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## PREFACE

The world as a whole has never and will never be a nonviolent and at the same time peaceful place. The last few years have shown the uncertainty of the European Union's future and its stability, but also the uncertainty of the European continent as a whole. BREXIT becoming a reality has shackled the Union and all believers in a common European future. France and Germany accepted UK's decision and started promoting a more coherent and assertive Union.

At the same time, the Arab spring and the Syrian conflict opened the Balkan Route, converting it as the only path towards a better future. Greece as a member state was not able to secure EU's external borders, starting to let refugees and migrants to pass towards Macedonia's borders.

The European Common Asylum and Migration Policy will be one of the key challenges for the Union in the future. The case of Greece has shown that external borders and its protection should be a common interest and responsibility, not a national task. How will FRONTEX, ESTA, and the European Asylum Agency reassure the effective security and defense policy? Will these measures affect the philosophy of solidarity towards those in need? The plan for dislocation of the refugees and migrants was the beginning of the disagreements between the member states, many of which did not accept the designated quotas. Such situation was worsened by many terrorist activities in member states' cities, starting with a crucial one in Paris, November 2015, with many more that followed. ISIS started using European Muslims, born in member states, to seed its legacy and "punish" the infidels. This situation resulted in the heightening of the level of state security, accompanied with its side effect of limiting human rights and freedoms of European citizens. The European values will never be the true ones if personal freedom is suppressed by state security.

But, not only Europe's future and destiny is uncertain. After the USA elections, the world felt uncertain. With the result of the USA elections and the win of Donald Trump, a new era of political movement began. During the period under his presidency, the US Government came to an edge in its relations with North Korea, which threatens with its nuclear arsenal, but also worsened relations with Russia, expelling diplomats as reciprocal measures and closing Russian oldest Consulate in San Francisco. Not to mention the Paris Agreement on Climate Change and Donald Trump's opinion on global warming, women and human rights, Muslim and Latino immigrants, the ideas of building a wall with Mexico, the actual banning entrance in the USA by citizens of certain Arab countries.

Which are the challenges that are in front of Macedonia? Is it possible to establish a strong rule of law by copying or even worse cutting someone else's experience and just paste it into a new society without even trying to understand its real needs?

Rector of the "St. Kliment Ohridski" University  
Prof. Dr. Sc. Saso Korunovski

Bitola, 2018

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# ANTI – FRAUD MECHANISMS FOR PROTECTION OF THE EUROPEAN UNION FUNDS IN THE REPUBLIC OF MACEDONIA AND THE BALKAN COUNTRIES

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## **Abstract**

One of the cornerstones of the European Union (EU) is the economic leveling of its regions. For that purpose, there are funds from which are financed projects of mutual interest. In order to prevent potential corruption in their use, the EU adopted several acts that recommending incorporation of mechanisms for protecting the allocated funds in accordance with their purpose in national legislation. As a candidate country and as a beneficiary of funds from the European sources, the Republic of Macedonia implements mostly of those recommendations. Through their analysis and review of laws in several Balkan countries, this paper detects the best anti-fraud measures for protection of EU financial interests.

**Key words:** European Union, financial resources, fraud, protection.

## **INTRODUCTION**

The use of resources from the EU's funds represents a solid basis for fostering institutional, economic and social development for many countries. This is important for the candidate countries for EU membership, as is the Republic of Macedonia. The role of the pre-accession IPA funds and other European sources are important for the accelerated development of these countries and for easier approximation to the economic level of other developed countries.

But these sources of funds are attractive for organized crime and its perpetrators who, through fraud, corruption, misuse and other criminal behavior, damage the financial interests of the EU as a whole, but also for each country and its citizens individually. Therefore, the EU and member states and aspirants should equally share the responsibility for the proper use of funds and work closely to protect them. In that direction, the Criminal Code of the Republic of Macedonia with the amendments from 2009 foresaw the crime "Fraud to the detriment of the funds of the European

Community". Similar legal changes were made in most Balkan countries. In addition, forms of cooperation between the national institutions of each country have been established with the European Anti-Fraud Office (OLAF).

The allocation and misuse of European resources and funds is the main topic of this paper. Their use, contrary to the purpose, can lead to closing the doors of European funds to the countries to which they are truly needed and to cause far-reaching consequences. Therefore, in order to fulfill the criteria for full membership in the EU, the focus of the Republic of Macedonia and other Balkan countries must be directed towards the creation of appropriate legal regulations for the protection of the EU's financial interests.

### **AMOUNTS OF DAMAGES OF THE FINANCIAL INTERESTS OF THE EUROPEAN UNION - DETERMINATION OF THE POSITIONS**

*"Frauda omnia corrumpi"* ("*Fraud spoils all*" *Lat.*) (Caesar Julius). This proverb shows the old truth about the danger of corruption and fraud in every society. But what do they mean ?!

There are numerous definitions for these two terms. In the context of the subject of research in this paper, we can present the definitions given in the Convention for the Protection of the Financial Interest of the European Communities, drawn up on the basis of Article 3 (2) (c) of the EU Anti-Corruption Treaty (Convention, 1995 July), with the both protocols (First Protocol, 1996 p. 2 & Second Protocol, 1997 p.12).

It is important to distinguish this special type of fraud and other subspecies. Under these acts, a fraud affecting EU spending means any action or intentional omission that involves the use or presentation of false, inaccurate or incomplete statements or documents, resulting in unlawful appropriation or misappropriation of funds from the general budget managed by or on behalf of the European Communities, non-disclosure of information for breach of obligations with the same effect; misuse of such funds for purposes other than those for which they were awarded, as well as income-derived fraud (Convention, 1995, November 27, Art.1, p. 49). While suspicion of fraud means "an irregularity leading to the initiation of administrative or judicial proceedings at the national level in order to determine the presence of deliberate conduct, in particular fraud, as referred to in Article 1 (1) (a) of the Convention. The existence of such proceedings for the purpose of determining the presence of fraud is a decisive factor in the classification of a certain irregularity as a suspected fraud in order to report to the Commission (Ibid. Art.1, p. 49).

On the other hand, corruption is defined in the European Parliament Resolution of 1995, adopted by the European Parliament in 1995, where point 1 states that corruption is "the behavior of persons with public or private responsibilities who fail to fulfill their duties, due to a financial or other benefit granted, either directly or

indirectly offered to them "(European Parliament Resolution, 1996). Most widely, corruption is an misuse of a public position for the purpose of achieving private profit. Both forms of incrimination are mutually intertwined. Corrupt payments facilitate many types of fraud, such as fraudulent invoicing, phantom costs, or failure to achieve the aims of a contract.

In the Republic of Macedonia, with its amendments in 2009 was implemented a criminal act "Fraud to the detriment of European Community funds" provided in Article 249-a (Amendments to the Criminal Code of the Republic of Macedonia, 2009). This article is similar to the definition given by the above Convention. Namely, our legislator makes a difference of two types of frauds. One of them concerns fraud, which affects the costs of the EU. According to paragraph (1) of this Article, this type of fraud is made by the person who, by using or displaying false, inaccurate and incomplete statements or corrections or omissions, unlawfully appropriates, keeps or causes damage to the European Community funds, funds with governed by the European Community or managed on their behalf. According to paragraph (2) of the same article, a fraud is committed by the person who used the funds referred to in paragraph 1 of this Article contrary to the approved purpose. While in the part of the income, according to paragraph (3) of this article, fraud is committed by the person who, by the above described actions from paragraph (1), unlawfully reduces the funds of the European Community, the funds managed by the European Community or managed on their behalf . In paragraph (4) of the same article a penalty is also prescribed for a legal entity, if it undertakes the said actions.

The object of protection in this legal provision is the financial interests of the EU, while the incriminated action is aimed at the EU funds. The criminal offense can be undertaken by any person or company and can do so by doing or by failing to act, which they were obliged to take. And in paragraph (1) and paragraph (3), the consequences of the incriminated actions are explicitly stated - damage or reduction of the EU funds has been caused. (Ibid.).

The dilemma in this crime causes his name. While the text of the said convention stands for the term "European Communities", the term "European Community" is used in our Criminal Code, which does not correspond either with the above conventions or with the current name of the EU. In this regard, Article 337 paragraph (1) of the Criminal Code of Kosovo foresees the crime "Fraud in connection with receiving funds from European societies". Under this provision, a fraud is committed by a person who deliberately uses or gives false or incomplete statements or, on the basis of this, illegally accepts or retains funds from the general budget of the European Communities or a budget managed by or on behalf of the European Communities. Under paragraph (2) of the same article, such fraud also causes any person who conceals information contrary to the explicit obligation to present them and on this ground illegally obtains or retains funds to the detriment of the European

Communities. Whereas, in accordance with paragraph (3), that person should benefit from the general budget of the European Communities or use the funds for purposes that were not originally approved (Criminal Code of the Republic of Kosovo, 2012). Therefore, it is necessary to amend Article 249-a of our Criminal Code and wherever the term "community" should be replaced with the term "Union". This is the case in the Criminal Code of Slovenia, where Article 229 foresees the criminal act "Fraud to the detriment of the European Union". In addition to the provisions defining the fraud in the manner described above, in paragraph (3) of this article, a qualified form of this criminal offense is prescribed - if the perpetrator, due to the actions referred to in the preceding two paragraphs, acquires a large property gain or caused great material damage. In paragraph (4) of the same article it is also foreseen that the persons authorized to make decisions or to control the companies and who have allowed or have not prevented the perpetrators from committing the crimes referred to in the preceding paragraphs, who were subordinated to them and acted on behalf of the company (Kazenski zakonik Slovenije, 2012).

