam the relevance of the Palermo Protocols. When it was being decided on the issue in the *Siliadin v France*,[4] the Court found national law to be insufficient since it was not reflective of the various acts of incriminations such as slavery, servitude or forced labour.[5] Since national legislation contained general norms, it was considered by the Court that it allows for a wide span of interpretations. The former and the latter feature of the national legislation were enough to pronounce France's legislation not in compliance with human rights guarantees. In this case the Court analyzed the requirements from Article 4 in relation to exploitation and it found that the circumstances amounted to servitude, which includes "in addition to the obligation to provide certain services to another (...) the impossibility of changing his status". In the context of trafficking, the Court stated that Article 4 poses positive obligations on states to protect individuals from exploitation. In order to fulfil its obligations, the state must also put in place effective criminal laws, not just to refrain from infringing upon a right. "Accordingly, it necessarily follows from this provision that States have positive obligations, in the same way as under Article 3 for example, to adopt criminal law provisions which penalize the practices referred to in Article 4 and to apply them in practice." The fact that the Court did not find that the situation in this case amounted to slavery since no one has exercised a right of ownership over the applicant, was criticised for being too conservative. We could support such critiques since comparative practice introduced that certain levels of control can have the same effect as slavery. Later in the *Rantsev v. Cyprus and Russia* the Court concluded that trafficking in human beings itself, within the meaning of Article 4-a of the Council of Europe Convention on Action against Trafficking in Human Beings, fell within the scope of the prohibition of slavery and forced labour from Article 4 of the European Convention on Human Rights.

On the other hand, legislation of the Cyprus was held sufficient in the *Rantsev v Cyprus and Russia*,[6] since it reflected the Palermo Protocol. Simultaneously, Russia's law was also considered to be satisfactory though it contained only a sequence of the Palermo efinition. In this case the Court noted that trafficking is not explicitly included in the provision of Article 4 (prohibiting slavery, servitude and forced and compulsory labour). But, since the Convention cannot be interpreted "in a vacuum", but rather in an international context, the Court considered that human trafficking as defined in the Article 3(a) of the Palermo Protocol and Article 4(a) of the Anti-Trafficking Convention falls within the scope of Article 4. In this regard, the Court concluded that the obligations of states attached to the prohibition of acts under Article 4, contain three aspects: the prevention of trafficking, the protection of victims and the prosecution and punishment of traffickers. Bearing in mind relevant case law, it should be stated that the Court does not insist on terminological equivalency among Palermo and national definitions. It is important that state encompasses and criminalizes all acts,[7] prohibited under the Article 4 of the Convention to meet human rights requirements. From its part, the Court did not provide any directions towards obligatory elements of crime definition.

Another form of exploitation which is certainly widely spread in trafficking industry is sexual exploitation. Sexual autonomy deeply concerns rights safeguarded through Article 8 of the Convention which safeguards right to respect private and family life. In this regard it is very important which remedies are available to the victims of sexual violence before national bodies. As we have seen in the case of *X and Y v. The Netherlands,* it was not possible to file a complaint on rape on behalf of a 16-year old girl with a mental disability. According to national legislation, such a complaint had to be filed by the victim herself while, at the same time, the use of a guardian was required. On the government's arguments that determination of remedies to combat sexual violence falls within the margin of appreciation of the state, the Court responded that it finds that the protection afforded by the civil law in the case of wrongdoing of the kind inflicted upon victim is insufficient. Further the Court pointed that effective deterrence is indispensable in this area and it can be achieved only by criminal-law provisions. It should also be noted that the Court ruled out claim that a victim has right to civil remedies in cases where a criminal law provision is also available.[8] Therefore, human rights law in certain instances requires operation of criminal law remedies in order to effectively deter sexual violence, which coincides with violations of human rights safeguarded through Article 8. Simultaneously, there is no such request in regard to operation of civil law remedies.

Since trafficking with its features amounts inhuman or degrading treatment of the victim, it could be regarded that the main requirement from ambit of the Article 3 is effectives of the domestic criminal law remedies. Up to now there are no precise directions what effective remedies are, but it is possible to conclude which are not.[9]

4 *Siliadin v France* Application no. 73316/01, Merit from 26 July 2005.
5 Simialr in *CN v. the United Kingdom* Application no. 4239/08 Merits from 31.02.2013.
6 *Rantsev v Cyprus and Russia* Application no. 25965/04 Merits from 7 January 2010.
7 *CN* v. *the United Kingdom* the Court the found the criminalisation of solely certain aspects of the violations in Article 4 is insufficient.
8 *August* v. *the United Kingdom,* Application No. 36505/02, 21 January 2003,
9 *A. v. the United Kingdom*, Application number 100/1997/884/1096**,** merit 23 September 1998

SCIENTIFIC DEVELOPMENTS IN THE FIELD OF REPRODUCTION AND REQUIRED RESPONSE OF ANTI-TRAFFICKING LEGISLATION[10]

In the past decades significant changes occurred in the field of reproduction which concerns wide spectrum of national and international legislation. Development of techniques for assisted reproduction gave rise to numerous questions particularly with regard to the filiations, protection of dignity and research subjectivity to *in vitro* embryos. Those questions are still the subject of lively debate. In the context of anti-trafficking legislation development of techniques for *in vitro* reproduction presented new ways for victimisation which requires urgent legal response. In this regard, understanding of international law status granted to *in vitro* embryos is important to determine possible states obligation in regard to their protection by the means of criminal law remedies.