The Criminal Code of Montenegro does not provide for a special crime for fraud against the financial interests of the EU. Instead, in Article 264, which relates to the taxation and payment of contributions, paragraph (2) provides for a penalty for a person who avoids paying taxes, contributions or other prescribed fees, conceals data or gives false information ... (or performs other actions referred to in paragraph 1), at the expense of the EU financial interests (Criminal Code of Montenegro, 2015).

The above provisions are an indication that efforts to effectively combat fraud affecting the financial interests of the EU require a common legal framework that should guarantee the use of the allocated funds according to their purpose. But, the basic question is - whether and how much they receive their practical confirmation ?!

## **PROTECTIVE MECHANISMS FOR THE INTENTIONAL USE OF FUNDS FROM THE EUROPEAN UNION**

The struggle for protection of the financial interests of the EU is implemented in the legal framework of the EU. The Maastricht Treaty in 1992 covers criminal provisions according to which, both the EU and the Member States are combating fraud and any other illegal activity that is detrimental to the financial interests of the EU by applying decisive sanctions for the protection of Member States (The Treaty of Maastricht, 1992).

The guiding principles of the EU Commission (Financial Regulation, 2002) in this area are:

- Ethics-the Commission and other authorities responsible for managing EU funds must respect the highest standards of ethical conduct and integrity of the applicants;

- Improved transparency-relevant information on the use of EU funds should be available in a format that can be revised, compared and analyzed for anti-fraud purposes, in accordance with the relevant protection rules data;
- Prevention of fraud-in the implementation phase of the programs, the risk-based monitoring and control mechanisms should ensure proper mitigation of the risk of fraud;
- Effective investigative capacity-when there is suspicion, fraud prevention authorities should have access to the necessary information, in cooperation with the audit investigation bodies and in accordance with the applicable regulations;
- Sanctions-justice must be achieved within a reasonable time and sanctioned persons must be deprived of the benefits and returned to the injured party;
- Good cooperation between the EU and national authorities and between the services of all institutions concerned;
- Prevention and detection of fraud are objectives that need to be achieved through the internal control process. All entities managing EU funds and the Member States are legally bound to prevent irregularities and fraud affecting the EU budget.

On these principles, member states have brought a series of measures to protect the EU financial interests. They, in accordance with Article 325 paragraph (3) of the Lisbon Treaty on the Functioning of the EU, together with the Commission are obliged to cooperate more closely in order to combat fraud and other illegal activities affecting the financial interests of the EU (Council Regulation, 1997, p.1).

As an authority that will contribute to the co-ordination of such cooperation, the European Anti-Fraud Office (OLAF) (Office de Lutte Anti-Fraude, Fr.) was established in 1999 as the leading institution in the EU to combat fraud (Regulation 1999, No.1073, Article 1, p.1). Pursuant to Articles 3 and 4 of the Regulation, although OLAF is part of the Commission, it is a separate administrative body that operates independently of it. According to Article 1 of the amendments, OLAF has been reformed as a body that "... Contributes to the design and development of methods for combating fraud, corruption and other illegal activities affecting the financial interests of the EU" (Amended, 2011, Art 1). OLAF has a triple function:

- External, which, pursuant to Article 1 (4) of Regulation No. 883/2013 (Regulation, 2013) consists of investigations into suspected fraud, corruption and other illegal activities with a potentially negative impact on public funds of the EU, whether it comes to revenues, costs or assets owned by EU institutions or to detect serious or transnational irregularities by companies operating in several countries, whether they are EU members or not. Investigations can be undertaken ex officio or at the request of the country itself. In both cases, OLAF assesses the information received to determine whether there are enough to open an investigation. All investigations are prepared in cooperation with the authorities of the concerned country, in order to provide assistance, if necessary. Officials of the country can participate in

investigations. In addition, OLAF contributes in investigations carried out by the the countries, with exchange of information and contacts;

- Internal, through which it detects issues related to the performance of professional duties by staff of EU institutions, thereby contributing to the strengthening of citizens' confidence in the institutions and the development of new policies for combating against fraud. These controls may result in recommendations to these bodies to eliminate irregularities, but also through disciplinary or criminal proceedings against employees in EU bodies;
- Preventive, through which OLAF helps the authorities in charge of managing EU funds to see the potential risks of fraud and contributes to the EU strategy for designing new legislation and anti-fraud policies. To this end, OLAF cooperates with the Directorate-General for Justice.

OLAF should be included in early stages of screening and should play proactive role throughout the process. To this end, OLAF regularly informs the Commission of its findings (ECA Opinion No 1, 2010, point 14). In addition, OLAF cooperates with Europol and Eurojust.

For more successful implementation of its functions, OLAF uses several instruments:

- The Information System (AFIS) is an important IT tool for the timely and secure exchange of information between EU institutions, Member States, international organizations and non-EU countries, as well as storage and analysis the relevant data;
- Early detection and disconnection system (EDES), which serves to: a) early detection of risky operators; b) the exclusion of an insecure operator from obtaining EU funds or imposing a sanction and c) publishing information for the most difficult cases on the website.
- The Hercule III / 12 Program (2014-2020), which provides grants to authorities in the Member States to strengthen their operational and technical capacity to conduct investigations for activities detrimental to the EU's financial interests (Regulation (EU, Euratom) 966/2012)

The main disadvantage of OLAF's work is that this body can conduct investigations, but has no authority to impose penalties or order perpetrators to repay the funds. It can only give recommendations to the EU or to the states, which can be: a) financial, with which recommend a refund; b) judicial, with which refer to the competent authorities of the countries to take judicial action; c) disciplinary, with which directs to the EU bodies that should take disciplinary proceedings against their officials and d) administrative, which directs them to the EU institutions to resolve shortcomings in the laws or in the procedure for combating fraud.

But it is positive that OLAF is following the implementation of the recommendations by the states, which within 12 months must inform it of the undertaken. In 2016, in 50% of cases for which OLAF issued a judicial recommendation to states, charges were raised (The OLAF Report 2016, p. 33)

## **ANTI-FRAUD PROTECTION OF EUROPEAN FUNDS IN A BALKAN COUNTRY**

According to OLAF's investigations, fraud cases with the Structural Funds can be found in all countries, but experiences show that most cases occur in the countries of southern and south-eastern Europe (OLAF Report 2010, p.15).

In fulfilling the recommendations of the European Commission, in 2003 Bulgaria established a Coordination Council to combat offenses affecting the EU financial interests (AFCOS). There are several investigations carried out by OLAF. For example, in 2011, the European Commission's Directorate General for Regional Policy (GD REGIO) submitted information on irregularities in the tender procedure for an EU-funded project to build a factory in Bulgaria. The OLAF investigation found that the company gave the wrong information about its experience and qualifications. Consequently, OLAF recommended that the financing of the project should be reversed and that the paid 7 million euros should be returned. DG REGIO accepted these recommendations, and OLAF submitted the dossier to the judicial authorities that opened the investigation (The OLAF Report, 2011, p. 23).

In Greece, Law No. 4320/2015 established the General Secretariat for Combating Corruption with the task of acting as a Coordination Service against Fraud (AFCOS) and as a national contact point with OLAF. He cooperates with the Special Institution for Institutional Support of the General Secretariat for Public Investments, the Fiscal Audit Committee and the Ministry of Rural Development and Food, to detect and prevent irregularities in the payment of assistance (European Commission Staff Working Document, 2016, p. 106)

Slovenia in 2017 has issued Guidelines for a police. They state that the police should continue to discover and investigate economic crime, with particular emphasis on cases that damage the EU funds (European Commission Staff Working Document, 2017, p.23). Regarding the protection of the financial interests of the EU, the audit is carried out by the Court of Audit, the Budget Supervision Department within the Ministry of Finance and the Parliament through a special Commission for control of public finances. An example of fraud could be the case with a former Member of European Parliament, who accepted bribery from the fictitious company to propose changes to laws. OLAF initiated an investigation, but due to lack of evidence, it was closed. However, the Slovenian police filed criminal charges and the prosecution filed a request for an investigation. After the court's decision to initiate an investigation, the former MEP pleaded guilty and was sentenced to prison (Žgajnar, Blanka, 2015, p.12).

In Kosovo, OLAF conducted investigation about an EU financed project and found that a representatives of the ministry and of the bidder exchanged confidential information to direct the tender procedure. Upon completion of the investigation in

2016, OLAF sent the documents to the judicial authorities, after which proceedings were initiated (The OLAF Report, 2016).

The above examples show that the Balkan countries have implemented recommendations from the EU Commission for the Protection of European Funds and cooperate with the EU bodies to fight fraud and corruption, in particular with OLAF.

### **THE CONTRIBUTION OF THE REPUBLIC OF MACEDONIA IN THE PROTECTION OF THE EUROPEAN UNION FUNDS**

The Stabilization and Association Agreement between the Republic of Macedonia and the EU entered into force in April 2004. The European Council approved the status of a candidate country for the Republic of Macedonia in December 2005. The use of the assistance from the Instrument for Pre-Accession Assistance (IPA) is provided through four budget sub-programs and the Government's European Integration Program. The Secretariat for European Affairs has an obligation to provide a purpose and functional utilization of these funds.