Starting point herein should be consideration that *in vitro* embryos are the recognized members of human race under the European human rights law that makes request for their protection in the name of human dignity.[11] Further, the status which is accorded in the name of human dignity requires 'protection without making it a "person" with the "right to life" for the purposes of Article 2.'[12] No doubt, being a human is inextricably connected to human rights protection. Consequently, there are no human rights requirements that certain entity is recognized as a person under the national legislation in order to be eligible for international law protection. This judicial course could be reflected in the normative activities at a regional level as well. For instance, the resolution by the European Parliament (strictly speaking non-binding declarations of legal policy) 1997 O.J. (C 115) 14, 4 Consideration B from 12 March 1997, addressing human cloning, sees it as serious violation of fundamental human rights. Following on the resolution from 15 January 1998, reflects the acknowledgement that the human person is created by the fusion of the cell nuclei and that this person's human dignity is entitled to protection from this moment in time.[13] According to the Court, prenatal life is qualified for certain level of human rights protection due to its human race membership and *capacity* to become a person.

Notion *capacity* is central criterion in theoretical debates when discussing whether certain entity has moral value and should it be granted with protection.[14] In the field of trafficking, *in vitro* members of the human race clearly have *capacity* to become victims of the every type of human trafficking. Latter *capacity* raises objective concern whether anti-trafficking legislation should encompass them? This further impacts the definition of the crime and eventually the states' obligation from the Article 4 of the Convention in regard to the prevention of trafficking and the protection of victims.

Elements of the trafficking crime in the context of new circumstances and modern sources of slavery

Before presenting any claims for criminalization of certain practices such as adoption/donation of *in vitro* embryos, it should be first examined whether those acts could meet the accepted legal definition of human trafficking. The Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography ("Optional Protocol"), definition consists of three elements: action, means, and purpose. The first element refers to "recruitment, transportation, transfer, harbouring or receipt of persons". The second element refers to the means, generally described as fraud, force, or coercion, which are waived where trafficking of children is concerned.[15] This means that in any act involving a child, including adoption circumstances, this second element does not need to be proved.[16] As to the third element, exploitation, it could be considered that it exists where a child is sold.[17] Therefore, the definition of trafficking could be fully applicable on *in vitro* embryos. This is strong inducement toward conclusion that national definition of trafficking which precludes non-*person* humans is too narrow and cannot respond

10 The author of this section and following subsection is Dragan Dakić, PhD candidate at University of Kragujevac, Faculty of Law, employed at the University of Banja Luka.
11 *Vo v France,* Application No 17004/90, Merits, 8 July 2004, para 84
12 *Ibid.*
13 *Starck,* "Embryonic Stem Cell Research according to German and European Law", 7 German L.J. 625 2006, 636. See also resolutions from 7 September 2000 and 10 March 2005.
14 Harris, *The Value of Life: An Introduction to Medical Ethics* (London: Routledge, 1985), at 8 and Singer, Rethinking Life and Death: The Collapse of Our Traditional Ethics (Oxford: Oxford University Press, 1995), p. 206.
15 Optional Protocol Article 3(c)
16 Alexander, J. Why the United States should define illegal adoption practices as human trafficking *Houston Journal of International Law* [Vol. 36:3 2014] 739
17 Optional Protocol Article 2a.

to present day conditions.[18] This claim could also rely on the following facts: The Convention on the Rights of the Child (CRC) defines only the upper limit of childhood which is set at the age of 18, while it is left to the State Parties to define the lower limit, i.e. when it begins. Simultaneously, CRC includes a preamble that 'the child, by reason of his physical and mental immaturity, needs special safeguards and care, including appropriate legal protection, before as well as after birth'. It is our consideration that CRC requires legal protection to be extended to prenatal stage regardless to the scope of national recognition of personhood to prenatal life. Meaning of the term 'appropriate' greatly depends on present-day conditions, which are consisted of scientific achievements as well.[19] Putting this in the context of the Optional Protocol, which introduces that sale of children means 'any act or transaction whereby a child is transferred by any person or group of persons to another for remuneration or any other consideration', 'appropriate protection' encompass protection against such acts before as well as after birth whether a child be *in vitro* or *in vivo*. CRC protection is granted to humans regardless of their packaging. Bearing in mind that the Court does not insist on wording but on the criminalization of all acts of the crime, it should be clear that there is no human rights requirement which imposes the obligation on the national legislature to make direct reference on *in vitro* embryos. Rather, attention should be shifted to the question whether national legislation criminalizes trafficking with them.

Distinctive feature of transaction of *in vitro* or *in vivo* children is in fact that it mostly occurs for a different purpose and motives as compared to transfer of adult persons. Namely, the most often purpose of children's transfer from the perspective of customers is either to become a parent or to find cure for diseases. Therefore, motives could be very noble. But noble motives are not sufficient to preclude international law requirements for incrimination. As we have seen the Optional Protocol prohibits numerous of acts qualified as sale of children which is considered for exploitation in itself.[20] This is due to fact that nobody can have ownership over humans regardless of their age or packaging. Otherwise children would be reduced to mere objects.[21] Especially vulnerable categories in this context are *in vitro* children for the following reasons: during the course of artificial fertilization it is possible to create much more embryos than needed for the purpose of reproduction. Further, they are suitable to be stored and transported much easier than any other frozen goods. Those facts make them be unidentified in official data and estimates. Due to traditional legal omission to recognize humans in prenatal stage as persons, certain jurisdictions granted parents of *in vitro* embryos with ownership rights over them. For instance, parents have power to sell[22] and donate[23] them or even to decide to 'let them die'.[24] If embryos are destroyed by a third person, parents are empowered only to bring damage claims like in the event when someone destroys their property (there is no criminal law liability of the pest). Therefore, resemblance between the position of traditional and modern chattel slaves is more than obvious.[25] There is rising consideration that trafficking is only a tool of enslavement,[26] which indentifies slavery to be one of the root causes of trafficking. Herein we should recall that slavery exists where any or all of the powers attaching to the right of ownership are exercised.[27] Thus, in this specific area, anti-trafficking legislation should be essentially employed as means to combat slavery by eliminating its new potential source. Bearing in mind that the slavery is considered for *jus cogens* norm of international law, which as such, introduces *erga omnes* obligation, it necessarily follows that states have positive obligations to criminalize all acts linked to enslavement process, including sales/transfer/transaction of *in vitro* potential slaves.

Another feature distinctive to *in vitro* victims is time of the offence. Ownership powers are exercised before birth. According to the briefing paper of the Directorate-general for external policies of the Union which *Addressing contemporary forms of slavery in EU external policy*,[28] chattel slavery exists where a person is born as permanent servitude, and ownership is often asserted. Apparently, act of trafficking occurs before the person is born. Therefore, it is not crucial when the powers attaching to the right of ownership are exercised, before or after birth, they present exploitation in the context of trafficking and they should be

18 For comprehensive analysis of shortcomings of European national legislation in regard to limitations of current national definitions see IMPACT Transnational Analysis Improving & Monitoring Protection Systems against Child Trafficking and Exploitation 2014, 37-43.

19 It is an interesting approach of the Italian Penal Code which in article 601criminalizes the 'result' of trafficking.

20 See also European Union Agency for Fundamental Rights (2009(a)), Thematic Study on Child Trafficking: Italy, Vienna. Cited in: IMPACT National Report Italy: Chapter 4.4.4.

21 See also the United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children which maintains that persons do not have the right to choose to be trafficked, or for their children to be trafficked.

22 See Californian AB 926 http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201320140AB926 30.01.2015.

23 See Scott, Williams, Ehrich and Farsides, "Donation of 'spare' fresh or frozen embryos to research: Who decides that an embryo is 'spare' and how can we enhance the quality and protect the validity of consent?" Medical Law Review, 2012.

24 Law on Infertility Treatment and Bio-Medically Assisted Procreation of the Republic of Slovenia. For more details refer to Žnidaršič Skubic Viktorija, 'The Issue of Consent in Biomedically Assisted Reproduction Procedures (The Case of *Evans v United Kingdom*)', *Civil Medical Law* 2010/11.

25 *CF* Paul Finkelman, *The American Suppression of the African Slave Trade: Lessons on Legal Change, Social Policy, and Legislation*, 42 AKRON L. REV. 431, 432-33 (2009).

26 Directorate-general for external policies of the Union which *Addressing contemporary forms of slavery in EU external policy*.

27 1926 Convention on Slavery.

28 http://bookshop.europa.eu/en/addressing-contemporary-forms-of-slavery-in-eu-external-policy-pbBB0113823/ 30.01.2015.

criminalized in order to combat and prevent trafficking/enslavement of the human beings. Also, international criminal law includes certain forms of human trafficking in the concept of enslavement or slavery.[29]

Enslavement was recognized as a crime against humanity in Article 7(1)(c) of the Rome Statute. It defined crime in symmetry to that of 1926 Convention on Slavery.[30] In the context of unborn victims, the Rome Statute stipulates that crime of genocide could be committed against born as well as unborn members of the group.[31] This implies that criminalization of acts attached to the ownership powers over *in vitro* humans could be also relied on legal standards which are settled in the related branch of law. One could argue that suchlike protection of *in vitro* victims is firmly grounded on legally binding international standards for the protection of children's rights. In any event, the omission to recognize all *potential* victims under the instruments which combat trafficking/slavery would demonstrate that historical lessons have not been learned.[32] Normatively speaking, anti-slavery instruments gradually evolved from 1904 and 1910 restricted suppression of the "White Slave Traffic" toward 2005 the Council of Europe Convention on Action against Trafficking in Human Beings which refers to all human beings as dignity agents,[33] which refers to *in vitro* agents as well.

CONCLUSION

When analyzing general human rights requirements in regard to national definition of trafficking it could be considered that Convention does not require uniformed definition to be accepted. It is important that national legislation applicable criminalizes all acts such as slavery, servitude and forced labour and symmetric acts which fall within ambit of Article 4 of the Convention. In the context of trafficking, the Court stated that Article 4 poses positive obligations on states to protect individuals from exploitation. Those obligations consist of three aspects: the prevention of trafficking, the protection of victims and the prosecution and punishment of traffickers.

In order to meet their positive obligations in regard to the prevention of trafficking and the protection of victims, states necessarily need to take into consideration reflective scientific developments such as advancement of reproductive techniques. This is due to the fact that such progress brings potential to place different groups of people into vulnerable positions. Especially vulnerable categories in this context are *in vitro* children since it is possible to create much more of them than needed for the treatment, and they are suitable to be stored and transported much easier than any other frozen goods. Certain jurisdictions granted their parents the ownership rights over them providing them with power to sell and donate them or even to decide to 'let them die'. Suchlike status of *in vitro* embryos is troubling in several aspects from the eye of international law. First, *in vitro* embryos are the recognized members of human race who as such are granted dignity. Status which is accorded in the name of human dignity requires the protection through human rights instruments without making them persons. The Convention on the Rights of the Child defines only the upper limit of childhood; simultaneously it includes a preamble that the child needs to be provided with appropriate legal protection, before as well as after birth. Term 'appropriate legal protection' implies the protection of the children against all, including new-developed, ways for their exploitation.