The national legislation covers the main elements of the Convention for the Protection of the EU's Financial Interests. But in spite of the introduction of the crime in our Criminal Code, fraud and corruption related to the use of European funds continued to be a serious problem. The structural deficiencies of the State Commission for the Prevention of Corruption and the political interference in its work have led to its dissolution.

A competent body for cooperation with the EU Commission and OLAF in conducting investigations about the European funds is the Department for the Prevention of Irregularities and Frauds (AFCOS), which operates within the Financial Police Directorate. The Committee on European Affairs is working with the Assembly of the Republic of Macedonia, which can review the use of EU funds. There is also an Audit body that monitors the functioning of the EU pre-accession assistance management in order to ensure the legality of transactions (National Program for the adoption of EU law, 2015).

One of the projects that has attracted the attention in the public is the construction of the highway section Demir Kapija-Smokvica along Corridor 10. This project is realized from the budget, with a grant from the EU and credits from the European banks (Government of the Republic of Macedonia, Construction of Corridor 10). The works on this section were performed by the Greek company. In the period March-August 2013, the Greek citizens, from the bank in Negotino, were withdrawn large amounts of money from their accounts (an average of 110,000 euros per person), allegedly based on salaries and then left them in the country, because they did not report money at the border crossing point. In the course of three months, a total of 3.5

million euro was drawn in cash. For this, the bank informed the Fraud Department of the Financial Police Directorate, which launched an investigation and cooperated with OLAF in gathering evidence material. In 2014, the Basic Public Prosecutor's Office for Prosecution of Organized Crime and Corruption opened a pre-trial procedure and blocked the accounts of two companies. On April 2014, the accounts were unblocked, because public prosecutor said that the case had a low level of suspicion. That prompted OLAF to launch its own investigation. On August 2017, the OLAF informs our Ministry of Finance that there are not enough suspicions and that the investigation is closed. However, on 21 March 2018, the Special Public Prosecutor's Office launched an investigation procedure with a suspicion that former government officials misused their official position to favor one company instead another, which had a lower bid; which enabled them to acquire a benefit in the amount of 480.412.974, 00 denars. The investigation procedure is still pending.

It shows that the legislative framework in the Republic of Macedonia, is in line with European standards. But the enforcement of laws in practice faces serious difficulties, which allows individuals and companies to perform frauds at the expense of the European funds.

## **CONCLUSION**

Implementing unified legal and administrative measures to protect the EU's financial interests should be a continuous process that needs to be developed until a balance between the national legal framework of the countries with the European laws. In this regard, the Republic of Macedonia must also harmonize its institutional system for effective control over the pre-accession funds. Potential perpetrators of fraud and corruption exploit all the opportunities offered by the single European market, the globalized economy and new technology, in order to achieve their criminal goals. Therefore, dealing with them requires the improvement of existing and the creation of new mechanisms for prevention, detection and protection, in order to respond to exposure from fraud in a satisfactory manner. It is necessary to monitor past results of anti-fraud measures, but also to develop appropriate tools for risk analysis. Because, "The current difficulties within the EU can not be solved solely by economic and financial help. In order to gain the trust of our citizens, the EU must show that its financial interests are protected from fraud and corruption "( The OLAF Report, 2011, p.11, Statement of the General Director, Giovanni Kessler).

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# **EU ENLARGEMENT AND GEOPOLITICAL STRUGGLES- THE INFLUENCE OF THE REGIONAL POWERS IN THE BALKANS**

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## **ABSTRACT**

The European Commission praises the accession policy 'as one of the European Union's most effective foreign policy instruments', but four main challenges pose obstacles to the accession of the Western Balkan countries: lack of popular will in EU member states; flagging interest on the side of the EU; bilateral challenges thwarting implementation of regional cooperation; and indifference to the EU from the side of increasingly authoritarian regimes in some Western Balkan countries. Emerging regional powers such as Turkey, or Russia, are ready to step into a vacuum. Without a new impetus towards enlargement, the EU will risk losing strategic influence in a neighbouring region to other regional powers.

## **INTRODUCTION**

Both inside the EU and in the Western Balkan region, the enlargement project faces serious obstacles. Following Croatia's accession to the European Union (EU) on 1 July 2013, no candidate country is on track for membership before the end of the same decade. Beyond politics, EU investments in the region have also slowed down. Nationalism has remained a strong force in the region, and in some places it has been supplemented by the growth of Islamist radicalisation. Disillusioned Balkan youth have even headed to Syria to join the terrorist fighters of the Islamic State of Iraq and Syria (ISIS). Enlargement champions point to the significant cost of non-enlargement in terms of the risk of a 'vacuum' building up that could rapidly be filled by other regional or extra-regional players. Various reasons, including the declining levels of foreign direct investment in the region following the financial crisis and austerity measures, have opened up opportunities for other actors to engage with the Western Balkans, not just economically, but also politically and even strategically. In this sense, Russia and Turkey are more than keen to strengthen old regional ties and friendships.

In May, 2018, during the EU-Western Balkans Summit held in Bulgaria, EU leaders expressed their concern over Turkey's and Russia's expanding influence in the Balkans. Speaking to the European Parliament, French President Emmanuel Macron stated that he did not want the Balkans to “turn towards Turkey or Russia.” The EU

took a note that it is no longer the only show in town. It is a question whether it can allow the luxury to neglect the region and the enlargement process for much longer. In order to understand why Russian and Turkish influence has grown in the Western Balkans, the EU must strive to grasp the modes of operation and the use of “soft policies” of Moscow and Ankara in the region. Different regional powers, such as Turkey, Russia, China and the Gulf states, have begun to become more engaged in the region, sensing a business and geopolitical opportunity enhanced by the absence of a momentum towards EU enlargement.

While the modernisation process in the region has been stagnating, ‘a tarnished, divided EU is often powerless to make real changes to Balkan political dynamics of polarisation, zero-sum games, and toxic nationalism...progress on core European standards such as the rule of law, media freedom, and the fight against corruption is often superficial or simply non-existent, while independent monitors warn against rollbacks of the progress that has been made.’ (Lasheras a, 2014a)

Lack of economic growth and low levels of foreign investments have influence elite thinking and behaviour. As EU enlargement policy is increasingly losing its might if not relevance, in the Western Balkans fierce fight for power and party polarisation, combined with (mis)use of nationalism, and development of authoritarian tendencies occur. There are a number of reasons for this trend. Candidate countries have become increasingly aware that the negotiations will take a long time. For example, for the 2004 enlargement negotiations lasted six years. Sofia and Bucharest joined the EU in 2007, negotiating for seven years. Croatia negotiated from 2005 to 2013. It is highly unlikely that any of the Western Balkan countries will be able to join the EU in such periods of time. Indeed, at the hearing in the European Parliament Committee on Foreign Affairs (AFET) of Johannes Hahn, the new Commissioner for European Neighbourhood Policy and Enlargement Negotiations, ‘some MEPs feared that if too extended in time, the preparatory process could force some of the candidates to give up’. (Marini, 2014)

Moreover, the Greek debt crisis dealt ‘a serious blow to the enlargement narrative as one of sustained convergence, EU-driven modernisation, and increasing prosperity.’ (O'Brennan 2013, 40) For local elites looking at neighbours from the region, such as Greece, with high youth unemployment and indebtedness, or Bulgaria, which has made limited economic progress since joining the EU, it is apparent that EU membership does not guarantee quick progress to prosperity and stability. In the successor states of former Yugoslavia, in spite of Slovenia and Croatia now being EU members, the expected results of increased economic progress were likewise not achieved: unemployment has risen sharply; the living standards for vast sectors of the population are appalling to the extent that a mass exodus to richer EU member states has been attempted. The economic problems of other EU economies, such as Spain or Portugal, also influence this line of thinking.

Moreover, the recent fall of the traditional two-party system and the rise to power of Syriza, the new left-wing, anti-austerity party in Greece, signalled to Western Balkan elites that it can be dangerous at election times not to pay heed to their own citizens’ sentiments. Closer European integration and acceptance of the terms of the EU do not always result in popular support. Some local elites are again turning to nationalism and the EU enlargement policy towards the Western Balkans is increasingly losing

its relevance. While governments seemingly align themselves with the EU agenda and work on their countries' accession, 'a large number of formal and informal economic and political elites continue to manipulate ethno-nationalist mobilisation for their own private economic interests and the preservation of political power.' (Balkans in Europe Policy Advisory Group, 2014: 4)

Using various methods, including sophisticated political marketing tools as well as brutal media spinning and control, Western Balkan leaders often win elections on populist agendas. Since the reward of full membership would come much later, there is not much to be gained by conforming to the entire spectrum of EU demands at this stage, especially if some of the issues are related to nation-state identity concerns. The gap between the transposition and implementation of EU laws is substantial.