Putting this in the context of states' obligations which are inherent in the anti-trafficking and anti-slavery international instruments, it follows that any act or transaction whereby a child – accepted dignity agent, is transferred by any person or group of persons to another for remuneration or any other consideration, presents prohibited exploitation. Exercise of ownership powers over humans, regardless of their age or packaging is prohibited under anti-slavery instruments. It is not important when ownership is asserted, whether it is before or after birth. Also, the purpose of selling is irrelevant since it has no capacity to preclude international law request for criminalization of such acts. The first step which we suggest to the states to overcome particularly acute problem of identifying victims is to regulate maximal number of embryos which could be created for the purpose of treatment and to stipulate strict protocols for their preservation. States need to eliminate any possibility to exercise ownership powers over *in vitro* embryos.

29 Roza Pati States' positive obligations with respect to Human Trafficking: The European Court of Human Rights breaks new ground in *Rantsev v. Cyprus and Russia, Boston University International Law Journal*(vol. 29:79) 2011, 130.
30 7(2)(c)
31 Rome Statute, Article 6 (d)
32 In 1904 and 1910 there were two restricted International Agreements for the Suppression of the "White Slave Traffic".
33 See Terry Davis, Secretary General, Council of Europe, Speech at the First Meeting of GRETA (Feb. 24, 2009), *available at* http://www.coe.int/t/secretarygeneral/sg/speeches/archives/2009/F_24022009_1st_meeting_GRETA_EN.asp. 31.01 2015.

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EFFECTIVE PROSECUTION OF CRIME AS AN EXPRESSION OF SOCIAL RESPONSIBILITY AND FAIRNESS – THE CASE OF THE REPUBLIC OF SLOVENIA

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Abstract: The cross-border dimension of organized crime and its strong character are a serious problem for the entire society worldwide and they require the efficient operation of the competent institutions, including law enforcement agencies. In an effort to provide law enforcement authorities with the means to effectively combat these crimes, the National Assembly passed the Law on confiscation of property of illegal origin (ZOPNI) in November 2011. Soon after the implementation of the Act, the competent and experienced authorities suggested that the current Act should be amended. In an effort to ensure the effective prosecution of such crimes and at the same time strengthen the role of the State Prosecutor organizations, the Government of the Republic of Slovenia proposed amendments to the State Prosecutor Act (ZDT), which would allow more efficient management and operation of the Specialized Prosecutor General's Office, aiming at fast and quality treatment of cases in the field of economic crime and corruption. One of the changes of ZOPNI was the establishment of the Department of procedures relating to the forfeiture of illegal origin. All legislative changes facilitate the burden of proof, but also extend the jurisdiction of the prosecution. The proposed amendments would also provide better conditions for the prosecution of the above-mentioned forms of criminality and bring greater flexibility in awarding state prosecutors with individual state prosecutor's office in each case from the jurisdiction of a specialized department. On the other hand, they introduce a legal basis for the adoption of the policies related to the detection, the control of corruption risks and the Public Prosecution exposures, as a public prosecutor is of outmost importance for successful prosecution of crime. Of course, only the actual use of the new legal provisions will reveal the efficiency of the changes referred to above.

Keywords: organized / economic crime, corruption, public prosecutors, legislation, legality

INTRODUCTION

The economic situation of our time, slow economic growth and the deepening financial crisis in the recent years have created many opportunities for the development of organized and economic crime[2]. Organized crime itself comprises various activities such as human trafficking, trafficking of illegal drugs, illegal arms and corruption, which generate massive financial income[3]. At the same time, we have witnessed the rise of other forms of crime. Given the fact that in modern times the crime rate is constantly rising, as proved by statistical reports, and the fact that the organized as well as economic crime have grown beyond national borders, the confiscation of property of illegal origin has become one of the strategic priorities of the entire European Union (EU). Namely, cross-border dimension of crime and its strong character poses serious problems for the society worldwide, while the actions are also encouraged at the level of each individual country[4].

Crime constitutes a danger to any political system and economy of each country. Its essential characteristic is to make profit in any illegal way; therefore the institution of deprivation of property should represent the biggest blow in the fight against crime[5]. Since it is the state's obligation to arrange all the necessary measures to suppress the sources of threat to modern society, the Act on confiscation of property of illegal origin (ZOPNI) was implemented in the Slovenian legal system on 29 May 2012. The implementation of ZOPNI became a necessity due to the increase in crime, as a factor that will restrict a constant growth of organized and economic crime[6], which (may) have a positive impact on the economic position and the stability of the country. Immediately after the Parliament's adopting of ZOPNI, the Ministry of Justice actively approached

1 mojca_rep@yahoo.com
2 Rep, Ipavec (2012).
3 Proposal of Directive of the European Parliament and of the Council on the freezing and confiscation of proceeds of crime in the European Union (2012).
4 Rep, Ipavec (2012).
5 Dobovšek (1997); Dobovšek (2009).
6 Dobovšek (2009).

to monitoring the implementation of the law in practice. The application of the law in practice, however, revealed some weaknesses. To address these shortcomings, the Ministry of Justice has actively approached the necessary changes to the relevant legislation. The law enforcement authorities were actively involved in the process of legislation change.

ZOPNI (LAW ON THE CONFISCATION OF PROPERTY OF ILLEGAL ORIGIN)

The priority of the Act was to pursue the following objective: to withdraw the property acquired in an unlawful manner from people who possess it, while ensuring the protection of the rights of those who have acquired such assets lawfully and in good faith[7].

When it was implemented, ZOPNI eliminated several deficiencies of the Slovenian legal order, as it also introduced the principle of criminal law, which specifies that no person shall retain the benefits derived from the crime or arose because of it. This idea goes back deep into history, to the time of the "Code 12 plates", which also states that the offender is to return the thing or its value, to which he came by an illegal manner. Moreover, there is a risk that the proceeds obtained on the basis of organized crime, corruption offences or other serious forms of crime can be used for further criminal activity by a person who has obtained this type of property. In Slovenian legal order, the possibility to confiscate illegally obtained proceeds on the basis of the Code of Criminal Procedure (ZKP)[8] already exists. ZKP can be seen as starting point for ZOPNI in terms of the suspicion of illegal assets, and also applies mutatis mutandis to the provisions of the law governing the criminal procedure. However, ZOPNI is carried out under civil and not criminal proceedings, in both cases of litigation[9]. So, ZOPNI was an effective institute that represented a step in the right direction on the one hand, but also brought some uncertainty due to the issues related to the principle of proportionality on the other.