Patronage is rampant among governing parties, and conflicts with the opposition are fierce. Once a party wins elections, it 'captures the state', (mis)using public institutions and media to maximise its own influence and power. Fully aware of this, opposition parties attempt to win power at all costs even if their behaviour damages the national interest. A negative EU progress report is interpreted as a media coup for the opposition. As a result, on the one hand there is minimal cooperation between government and opposition parties towards passing certain laws and regulations with a view to approximation to EU standards. On the other hand, support for EU reforms is often conditional on securing demands that serve short-term party interests. Threats and boycotts of parliament or elections or state institutions have been common in the region. Montenegro has in effect seen no alternation of power, while in Serbia a concentration of power in the hands of Prime Minister Aleksandar Vučić becomes increasingly evident.

Citizens from the region are in dire economic straits with a shortage of employment opportunities. There is a ubiquitous feeling of hopelessness among young people, which often leads them to resort to crime or attempt to emigrate. Levels of youth unemployment are high and so is the gross minimum wage. (Zendeli 2014, 55; Eurostat 2015) As funds are in short supply in EU member states, Western Balkan leaders turn their attention elsewhere including actors such as the Gulf States, China, Russia, and Turkey. As governments usurp democratic consolidation and the EU enlargement perspective of the Western Balkans slowly progresses while economic recovery stalls, public confidence in further EU enlargement has begun to wane (See Table 1). The disappointment of people who never expected the path to EU membership to be so long and so difficult is 'also playing a major role because an atmosphere of frustration, resignation, and suppressed anger now prevails while anti-EU sentiment is becoming more widespread'. (Spaskovska, 2014)

**Table 1: What is your opinion on further enlargement of the EU to include other countries in future years?<sup>1</sup> (%)?**

	Macedonia	MONTENEGRO	SERBIA
<b>Autumn 2014</b>	79	61	58
Spring 2014	77	69	63
<b>Autumn 2013</b>	79	64	50
Spring 2013	85	68	57
<b>Autumn 2012</b>	83	62	49
Spring 2012	88	62	58
<b>Autumn 2011</b>	85	72	
Spring 2011	84	72	
<b>Autumn 2010</b>	85		
Spring 2010	88		

Source: Eurobarometer, [http://ec.europa.eu/public\\_opinion/index\\_en.htm](http://ec.europa.eu/public_opinion/index_en.htm)

## FILLING THE VOID

Various reasons, including the declining levels of foreign direct investment in the region from EU member states following the financial crisis and austerity measures, have opened up opportunities for other actors to engage with the Western Balkans, not just economically, but also politically and even strategically. In this sense, Russia and Turkey are more than keen to strengthen old regional ties and friendships. China and several Gulf states are relative newcomers to the region with specific economic interests. Radical forces linked with Islamic State have also begun to engage in the Western Balkans.

### *Turkey*

Turkey has ambitious regional aspirations. It has actively sought to build on its religious, cultural and historical affiliations with the Western Balkans – an approach dubbed by observers as 'New Ottomanism'. While Turkey doesn't have tangible leverage on the external orientations of Western Balkan countries, it has a certain clout in countries with a significant Muslim population. Turkey and its business leaders influence the region through the building and management of various schools and universities (Gülen Movement) and aid projects funded through the Turkish Cooperation and Coordination Agency (TIKA) and the Presidency for Turks Abroad and Related Communities (YTATB), as well as 'the "soft power" of various television soap operas that have gained huge popularity and influence societies' views and opinions about Turkish lifestyle and society'. (Mitrović 2014, 58) Gülen's

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<sup>1</sup> There is no data on Bosnia and Herzegovina and Kosovo, while Albanian data is collected only since November 2014.

adherents and networks have flourished in the Balkans for years, and ‘nowadays constitute a formidable nexus of NGOs, religious centres, schools and colleges, as well as private companies’. (Michaletos 2015) Despite the recent conflict between Ergoyan and Gülen Turkish influence in the Western Balkans has been rising.

For the Christian population of the Western Balkans, the strong Turkish Islamic influence is a concern as besides restoration of the Ottoman Islamic heritage, Turkey has invested in building new mosques in the region. In October 2014, Turkey’s Directorate for Religious Affairs (Diyanet) announced plans to build the largest mosque in the Balkans, able to accommodate more than 4,500 worshippers, in the Albanian capital, Tirana. The architectural style will be identical to Ottoman designs and should be opened to the public by early 2016. Four minarets will be erected, along with a 400-seat conference centre, an Islamic studies library, a halal restaurant, and an Islamic history museum of Albania.

Moreover, the trade volume between Turkey and the Western Balkans ‘increased by more than fourfold between 2002 and 2012’. (Ekinci 2013, 20) Turkish investments in the Western Balkans have focused on various sectors, including strategic ones such as telecommunications, energy, transportation, and finance. The airports in Skopje and Pristina were built and/or are managed by Turkish companies. Albania’s public telecommunications company was acquired by a Turkish consortium in 2007.

Turkish banks have become more active during the past few years, including Turkey’s Calik Holding purchasing Albania’s second largest bank, and the Turkish Economy Bank opening branches within Kosovo. In Bosnia and Herzegovina, Turkey acquired 49% of BH Airlines, opened several branches of the its state-owned Ziraat Bank in the country, therewith providing local financial empowerment, and Natron Hayat invested 90 million dollars in the country’s paper industry. Turkish firms have undertaken large construction and housing projects, while a large number of small Turkish enterprises operate in the manufacturing and services sectors.

Turkey is a significant economic partner of Macedonia. Both countries have a bilateral free trade Agreement which facilitates economic cooperation. Trade with Macedonia amounts to USD 400 million, or some 345 million Euro. (Ministry of Economy, 2018) In the 2016 - 2017 period Macedonian exports to Turkey were about 1.5% of total Macedonian export, while Turkish imports were 5% of the total Macedonian import in the same time frame. (National Bank 2018) On the exports side, iron and steel and textile and clothing prevail, while textile and clothing, equipment and machines, plastic masses, food and beverages are mostly imported from Turkey. In the first half of 2018, exports to Turkey increased by 14%, and imports by 10% compared to the same period of the previous year. On the other hand, Turkish direct investments in Macedonia are also noticeable. In the last 10 years, the Republic of Turkey has positioned itself in the top 10 top investors in Macedonia. Since 2010 the total direct Turkish investments in Macedonia are 89 million Euros. To spur trade, the Economic Chamber of Macedonia and Turkey (MATTO) has been founded.

### ***Gulf states***

The role of the Gulf States in the region has grown in recent years. One of the first Gulf initiatives was the launch by the Qatar-based television station Al Jazeera of its Balkans network in November 2011. Headquartered in Sarajevo, with studios in Zagreb and Belgrade, Al Jazeera broadcasts mainly in Bosnian/Serbian/Croatian but also in other languages of former Yugoslavia. At the May 2014 Sarajevo Business Forum, the prominent presence of Qatar, United Arab Emirates (UAE), and Kuwait could not be overlooked. Qatar and UAE have shown particular interest in Kosovo and Bosnia and Herzegovina, a relationship that goes back to the Balkan wars of the late 1990s. Since the wars of the Yugoslav succession, “the Gulf states have criticised the EU (and NATO) for ignoring the plight of Muslim states and communities in the region.” (Van Ham 2014, 17) Building upon Islamic ties to the region and filling the vacuum in the south-east Europe several Gulf States have used their wealth to increase their influence in the Western Balkans.

Yet the closer ties clearly go beyond religious solidarity, as the growing economic links between UAE and Serbia testify. Serbia signed a USD 1 billion loan with UAE in March 2014. In order to finance its debts until 2016, Serbia planned additional borrowing from UAE as well as from China. Before this major deal was agreed, UAE’s national airline, Etihad Airways, had already purchased a large (49 %) stake in Air Serbia, formerly JAT Airways – Serbia’s national carrier – in August 2013. (De Launey 2013)

*Belgrade on Water* is the name of the construction project aimed at improving Belgrade's cityscape and economy. Initiated in 2014 between the Serbian government and Emirati investors, Eagle Hills, it envisions office and luxury apartment blocks, eight hotels, a shopping mall and a tower resembling Dubai’s landmark Burj Khalifa on the right bank of the Sava River. Eagle Hills has “agreed to put up the 3 billion euro (\$4.08 billion) cost of the scheme but the terms have not been settled and it is unclear how much the Serbia government will contribute in funds.” (Robinson et al 2014) This engagement offers the Gulf States 'a new set of potential allies in the corridors of power in Brussels'. (Van Ham 2014, 17) Although religious affinities are less important when it comes to investments, a certain dose of cultural influence in the host country is expected to occur.

### ***Russia***

Over the past few years Moscow has used loans and strategic acquisitions, proposed energy projects, trade and other investment to deepen its relationship with the Balkans. In 2012-13, the Russian government ‘agreed to bail out the Serbian economy to the tune of EUR 0.8 billion. The Russian Railways company is currently refurbishing a 350-kilometre stretch of track in Serbia at a cost of EUR 0.75 billion.’ (Clark and Foxall 2014, 9) Moreover, the Moscow-based oil multinational Lukoil now ‘owns 79.5 % of the local service-station chain Beopetrol, along with hundreds of filling stations across Bulgaria, Serbia, Montenegro, Macedonia and Croatia, while Gazprom holds majority ownership of Serbia's largest natural gas supplier.’ (Blome et al, 2014) Russia is the fourth biggest investor in Bosnia and Herzegovina. The Russian state-owned oil company, Zarubezhneft, without a tender, achieved a

strategically significant presence in the oil sector through its presence in Republika Srpska, the Bosnian-Serb entity. It acquired the Rafinerija Nafta Brod oil refinery and the Modriča motor oil plant when they were privatised in 2007. These are the only two such facilities in Bosnia and Herzegovina, both located in Republika Srpska. It also ‘acquired the local retailer, Nastro Petrol, which now has a chain of 82 petrol stations and a 35 % share of the market’. (Clark, D., and Foxall, A., 2014, 8) In November 2014, showing its more assertive role in Bosnia and Herzegovina, Russia for the first time in 14 years abstained on the vote at the UN to extend EUFOR Althea, an EU-led peacekeeping mission in this former Yugoslav country. Russia objected to the resolution because it referred to the prospect of Bosnia and Herzegovina joining the EU. (Dempsey 2014)

A growing energy market in its own right, the Western Balkans is also becoming increasingly important as a transit route to the rest of Europe. This is the case both for Russia in its efforts to bypass Ukraine and for new suppliers in the Caspian basin hoping to bypass Russia – including the aborted Nabucco pipeline and the Baku-Tbilisi-Ceyhan (BTC) pipeline. Following the cancellation of the South Stream development, Russia made deals to build Turkish Stream, a massive gas pipeline that will travel from Russia from 2017, transit through Turkey and stop at the Greek border – giving Russia access to the southern European market.

Russian influence in the wider Balkans region has become strong in other sectors too. According to the Bulgarian National Bank, ‘net inflow of foreign investment into Bulgaria between January and October 2014 was around EUR 805 million. Of that, some EUR 177 million, or about 22 %, came from Russia’. (Stratfor, 2015) Russia’s state-owned Sberbank is now an important player in the Balkans following its EUR 505 million takeover of Volksbank International in 2011. Volksbank International was its first acquisition outside the Commonwealth of Independent States (CIS), and part of a broader plan to become a major global financial institution. Now Sberbank has 295 branches and ‘a client base of over 600,000 across several countries, including Serbia, Croatia, Slovenia, and Bosnia and Herzegovina.’ (Sberbank 2012) Russia is Montenegro’s largest inward investor, with as much as 32 % of enterprises under Russian ownership. Most of these investments are concentrated in real estate, tourism and leisure with wealthy Russians attracted by the opportunities of visa-free travel and low tax rates.

Since around one-third of all tourists coming to Montenegro are from Russia, which amounts to around 300,000 annually, this represents a source of economic dependency the Russian authorities have sought to exploit. In addition, Russian businesses have acquired a number of major tourist resorts in Montenegro, with some reports claiming this number to be as high as 40 %. Real figures of Russian investment may be higher, ‘since it is suspected that many investments have been done illegally and in secret so that tracing financial assets made in various money-laundering and tax-evasion schemes is usually impossible to account for’. (Đorđević, 2014)

Russia’s overall policy in the Balkans is to seek allies and to create influence in a region that is expected to become part of the EU in the future. Just as it supports right-wing parties in Europe seeking influence inside the EU, Moscow cultivates relations with politicians and elites in the Balkans, so that when accession occurs they will

have new allies in Brussels. Moreover, 'the Balkans are central to the Kremlin's narrative about the post-Cold War normative order being broken, which is deployed both externally and inside Russia as part of the regime's quest for legitimacy'. (Bechev, 2015) An aggressive Russia under Putin is perceived particularly well in the Slavic Orthodox countries of the Western Balkans as a counterpoint to the rational, calculating EU. The frustrations and the growing indifference towards the EU enlargement process among the Balkans elites only aid the Russian ambitions in the region.

### ***China***

China's interest in the Western Balkans is based mostly on economic interests. Beijing perceives the region as a gateway to the EU, has increased its links considerably in recent years, and this trend is likely to continue. The Chinese economic engagement in the Western Balkans should be placed in a wider regional context, namely Beijing's relations with the whole of Eastern Europe. All of the Western Balkan countries (except Kosovo) are part of the '16+1' platform for cooperation between China and the group of 16 post-communist countries in Central and Eastern Europe. The former communist countries, and in particular those from the Western Balkans, are seen by Beijing as having more 'flexible' legal and political frameworks than those of the EU. 'As such, gaining an economic foothold in these countries at this moment is much easier than gaining it in EU member states. Moreover, they can serve to be a testing ground for Chinese enterprises, and once these countries join the Union, China could have already gained a significant presence inside it'. (Vangeli, 2015)

Chinese development aid has been substantial in the region. Since 2010, EUR 1.4 billion of Chinese funds has been directed into projects in Serbia, 'including construction of Kostolac power plants and the expansion of a coal mine that feeds them, a bridge over the Danube in Belgrade worth EUR 170 million, and a long-term EUR 0.88 billion loan to finance the building of two highways by Chinese companies in cooperation with local partners'. (Pavličević, 2014) In September 2011, the Serbian municipality of Vranje signed an agreement with a Chinese company that envisaged a EUR 300 million investment in solar energy sources in the region. Indeed, China's long-term strategy views Serbia as a strategic partner in the region, and it believes that Belgrade can fill the role of a European transportation hub. An agreement to construct a high-speed railway between Belgrade and Budapest was signed in November 2013. The project, worth EUR 2.5 billion, will be financed by 'the China Development Bank and executed by Chinese state-owned enterprises. Agreements have also 'been made in Bosnia and Herzegovina through the Stanari project, worth EUR 350 million, and others in the region'. (Zeneli, 2015) Indeed, neighbouring Bosnia and Herzegovina has agreed projects worth a total of EUR 1.4 billion to be financed by China.

Montenegro chose a Chinese company 'to build a EUR 800 million stretch of a motorway linking it with its northern neighbour, Serbia'. (EurActiv, 2014) Two Chinese companies are among the top bidders to build a coal power plant in Montenegro. In 2009, a Chinese public company completed the construction of Kozjak hydropower plant near Skopje. The Chinese government provided Macedonia

with around EUR 72 million (almost 60 % of the investment) in financial support in the form of loans for the project. In addition, 'two major highways in Macedonia are being built with a loan from China worth nearly 580 million euros, by the Sinohydro Corporation.' (Xinhua 2014)

During a visit to Beijing in September 2014, Albanian Prime Minister Edi Rama announced new infrastructure projects backed by Chinese money, including a highway linking Albania and Macedonia. The new two-lane highway would link the capital, Tirana, and the isolated Dibra region on the Macedonian border through an expensive shortcut into the mountainous area in central Albania. Great importance is also being placed on the idea to develop Shengjin on the Adriatic, Albania offering China a 25-year concession to invest in the port's infrastructure and modernisation. One of Beijing's aims is to advance the New Silk Road project by accelerating investments in regional infrastructure links and creating a large network of ports, logistics centres and railways to distribute Chinese products and bolster the speed of East-West trade. A new and efficient railway route through the Balkans is the perfect backbone for a speedy distribution network. The Western Balkan energy sector, where major Western utilities are unwilling to make risky investments, is a particularly attractive target. The increase in China-Balkans cooperation follows the worldwide trend whereby Beijing is assuming an ever bigger role. While China does not have the capacity to replace conventional partners in the Western Balkans, it offers what the traditional European partners do not at the moment, namely investment and tangible outcomes with minimum political conditionality. At the end of the day, however, China is driven by its own economic interests and arguably political ones too, so the Western Balkan governments should not get too enthusiastic about Beijing's increased influence in the region. The countries of the Western Balkans are interesting to China as long as they retain their EU prospects and advance regional cooperation.

### ***ISIS and radicalism***

Several hundred jihadists from a number of Western Balkan countries, according to some estimates even thousands, have joined the extremist armed militia ISIS (Islamic State of Iraq and Syria) in its murderous campaign in Syria and Iraq. Disaffected Albanian youth from Albania, Kosovo, Serbia and Macedonia have joined ISIS, as well as Bosniaks from Serbia, Montenegro, and Bosnia and Herzegovina. Recruiters are mainly local activists and preachers who are enlisting people from known Salafist groups. David Gardner, a Middle East expert and reporter for the *Financial Times*, attributed the appeal of the Islamic State to the phenomenon that 'since the end of the cold war and after the wars of the Yugoslav succession, the western Balkans – in particular Albania, Kosovo, Bosnia, Macedonia and even bits of Bulgaria – have been carpeted with Saudi-financed Wahhabi mosques and madrassas. This is moving local Muslim culture away from Turkic-oriented, Sufi Islam towards the radical bigotry of Wahhabi absolutism, which groups such as Isis have taken to its logical conclusion. This is fertilised ground for jihadi ambition.' (Gardner, 2014)

According to latest available data in a Central Intelligence Agency (CIA) report in September 2014 more than 40 jihadists from Kosovo and nine Macedonia had been killed in the fighting to date. By the fall of 2014, some 340 fighters came from Bosnia

and Herzegovina, according to a Radio Free Europe/Radio Liberty analysis. (RFE/RL 2014) A further '150 came from Kosovo, 140 from Albania, and 20 from Macedonia'. (Tomović, 2014) Some 150 Bosnians "are believed to have joined jihadi groups in Iraq and Syria, while some 50 others have already been and returned from the battlefield, according to the intelligence services." (Smajilhodzic 2015) According to the Kosovar Center for Security Studies (KCSS) "as of January 2015, there are 232 confirmed cases of Kosovo citizens fighting alongside militant groups in Syria and Iraq, including Islamic State (IS)." (Paraszczuk 2015) Meanwhile in Serbia, in April, Serbia's Interior Minister Nebojsa Stefanovic claimed that "thirty Serbian nationals have gone to fight in the zone of armed conflicts in Syria and Iraq, some of whom have taken their families with them...while ten people from Serbia were killed in these war zones." (InSerbia team 2015)