At the time of the adoption of ZOPNI, the discussions of many theorists and practitioners were aimed precisely at the field of human rights and fundamental freedoms, since criminal law must remain a defender of human rights[10]. In the end, the opinion on the necessity of the enactment prevailed, especially for the well-being of the country, but also because ZOPNI represented the effective prosecution of serious forms of crime. The new provisions of ZOPNI such as the withdrawal of the unlawfully obtained pecuniary advantage offered answers or solutions to a number of problematic areas of modern times in terms of (then mostly) organized crime[11]. The provisions of the Act regarding the confiscation of the property of illegal origin were a necessity for the acquisition of property in a lawful manner and for the protection of economic, social and ecological function of property provided by the acquisition of property in accordance with the regulations for all crimes specified as criminal offence in the Criminal Code "KZ-1[12] (catalogue offences)":

- Terrorism (Article 108 KZ-1)
- The financing of terrorism (Article 109 of the KZ-1)
- Enslavement (Article 112 KZ-1)
- Trafficking in human beings (Article 113 KZ-1)
- Abuse of prostitution (Article 175 KZ-1)
- Presentation, manufacture, possession and distribution of pornographic material (second, third and fourth paragraph of Article 176 of the KZ-1)
- Production and transport of harmful agents for the treatment (first, second, fourth and fifth paragraph of Article 183 of the KZ-1)
- Production and transport of harmful foods and other products (first, second, fourth and fifth paragraph of Article 184 of the KZ-1)
- Illicit production and trafficking of drugs, doping substances and precursors for the manufacture of illicit drugs (Article 186 KZ-1)
- Facilitating the use of illicit drugs or doping substances (Article 187 KZ-1)
- Organization of cash chains and illegal gambling (Article 212 KZ-1)
- Against the economy (Twenty-fourth chapter KZ-1), which is punishable by a sentence of three years' imprisonment or more,

7 Ministry of Justice, 2011.
8 Rep, Ipavec (2012); Dežman (2011).
9 Kovačič Mlinar (2012)
10 Rep, Ipavec (2012); Dežman (2011).
11 Rep, Ipavec (2012).
12 Official Gazette of the Republic of Slovenia, No.55/2008.

– Taking a bribe (Article 261 of the KZ-1)
– Giving a bribe (Article 262 of the KZ-1)
– Receiving benefits for unlawful intervention (Article 263 KZ-1)
– Making gifts for unlawful intervention (Article 264 KZ-1)
– Criminal association (Article 294 KZ-1)
– Production and acquisition of weapons and devices intended for the offence (first paragraph of Article 306 of the KZ-1)
– Illicit manufacturing of and trafficking in arms or explosives (Article 307 KZ-1)
– Other offence committed in a criminal organization, or
– Other intentional offence, which is punishable by a maximum sentence of five years' imprisonment or more, if it is considered the origin of the illicit property.

The public prosecutor may ordered a financial investigation, when the following conditions were completed [13]:

– If it was found - during the pre-trial of criminal proceedings or during the criminal proceedings itself that there were grounds for suspicion that the suspect, the accused or the decedent committed a catalogue offence;
– If a person referred to in the previous indent is involved in the ownership, possession, use or enjoyment of property in respect of which there are grounds to suspect that its origin is illegal, or this person had power of disposal with such property, or such property was passed over to this person's legal successors, or this person transferred such property to the related person, or such property was mixed with assets of these persons, which were claimed with reasoned grounds for suspicion indicated in the denunciation made by police, and
– If the property referred to in the preceding paragraph does not constitute proceeds of an offence with catalogue or because of it.

The public prosecutor may have ordered, under the conditions specified, a financial investigation against the convicted person for a catalogue offence within one year after the final judgment of conviction. In the order for a financial investigation, the public prosecutor determined the person against whom a financial investigation was carried out, and the period for which it was executed. Financial investigation sessions can be conducted for a maximum period of five years preceding the year in which the catalogue offence was committed. If the financial investigation revealed reasonable grounds for suspecting that the property was transferred or passed over to a related party, the Attorney General may extend the financial investigation against those persons as well. Financial investigation in accordance with ZOPNI could last one year maximum. By order of The Office of the State Prosecutor General, the duration of investigation can be extended up to six months maximum due to objective reasons. However, without an effective cooperation of the prosecuting authorities even the best provisions of the law remain solely a dead letter on paper. Therefore we shall devote a few words also to the prosecuting authorities.

THE ROLE OF PUBLIC PROSECUTOR'S OFFICE OF THE REPUBLIC OF SLOVENIA

The Supreme Prosecutor's Office of the Republic of Slovenia, led by the Attorney General, is organized into the following sections[14]:

– State Prosecutoral Council,
– Criminal Law Department,
– Civil and Administrative Affairs Department,
– Training and expert supervision department,
– Expert Information Centre.

Within the Supreme Public Prosecutor's Office of the Republic of Slovenia, there is also an organizational unit of the Professional Information Center. At the same time, there is also a special unit called the Specialized Prosecutor General's Office of the Republic of Slovenia, operating in the framework of the Supreme Public Prosecutor's Office and being responsible for the prosecution of offenders in the field of classical organized and economic crime, terrorism, corruption offences and other crimes, where detection

13 ZOPNI, Official Gazette of the Republic of Slovenia, No. 91/11
14 The Office of the State Prosecutor General of the Republic of Slovenia

and prosecution require special organization and the capacity to act in the entire national territory[15], in accordance with the State Prosecutor's Code.

The Public Prosecution Service of the Republic of Slovenia has actively participated in the preparation of the proposals to amend ZOPNI due to uncertainty (defined below) and difficulties in the implementation of the code in practice. In doing so, they made the following proposals[16]:

– The change of definitions for the owner of the property of illicit origin, the plaintiff and the standards of proof to challenge the presumptions of law. However, according to the prosecution, the solutions regarding the use of evidence obtained in the context of financial investigations in criminal proceedings have proven much less appropriate. The prosecution has always insisted on using an analogue set of Article 75 of the KZ[17] regarding the confiscation of property. The latter states:

1) The perpetrator or another recipient (hereinafter referred to as the recipient) of the benefits are withdrawn money, valuables and any other pecuniary benefit which have been obtained by crime or because of it, but if such benefits cannot be taken away, the recipient's property, corresponding to the value of such proceeds is confiscated.

2) If an offender or other recipient of benefits cannot be deprived of the proceeds or property which corresponds to such proceeds, it must be ordered to pay a sum of money which corresponds to such proceeds. The court may, in justified cases, allow that the amount of money corresponding to such proceeds shall be paid in installments, while the payment deadline may not be longer than two years.

3) Proceeds of crime or because it may also be collected by those to whom it was transferred free of charge or for a fee that does not correspond to the actual value, under the condition that these persons knew or should have known that it was obtained by crime or because of it.

4) If the proceeds of crime or because of it were transferred to the close relatives of the offender (the domain of Article 224 of this Code), or if due to the denial of the withdrawal of the proceeds from the first paragraph of this article, any other property of the offender was transferred to their relatives, this property shall be taken away from them unless they can demonstrate that they paid its actual value.

5) If the proceeds were gained by more persons, every person shall be taken away the corresponding proportion of the proceeds. If these proportions cannot be determined accurately, the proportions to confiscate are determined by the court taking into account all the circumstances of the case".

The prosecutorial proposal in the draft amendment to ZOPNI-A was taken into account by the Ministry of Justice. However, during the second reading at the National Assembly Committee, an amendment to replace the proposal with the introduction of the provisions of the privileged change action was tabled and adopted.

In 2011, the Supreme Public Prosecutor's Office gave suggestions, opinions, ratings and comments in relation to the activities of various government bodies concerning the process-making of the new legislation, changes in laws, regulations and general acts, and was also actively involved in their implementation . These activities were related to the various laws and secondary legislation, in particular to the adoption of the Law on the State Prosecutor's Office and to the amendments and supplements of the Criminal Procedure Code and the Criminal Code and the implementation of ZOPNI [18].

The amendment to ZKP[19], where the new Article 502.e[20] is emphasized, shall read as follows:

1) Ex officio, the court shall inform the competent tax authority of its decision in relation to ordering, change and elimination of the temporary withdrawal of insurance proceeds. It shall do so by sending the copy of its decision to the competent tax authority.

2) If after the receipt of the notice referred to in the preceding paragraph, the competent tax authority communicates to the Court that it is planning to introduce the procedure, authorized by law, in relation to its decision on amending or lifting the temporary protection, the court orders that the body responsible for the execution of insurance, shall not amend or cancel it prior to the receipt of the written notice from the court claiming that one month has passed from the date of the notification of the decision on the modification or withdrawal of insurance to the competent tax authority."

The active participation of the law enforcement agencies in the preparation of new legislation has undoubtedly had a positive impact, especially as the law enforcement authorities use this legislation in the course of their daily work.

15 The Office of the State Prosecutor General of the Republic of Slovenia
16 The act proposal on Changes and Amendments of the State Prosecutor's Office Act ZDT-1B
17 Criminal Code (KZ-1-UPB2)
18 Official Gazette of the Republic of Slovenia, No. 91/2011
19 Official Gazette of the Republic of Slovenia, No. 91/2011
20 ZKP-NPB29

THE EFFECTIVENESS OF LAW ENFORCEMENT AGENCIES ON THE BASIS OF THE LAW ON CONFISCATION OF PROPERTY OF ILLEGAL ORIGIN

The work results of the Public Prosecutors' Offices in the field of ZOPNI in 2012[21]:

Followed by the implementation of ZOPNI's provisions in May 2012, only the District Prosecutor's Office Maribor and the Specialized Prosecutor's Office of the RS approached the financial investigations. In Maribor, they ordered a financial investigation against one person. All the measures and activities that were carried out at the Specialized Prosecutor's Office of the RS are described in continuation. In the area of the matters dealt with by the Specialized Prosecutor's Office RS, the following activities focused on financial investigation and the insurance of the property of illicit origin were carried out in the second half of 2012:

– The financial investigations were ordered in five cases: in the first against two individuals, in the second against three persons in the third against two individuals, in the fourth against the four suspects and 10 related physical and 51 legal entities, and in the fifth against five people,
– The proposals for insurance and suspension were submitted and then followed by the decisions of courts: in one case, there was the insurance of funds on the current account, in another case a proposal to secure funding on the current account and the real estate, and in the third case the insurance of funds on the bank account and the suspension of the real estate. The immediate communication about the suspicious banking transactions between the bank, the Office for Money Laundering Prevention (UPPD) and Specialized Prosecutor's Office of the RS proved as a very positive in one of the cases. This communication was followed by a blockade of banking transactions and an instant retrieval of the data needed to support the proposal for a temporary insurance. In such cases, there are only 72 hours available for the procedure, and only thanks to the good cooperation with the UPPD, the insurance proposal could be justified.