In September 2014, an anti-terrorist police operation, entitled 'Damascus', took place in Sarajevo and 12 other towns of Bosnia and Herzegovina. As a result, 'a court ordered the detention of five Bosnians charged with organising and recruiting young people to join extremist Islamist fighters in Syria and Iraq'. (Somun, 2014) In November 2014, 'in the 'Damascus 2' Bosnia-Herzegovinian authorities arrested 11 Islamist radicals suspected of support for terrorism and the jihad in Syria and Iraq, while two more suspects were detained during 'Damascus 3' in February 2015.' (Radio Free Europe/Radio Liberty, 2015) The raids took place in five Bosnian locations, including Sarajevo. In Kosovo, in August 2014, 40 ethnic Albanians suspected of links to ISIS were arrested. On 29 November 2014, in a police operation codenamed 'Palmira', Austrian police arrested 13 people, 'including a few from Bosnia and Herzegovina and Serbia in raids targeting alleged terrorists and recruiters of fighters in foreign conflicts connected to the so-called ISIS'. (Remiković, 2014) The Balkans are also becoming a transit point for foreigners wanting to fight with ISIS in Iraq and Syria. Over the past several months, authorities in Bosnia and Herzegovina, Kosovo and Bulgaria have arrested foreigners allegedly working for ISIS. The danger from ISIS fighters coming back to the Western Balkans is realistic. For example, according to evaluations by one of the leading researchers of violent Islamism on average one out of nine foreign fighters return home. (Hegghammer 2013)

All six Western Balkan countries officially declared their support for the US-led military coalition in Iraq and Syria to fight ISIS. Albania even declared that it would 'establish the largest anti-terrorism directorate in the [Balkan] region', following reports of Albanians joining the Islamic State.' (*Turkish Weekly*, 2014) Albanian security experts detected rising religious and ethnic extremism in the country, and Foreign Minister Ditmir Bushati stated that Albania 'was open to further opportunities to assist a US-led coalition campaign against Islamic State insurgents who have overrun large parts of Iraq and Syria'. (Jones and Strohecker, 2014) In the autumn of 2014, Western Balkan governments all showed a determination to confront radical Islamist forces, drafting and in some cases (Kosovo, Bosnia and Herzegovina) passing legislation to sanction citizens that take part in foreign wars. Five citizens of Kosovo have already been indicted on terrorism charges for fighting in Syria. (Bytyci 2015) In February 2015, at the initiative of the Albanian Chairmanship of the South East European Cooperation Process (SEECP), 'a Joint Declaration on Terrorism was

approved by thirteen ministers of foreign affairs in the region, sending a message of cross border unity in tackling common challenges through joint actions'. (Ora News, 2015)

## CONCLUSION

In recent decades, the EU has invested so much in the Western Balkan region that the region is now strongly integrated economically with the EU, which accounts for more than two-thirds of the region's total trade. Therefore, an exit strategy should not be under consideration. On the contrary, closer integration should be moving further ahead. A deceleration of the accession process would seriously undermine the credibility of the EU and its self-proclaimed 'soft power', leaving the door open for the stronger influence of rising regional powers such as Russia or Turkey. Given the visa-free travel to the EU Schengen countries for the Western Balkan countries (except Kosovo), there is a danger that radicalised Islamic youth from the Balkans would move in and become active in Europe. Organised crime, corruption and immigration could also emerge as potential threats to Europe-wide security and stability if the Western Balkan countries' accession is postponed indefinitely. The Western Balkans and the EU need to recharge the EU enlargement process through a reinvigorated accession process and strategy.

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## **FORENSICS OF ECONOMIC FINANCIAL DOCUMENTATION**

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### **ABSTRACT**

Criminal and financial investigation of economic financial crimes is a long complex process involving a system of operational and tactic measures and activities, investigating activities and specific investigating measures on the part of the investigators. Within the overall operational process, following the “from information to realization” principle, or “from general suspicion to relevant evidence”, the investigators deal not only with discovering, but also with complete revealing and defining the crime situation, applying a range of methods and techniques of investigation. The economic financial crime is a kind of non-violent crime, involving disrespect of legal provisions, counterfeiting of business documents and misuse of position for personal gain and the data related to the performed crimes are located in the business and financial documentation. How to disclose a criminal situation and to provide evidence is the subject of the forensics of economic and financial documentation. It represents a procedure of determining the application of legal acts and defined standards of legal persons for financial working, in cases of reasonable grounds for committed economic financial crime. Applying the operational and tactic measure “Insight into the business documentation and in the business premises”, data for determining the general suspicion for committed crimes and their relation to actual perpetrators are being provided, whereas the process of revealing and evidence

provision actually represents an application of a range of forensic procedures and methods, such as: forensic revision, forensic accountancy, handwriting and signature forensics, and with the increased involvement of computer technology, computer forensics in the part of dealing with extraction, analysis and comparison of electronic business documentation becomes more evident. The paper takes into consideration all the segments of economic financial documentation forensics in line with the process of providing relevant evidence as a necessity for successful conduct of the overall crime case against economic financial crime perpetrators.

The role of forensics is particularly important not only in providing firm, undefeatable evidence of the crimes performed and their connectivity to official authorities and people in charge, but also in detecting the way in which the crime was committed, the size and type of crime proceeds, as well as in determining the damage caused during the crime activity, that is to say, the illicitly acquired proceeds and laying the grounds for property confiscation upon completed court trial and reached final verdict. The forensic investigation is performed by court experts in a process of analysis, by applying corresponding tactics, techniques and methods and preparing expert evidence containing the findings and opinion of the court expert with a status of an official endorsed by the court. Through an analysis of the criminal practice, this paper presents the indicators of the role the forensics plays in fighting the economic financial crime.

**Key words:** forensics, economic financial documentation, forensic accountancy, forensic audit, expert evidence.

## INTRODUCTION

The economic financial crime is a specific type of crime, differing from classic type of crime on several grounds, such as:

- According to status, this type of crime is performed by officers, officers in charge and officials performing tasks of public interest.
- According to professional qualifications, the perpetrators of this type of crime are established professionals in their areas of activity who make use of their professional expertise, but also of the influence and power derived from the function they perform, from the job place they hold or fulfillment of the work tasks they are entrusted with.
- According to the motive – it is always gaining material goods, finances and other proceeds considered as a motive for engaging in economic financial criminal activity.

- According to the process of criminal investigation, it usually starts with one suspect at the beginning, to proceed with revealing a series of other suspects involved in the acts of crime and other types of crime related, as well.
- There are substantial differences among individual economic financial crimes that are further branching off in the course of the process of disclosure and providing of evidence.
- There is interconnection of criminal activities involving office authorization and responsibilities.
- The evidence is generally material and contained within the economic financial documentation.
- The process of evidencing is related to the provision of relevant pieces of evidence involving application of corresponding tactics for supplying, analyzing, selecting and expert evidencing of economic financial documentation.

Deriving from the above differences are corresponding differences in the process of criminal investigation for which it is necessary to perform a forensic processing of economic and financial documents that involves supplying of relevant evidence necessary to start a lawsuit against the perpetrators. The forensic approach is introduced at the moment of undertaking a professional insight into the business documents on the part of the criminal investigators who determine the status of the perpetrators, select legal and financial documents containing data about the criminal activity related to the manner and the means used in the criminal activity, define the motive for the crime etc. As the analysis and the selection of documents is completed follows the process of analysis and expert evidencing of the singled out documents in which the evidence relevant to the crime are determined, the relatedness of the perpetrators to the methods and tactics involved in performing of every single crime is defined and the relatedness of the perpetrators to the used methods and tactics and to the size of illicitly gained property and damage caused are detected, based on the analysis done.

In disclosing situations involving economic financial crime, depending on the nature of the criminal activity and for the purpose of supplying relevant evidence, forensic audit, forensic accountancy, forensic graphology and computer forensic of business documents are being performed.

The forensics of economic financial documents is aiming at provision of relevant evidence acceptable at the court. What is evidence acceptable at court? When it comes to crime related to financial working, crime of illicitly spending the budget money or crime related to forfeiture or destroying the business documents or forging a signature, acceptable evidence at court involve expert evidence by licensed professionals in given areas of interest. The forensics of economic financial documents encompasses the whole process of criminalist and financial investigation, starting with legal and physical persons providing the required documentation,

document analysis, up to the expert evidence of the provided documents and ending up in evidence that includes findings and an observation, which actually is the evidence for the case.

## **BASICS OF FORENSIC INVESTIGATION OF ECONOMIC FINANCIAL DOCUMENTS**

The basics of forensic investigation of economic financial documentation are the subject of regulation in the Law on Crime Procedure and in the laws regulating the activity of individual authorities and institutions dealing with control and auditing the way the budget money are spent, since the budget finances are very often the target for criminal attack and gain on the part of the perpetrators of economic financial crime.

By introducing the new concept of the Law on Crime Procedure in the Republic of Macedonia, the procedure for criminalist and financial investigation of economic financial crime is improving, qualitatively. Namely, due to the capacity that several state bodies and institutions for criminalist and financial investigation of this kind of crime, it is preferred to follow a concept that involves the public prosecutor from the very start of the disclosing process, with only a general suspicion existing, then, in the process of formation of grounded suspicions, or confirmation of implications that individuals of certain status – officials, heads or professionals performing tasks of public interest, are actually perpetrators of crimes related to economics and finances. What is important, or what makes the difference between economic financial and classical crimes, are actually the initial suspecting the implication of crime situations. Whereas in classical cases, the investigators take the crime as a starting point to reach to the perpetrator, in cases of economic financial crime, the case starts with the suspect or the suspects, disclosing the deed by means of supplying evidence for the deed and the illicitly gained proceeds of crime.

The criminal legislation provides the process framework of legal police authority incorporating operational and tactical measures and activities, investigation measures and activities and specific investigating measures. Beside this, it foresees which state bodies are entrusted police authorization to investigate the listed crimes and crimes resulting in illicit property gain or causing damage beyond acceptable amounts. Namely, it is the Police and the Public Prosecution that are authorized to perform investigation in all types of crimes, whereas the Financial Police is in charge of investigations and evidence provision in financial crimes such as: money laundering and other crime proceeds, illicit trade, smuggling, tax evasion and other crimes involving illicit property gain of certain amount.<sup>2</sup>

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<sup>2</sup> Чл. 47 ст. 1 од Законот за Кривична постапка, *Сл. весник на РМ бр. 150/10*.

It should be emphasized that there are bodies of direct law enforcement (Criminal Code of the Republic of Macedonia and the Law on Criminal Procedure) as well as bodies and institutions that indirectly contribute to the investigation and prevention of economic crime. In the Republic of Macedonia, there are institutionalized bodies directly in charge of discovering and investigating the incriminated conduct, by direct application of the Criminal Code and the provisions of the Law on Criminal Procedure with detailed description of the procedure, the measures and activities they take. Worldwide, there are the so-called law enforcement agencies and they are equivalents to the state bodies entrusted with police authority in our country. Of course, in the course of the investigation procedure, they have to inevitably, cooperate with institutions that are indirectly involved in performing investigation supervising and control.<sup>3</sup>

The Macedonian legislator, in function of the criminal and financial investigation of the economic financial crime, foresees an obligation to hand in data in possession of state bodies, units of local self-government, organizations, legal and physical persons with public authority, upon request by the public prosecution. The public prosecutor can request control over the work of the legal or physical person and temporary taking over of money, securities, objects or documents that can be considered as evidence of the crime until full legal enforcement of the decision is reached, then, inspection control and reporting on the data related to unusual and suspicious money transfers. The state bodies, the units of local self-government, the organizations, the legal and physical persons entrusted with public jurisdiction are obliged to submit to the public prosecutor every document, object or report considered necessary in the course of the procedure. The public prosecutor has every right to request data and reports, documents, acts, objects or banking details even from other legal persons and from the citizens, for which the prosecutions reckons they are in possession of. The aforementioned state bodies are obliged to take up the necessary measures and involve the necessary means, and within 30 days without delay, to submit to the public prosecutor the requested documents, acts, data, reports, object or bank accounts. If this obligation is not respected, the public prosecution has the right to take them and make an insight into them, at the same time informing, in writing, the person in charge or the official that was previously contacted with the request and can take up the corresponding measures as foreseen by the law. Also, the prosecution has the right to suggest to the court a fine of 2,500 to 5,000 Euros for neglecting the request for submission. When the prosecution requests taking up certain measures, then the official of the state body that was contacted regarding the request has the obligation of informing about the measures taken within 30 days. Accordingly, the insight into the banking details is not considered breach of banking secrecy. Also, the public communication network

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<sup>3</sup> Николоска С., Економска криминалистика, Ван Гог, Скопје, 2015, стр. 213.

operators and public communicating services are obliged to submit data regarding contacts made through the public communication channels, immediately upon request by the public prosecution.<sup>4</sup>

The process of criminal investigation starts and is based on general suspicion on the part of criminalists who contact the public prosecution on the matter. It is the public prosecution that plans and coordinates further activity, involving taking up legal measures and activities for complete disclosure of the crime in question and provision of unbeatable evidence in front of the judicial authorities. The investigators, according to the Law on Criminal Procedure of the Republic of Macedonia<sup>5</sup>, as judicial police, are aiming, in a process of legal procedure, at providing evidence of the economic financial crime committed, the dynamics of perpetrating the criminal activities, the manner in which it was performed, the connectivity of perpetrators and the type and amount of crime proceeds.

The specific of economic financial crime is viewed in their relatedness to office jurisdiction, to professionalism in execution and the elements of several crimes in a single case, representing a whole, usually involving more than one perpetrator, related to a single realization. The criminal realization is dependable on several involved who display criminal behavior, including misuse of professional position, which is on the other hand a term under which the criminal aim is achieved. The disclosing of the overall crime situation provides solution to the golden criminalist issues by means of providing evidence for the crime performed, relating the crimes to the perpetrators, as well as casting light on the manner and motives of the perpetrators for the criminal act in question.

What is characteristic of the economic financial crime is that the perpetrators are persons with professional capacity, as they usually represent the parties in a legal or economic relation, but, what made them or made not perform the crime, is the motive. And the motive for such crime is gaining riches, property, finances, and this motive goes far beyond the knowledge and sensibility about what is allowed and what is forbidden. In line with the motive for committing an economic crime, it is the character of the person that matters, too. Behind every criminal act there is a certain motive, a stimulating energy that instigates the criminogenous activity, directs it and manages it. The identification of the motive for a given criminogenous behavior is actually the key indication for disclosing the crime and reconstructing the whole crime. The motive-driven activity of the perpetrator leads him/her towards achieving the certain aim. The aim has its own "WHY" and "BECAUSE". The higher the degree of the aim or the conscious direction towards the aim, the stronger the influence of

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<sup>4</sup>Чл. 287 од Законот за кривична постапка, Сл. весник на РМ бр. 150/10.

<sup>5</sup> Сл. весник на РМ бр. 115/10.

the will is going to be. <sup>6</sup> Whether there existed will and intention for economic financial crime is only a matter of indicativity, whereas whether the will was critical to the economic crime is irrelevant. The motive of unlawful gain and the intention how to achieve this, are of course important factors. Yet, it is the opportunity or the conditions of the perpetrator, as to whether the circumstances, or professional features and abilities are suitable, that are actually of critical importance in such cases. Above all, it is the character of the perpetrator that is considered critical as well, in terms of judgment of what is allowed and what is forbidden. The line between these two in cases of economic and financial crime is rather thin, because it is all about complying or not with the law, respecting or not the authorization and jurisdiction granted according to the law. For instance, the manager of a public enterprise is a healthy individual of firm character, but this firm character is impeded by greed and misuse of position, as well as belief that the crime cannot be disclosed. The crime investigation is directed towards the influences on the person, his/her will, intention and motive for misuse of position, the authorities and jurisdiction to display an illicit or criminal behavior that would provide him/her some kind of financial gain. In criminology, according to Batkoska<sup>7</sup>, the perpetrator's personality, the timing (whether or not the perpetrator had any authority at the time the crime was conducted) and other facts of relevance have to be studied. Meanwhile, it has to be differentiated between the internal (subjective) and external (objective) factors and their mutual relation of causality. Of particular importance for the perpetrators of economic crimes is that the criminalist psychology has to deal a bit with the manner and methods these people use in the process. It has to be bore in mind that these are educated individuals that sovereignly reign their territory or area within which they actually perform the crime, have firm possession of professional knowledge and expertise how to do it, but also how to conceal the traces or the evidence of the criminal activities done. The principle of opposing the economic financial crime that resulted in substantial crime proceeds is based upon several general assumptions, such as:<sup>8</sup>

1. Because the illicit gain of property and crime proceeds is the basic motive for acting in organized crime, their appropriation would influence the decrease of motivation among the perpetrators if this, really, leads to confiscation, regardless of the efforts put into concealing what was gained through an unlawful process.
2. The appropriation of the illicitly gained property acts preventively on the opportunity to infiltrate the "dirty" money in the legal economic flows, above all the money of the powerful criminal organizations.

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<sup>6</sup>Баткоска Ј. *Индицији и психолошка реконструкција на злосторството*, Годишник на Полициската академија, Скопје, 2007/2008, стр. 197.

<sup>7</sup>Ибид, стр. 195.

<sup>8</sup> Bošković G. i Marinković D. , „Metodi finansijske istrage u suzbijanju organizovanog kriminala“, NBP, Beograd, 2010, str. 88.

3. The illicitly gained proceeds are appropriated in this way in order to prevent using them in other, related crime actions.

4. The fourth assumption has a moral character – no one is allowed to gain property through criminal activity and enjoy making use of it.

The above assumptions will be realized through well-organized activity of the bodies of authority – investigators, through good planning of the operational activity, complete analysis of business documentation, linking the data deriving from the documents and determining the crime elements, as well as identification of responsibility. The determination of criminality and the existence of elements of crime are of particular significance in the whole process. The determination of criminality means solving the criminal case, which is the ultimate aim of investigators and judges, but the ultimate goal can only be achieved through application of a forensic approach to the investigation. The forensics of economic financial documentation represents a process of comprehensive investigating of economic financial documents in order to obtain response to crime questions for classifying the actual crimes and perpetrators.