The remedies - appeals and complaints that followed after the orders of insurance – drew attention to the possible dependence of the temporary protection ordered by ZOPNI on the ratio of non-final acquittal catalogue offence. They managed to assert the view that the imposition of such a judgment does not prevent the ordering of insurance. The court confirmed the arguments of the prosecution and extended the order of protection.

In the second case, in the opposition to the decision ordering the suspension, the argument was raised that the assets acquired outside the timeframe of the financial investigation can be subject neither to withdrawal nor security. In its complaint, the Prosecutor's Office hold the view that by analogy to the arrangements in the first paragraph of Article 75 of KZ for securing of illegal assets, any legitimate assets of the person under investigation may be used. The Court at first instance did not follow the argument of the prosecution, but the high court at the appellate level fully followed the prosecution's argument.

The work results of the public prosecutors' offices in the field of ZOPNI in 2013[22]:

In 2013, the Supreme State Prosecutor's Office established the record of all criminal proceedings, in which the securing of illegal proceeds was ordered. In comparison to previous years, the results of the work improved significantly; in a total of 107 criminal cases, the securing of improper benefits in the total amount of over 418 million was ordered. These insurances concerned 208 legal entities and individuals, covering the multiannual periods and different stages of the corresponding criminal proceedings. When analyzing this type of insurance, the public prosecutor pointed out the following factual and legal issues:

– The problem of arranging the system for the extension of temporary insurance in criminal proceedings, which requires a constant decision making of prosecution and the courts on insurance without changing the factual and legal status. Therefore, an initiative for amendments to the provisions of Article 502 of ZKP was suggested. In the case practice the problem of non-compliance with the provisions of ZKP concerning the urgency and priority nature of the criminal proceedings with the ordered insurance was pointed out.

Namely, there have been cases where insurance was eliminated due to the expiry of the absolute statutory deadlines of the insurance. In these cases, the question arose about who will take the responsibility for the delay.

– A special problem was the lack of records and control over the sentenced withdrawals of the unlawfully acquired benefits in criminal proceedings, and especially over the actual execution of the judgments. These data are important indicators of the actual results of work in the field of unlawful deprivation of benefits.

21 The annual report of The Office of the State Prosecutor General of the Republic of Slovenia 2012
22 The annual report of The Office of the State Prosecutor General of the Republic of Slovenia 2013

In 2013, the Public Prosecutor's Office conducted the following activities:

– Derivative financial investigations in eleven (11) cases. The following offences appeared as catalogue offences: drug trafficking, human trafficking, the abuse of authority or confidence in the economic activity and money laundering; Temporary insurance in six cases of a total worth of 7,170,000.00 € were ordered.

– Temporary confiscation of the property in two cases totaling 72,900,00 € were ordered.

– Three actions against five individuals and two legal entities were filed, the actions requiring the deprivation of property with a value of 3,719 million €.

The investigation revealed the practice of setting up a financial investigation teams as very positive, but on the other hand, the problem of the lack of concentration and time-consuming activities within the ordered investigations was pointed out.

Institutions find it difficult to ensure the participation of a large number of financial investigative teams at the same time, as they are not provided with additional human resources for these purposes.

In carrying out financial investigations, it was necessary to place greater emphasis on finding the real property of persons under investigation, which is not evident from the registers and databases. It is essential to ensure the effective international cooperation and data acquisition about the assets outside Slovenia, in particular through a network of the national *Asset Recovery Office (AROs)*, which has been totally removed. This means that Slovenia does not comply with the obligations in the field of efficient and specialized international assistance and cooperation, specified with the EU acts. Because of this, the public prosecutor gave proposals to amend the ZDT[23]: as the current wording of the fourth paragraph of Article 192 of the ZDT provisions did not meet the powers held by the Specialized Prosecutor's Office in connection with the forfeiture of illegal origin. Therefore, the content was appropriately adapted to the changes and amendments of ZOPNI, which explicitly defines the applicant in the process of the confiscation of the property of illegal origin.

The proposed amendments brought urgent but positive consequences for the procedures or operations of the public administration and the judiciary. They were mainly related to the following changes:

– To provide better conditions for the prosecution of the priority forms of crime (more flexible system for the allocation of the matters within the competence of Specialized Prosecutor General's to the state prosecutors of the competent district, the establishment of a new Civil-financial department procedures concerning the forfeiture of illegal origin).

– Eliminate resource constraints for the appointment of the new state prosecutors with specific skills in order to ensure greater flexibility in awarding the position of a public prosecutor (concretizing the award criteria in the Specialized Prosecutor's Office, lifting the restrictions on the duration of the secondment of the Attorney General on Specialized Prosecutor's Office) and in this way provide additional candidacies for the appointment of new prosecutors at the specialized Prosecutor's Office, removing the restriction on the duration of the secondment of the Attorney General on the specialized Prosecutor's Office, simplifying matters relating to the allocation of the jurisdiction from the specialized Prosecutor's Office to the State Prosecutor with the jurisdiction over the District Public Prosecutor's Office). All these measures will provide better conditions for the prosecution of perpetrators of the priority forms of crime, with a special emphasis on strengthening skills and resources. To this end, the proposal contains revised provisions on the conditions and criteria to be considered for the appointment, transfer and allocation of the Specialized Prosecutor's Office. In addition, the proposal also introduces the possibility for a person who has not exercised the State Prosecutor functions, but meets the legal conditions for the State Prosecutor's Office and has the necessary specialist knowledge[24] to stand for a State Prosecutor's position in the Specialized Prosecutor's Office.

– The establishment of a special inter-organizational unit within the Specialized Prosecutor General's Office.

– Department of Procedures relating to the Forfeiture of Illegal Origin (the so-called Civil finance department).

– The establishment of standards and the creation of the Business Conduct Code for prosecutors (the adoption of a binding Code of Ethics of Public Prosecutors, the establishment of the Commission on Ethics and Integrity at Public Prosecutor Council).

– The concretization of the provisions relating to the cooperation with the European Judicial Cooperation (EUROJUST).

– The concretization of the provision clarifying the focal point in the ARO system ("Asset Recovery Offices").

23 The act proposal on Changes and Amendments of the State Prosecutor's Office Act ZDT-1B
24 The act proposal on Changes and Amendments of the State Prosecutor's Office Act ZDT-1B

In March 2014, a state prosecutor Stanislav Pintar stated that three lawsuits with the total value of four million had been filed but the procedure had not been completed, so the property could not be confiscated. For this reason the changes of the ZDT provisions were followed by changes of ZOPNI.

Significant changes of ZOPNI -A[25] were the following:

1. Firstly, the obligatory creation of the financial investigation team (under the current law, this was only optional), which is ordered by the head of the competent public prosecutor's office. The financial investigation team is led by a competent public prosecutor, and consists of representatives of the police, Tax Administration, Customs Administration, the State Attorney of the Republic of Slovenia, the Office of the Republic of Slovenia for the Prevention of Money Laundering, the Corruption Prevention Commission, the Agency for the Securities Market, the Agency of the Republic of Slovenia for Protection competition or the Court of Auditors, in accordance with the proposal of the competent public prosecutor. The obligatory creation of the financial groups may, in the opinion of the Public Prosecutor, be problematic in terms of the security procedure of financial investigations, which may have a direct impact on its effectiveness. In some specific cases, it has been shown that even in the case where there was no established investigative team, the Prosecutor's Office did not manage to prevent the outflow of confidential information. This leads to the reflection on changing the way in which investigative groups are established, and on the need to limit the circle of persons who are informed about the process, and on the relative continuity of the members of the investigation teams. Finally, the provision of the law on the confiscation of illegally obtained proceeds, which provides confidentiality of information obtained in financial investigation, but does not provide confidentiality of the proceedings of financial investigation[26], is illogical.

2. In ZOPNI-A there is a specified connection to the ZDT-1, stating that a specific internal organizational unit, which legally represents the Republic of Slovenia as the applicant in the proceedings for the withdrawal of the illicit origin of the property or in connection with it, shall be established within the Specialized Public Prosecutor's Office (SDT RS).

3. On the basis of the proposals from the Commission for the Prevention of Corruption, the Commission for the Prevention of Corruption is added to ZOPNI -A as a body that can make a proposal for the initiation of a financial investigation and it consequently informs on the commencement and termination of the financial investigations.

4. The implementation of a special hearing before the commencement of the proceedings: in terms of accountability of the RS by the Article 45 of ZOPNI, the person under investigation is given an opportunity to review the data collected in the financial investigation and to propose their evidence. This was proposed to protect the constitutionally guaranteed right to adversarial. This provides the examinee with the possibility to give their views and evidence on the (il-)legal origin of the persons' property prior to the filing of the application and commencement of judicial proceedings.

5. Disabling the abuse with the established land debt: there is a provision added, according to which the process of the repayment of the land debt cannot open after the beginning of the civil proceedings for the confiscation of property. This seeks to prevent the abuse of the owners, who have been setting up fictitious land debts and have been trying to disrupt the confiscation of the illegal-origin property by using land charge certificates.

CONCLUSION

The changes of ZOPNI bring new solutions which are very difficult to carry out and are alien to the Slovenian legal order. According to the Ministry of Justice, the adoption of ZOPNI and the ZDT amendment represents one of the bricks in constructing an effective combat against crime, which will not be based solely on repression. But the simple implementation of new provisions of the Code is not enough for a successful operation, the public must be properly informed about the newest releases and provide an intensive training for those implementing the law. They should be taught to use the new institutions, and be given a trial period for the experimental implementation of the most demanding innovations. This proposal was already suggested by the Public Prosecutor's Office[27]. According to the previous legislation and practice in the prosecution of catalogue offences on the basis of ZOPNI, the Prosecutor's Office actively participated in the amendment process of the relevant legislation proposals, as the Office itself benefits from an appropriate legislation, which enables more effective prosecution of such crimes and, consequently, strengthens the role of the State Prosecutor organization. This will bring more efficient prosecution and functioning of the Specialized Prosecutor General's Office with the aim of faster and more quality treatment of cases in the field of economic crime and corruption, which was the primary goal at the beginning of the procedure for

25 Official Gazette of the Republic of Slovenia, No. 25/2014
26 The annual report of The Office of the State Prosecutor General of the Republic of Slovenia 2013
27 The annual report of The Office of the State Prosecutor General of the Republic of Slovenia 2012

amending the legislation. The proposed amendments and supplements are likely to have a positive impact on the internal operations of the prosecution, in terms of more efficient and faster decision-making processes. This can have a positive impact on the attitude of the parties in a dispute (especially the victims of crime) towards the Public Prosecutor and on the general social perception regarding the prosecution of the offenders and the crime prevention. The fact is that the confidence in the rule of law has been decreasing in the past years. Changes of relevant legislation might be one of the measures in order to achieve greater confidence of citizens. This could increased the society trust and give individuals a certain security, which is a prerequisite for successful development of the society in all areas. Legislative changes should also represent an important preventive step in changing the thinking of all actors in the society as the effective forfeiture of illicitly acquired property reflects the social responsibility and expression of justice. Of course, the time is the factor that will show how necessary, meaningful and effective the actual changes in all presented Codes have been.

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