In its broadest sense, the forensic science can be defined in the same manner as any other science that is in service of the legal system. This broad definition has to incorporate cases of both civil lawsuits and felony, but, in practice, forensics is most often dealing with solving the latter.<sup>9</sup>

### *Inspection of corporate documentation*

The forensics of economic financial documents commences at the moment when the investigators make planned insight into the documents of interest, a measure foreseen in the Law on Criminal Procedure. The legal provision behind this operational and tactical measure reads: **to perform introspection of certain objects and premises used by the state bodies or institutions of public jurisdiction and other legal persons in the presence of responsible official and an insight into the documentation in their possession.**<sup>10</sup> The cited operational tactical measure is carried out at an initiative and on the part of the police forces, and corresponding official materials in the form of minutes or official notes are prepared. Attached to these are the available pieces of evidence, objects and hints found in the corresponding business documentation. This is a complex measure, comprising of several activities taken by the judicial police, in parallel and upon previously submitted plan and timeline of activities taken. In addition to the original complexity of the measure is the additional one emerging in the process of planning and the realization, in cases of grounded suspicion of more subjects involved in the crime. In

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<sup>9</sup>Цексон Р. В. Е. И Цексон Ц., Наука за форензиката, НАМПРЕС, Скопје, 2009, стр. 1.

<sup>10</sup>Чл. 276 ст. 6 од Законот за кривична постапка, *Сл.весник на РМ бр. 150/10*.

cases like these, the measure is applied in several places at the same time – group application of the measure for inspecting the premises and insight into the corporate documents that contain data relevant to the further disclosure and supplying of evidence materials.

“In cases of sizable, more comprehensive and complex application of the inspection of corporate premises or documentation measure, it is necessary to cooperate with certain professional services or bodies that, within the scope of their jurisdiction also incorporate this measure and have at their disposal staff whose specialty is keeping financial documents (Public revenue Office, financial police, inspection offices etc.) and primarily deal with selection of relevant and elimination of irrelevant documentation.”<sup>11</sup>

What is considered as relevant documentation includes documents, business books, financial documentation for which it is believed or it is obvious that are forfeited or fictitious, bearing marks of crime (signature, seal) or are the very subject of the crime – fictitious invoice, unlawfully adopted decision and the like.

The inspection is performed with the purpose of determining the situation with business books and records kept and to discover forfeited or fictitious documents. In this direction the operational units should be looking for the following facts:

- The subjectivity of the legal person (regardless whether it is a state body, an institution, trading company, corporation, private legal entity, public service, civil association etc.)
- Identification of an official or person in charge as a perpetrator
- Business book keeping in accordance with the law
- Material and financial accountancy in accordance with the law and determining elements of fictitiousness, forfeiture or destroying of business documentation, or discovered duplicate documents
- Treasury operation in accordance with the law, discovering double payments and/or fictitious payment orders
- Determining the connectivity to other entities in the criminal case
- The way of storing the business documentation and obeying the legally defined terms for retention and destruction.

It is of great significance to mention that in the course of the investigation of cases of economic financial crime, in the course of collecting supporting materials, expert evidence of economic financial documentation in terms of accountancy condition and control of expenditure or cash flow among legal and physical persons, is conducted and a complete audit of the financial operation. In the recent years, an ever growing attention is paid to a comprehensive investigation of economic crimes and specific

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<sup>11</sup> Бановиќ Б, „Обезбеђење доказа у криминалистичкој обради кривичних дела привредног криминалитета“, Београд, 2002, стр. 256.

disciplines have been developed, like forensic accountancy and forensic audit which, beside the knowledge and expertise in the area of accountancy and auditing, require certain knowledge and expertise in the field of criminology as well.

### ***Expert evidence of economic financial documentation***

“Our contemporary society is characterized by an intensive scientific and technological development and it is necessary to spread wider the area of expert evidence need as a specific process activity to involve the work of diverse professionals and experts in the pre-trial and trial procedures. The practice shows that in discovering and determining the disputable facts, such expertise has been used in 80% of all cases of economic crime, representing the second most present measure, following right after the witness statements”.<sup>12</sup>

“The expert evidence procedure should be starting with an inventory of all financial and material means and determining the state of facts, and then to compare it with the situation in accountancy that would provide controlling the accuracy of ledger and the accuracy of other accountancy documents that serve as grounds for entry”.<sup>13</sup> Then follows the analysis of the documentation that leads to cooperation with other legal entities, including the banking institutions and the Public Revenue Office. The tactics applied in the expert evidence procedure depends largely on which segment of work is being investigated and what documents are the subject of interest of the expert evidence.

The expert evidence of documentation is, most often, requested due to the following reasons:<sup>14</sup>

- Existing suspicion about the authenticity of signature or handwriting
- Existing suspicion that changes have been made to the original document or if the document is created of several parts of different documents (photocopies, photo-montage)
- Existing suspicion about the date of the document
- Need to reconstruct a partially destroyed document (in cases of tearing off, burning or if a document contains written interventions on the text)
- If identification of a copying machine is required
- If identification of a typewriter or computer printer is required
- If determining of microfilmed document authenticity is required.

The following are considered essential elements for the expertise of documents: the material of the document, how it is written (by hand, printed etc.), what is it written with or printed, the stamps, seals or other specific things applied on the documents,

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<sup>12</sup>Крцкоски, М., *Веитачење во кривичната постапка*, Југословенска ревија за криминологија и кривично право бр. 3 - 4, Београд, 1980, стр. 400.

<sup>13</sup>Пауковиќ М., *Веитачење код привредних деликата*, Загреб, 1961, стр. 22.

<sup>14</sup>Бановиќ Б., *оп. цит.*, стр. 277.

the copying medium and the methods of inspecting (physical and chemical, optical, mechanical, graphologist etc.).

When performing the expert evidence procedures, the experts are expected to provide answers to numerous questions, the most important ones being:

- Is the signature on the incriminated document original?
- Is the handwriting of the contentious document original?
- Are the stamp and the seal used on the incriminated document original?
- Is the stamp or the seal used on the incriminated document put on the date of preparation of the document?
- Whether the copies of the document are identical or are there any added or deleted parts/items?
- Is the document printed on a given computer printer authentic for that precise printer, and whose computer entry code has been used at the time the document was prepared and printed?

### ***Forensic audit***

Particular attention in investigating economic crime in the form of necessary expertise for the process of criminalist economic investigation is given to auditing and accountancy. The latter because every legal entity keeps financial and accounting books that provide an insight into the material financial condition of its work. In a series of economic crimes, it is necessary to inspect such documentation by means of analyzing the analytical cards of goods input and output and analyzing the financial value rendered in units of money. Every practitioner involved in the investigations of economic crime needs to possess at least basic knowledge in order to perform the inspection of analytical cards kept in the material and financial accounting and identify the fictitious or double payments made. The audit is also very significant in investigating economic crime, which is performed upon request by the legal entities, or upon request by the court, or an audit of budget expenditure upon request by the state bodies and institutions.

The term “revision” (as a synonym of the term “audit”) is etymologically derived from the Latin verb “revidere” meaning “to check”, “to examine” and the Neo-Latin word “reviso” meaning “to look into”, or “to revise and to evaluate”, “to perform a last check”. In the English-speaking areas, the term “audit” is more common, which derived from the Latin word “audite”, meaning “to be heard”. The original interpretation of “auditer” is the one who makes revision, and then, in a process of back-derivation, the term “audit” has been created.<sup>15</sup> What does audit represent and what is the job of the auditor? In the broadest sense of the word, according to Tom

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<sup>15</sup> Николовски П. , *Интерна и екстерна ревизија*, Економски факултет Прилеп, 2009, стр. 3.

Lee<sup>16</sup>, “the audit represents an instrument by means of which a person is being convinced (by another one) about the quality, condition or status of a topic issue that was the subject of investigation of the other person.” Or, to put it in other words, it would mean controlling the previously conducted investigation in case someone suspects its impartiality, integrity and credibility. The audit is a procedure that is particularly being carried out on the financial operation both in the public and in the private sector. Auditing the financial reports aims at providing independent and objective opinion about the veracity and trustworthiness of the presented data in the financial reports, like: the statements of financial conditions, the statements of achievement and the report on cash flow.

The audit of expenditures of state bodies and institutions as budget beneficiaries is of exceptional importance. Due to lawful or unlawful expenditure of budget money, the vital state and civic interests are brought into question. The illicit expenditure of budget money leads towards piling up personal riches for officials managing state money, or officials as signees of state bodies and institutions accounts and are entrusted with the right and responsibilities related to managing these financial resources. The relatedness of audit and economic crime is viewed through the role of audit in disclosing misuses on the part of officials in charge and of function in state bodies and institutions, as predominant perpetrators of economic crimes. These are perpetrators entrusted with certain functions and authorization in the name of the state, at every level of authority, from the lowest up to the top highest ones. Looking back to the earliest definitions of economic financial crime as kind of a white collar crime, it is easily noticed that it involves perpetrators with significant responsibility even in cases of budget money expenditure.

### ***Forensic accountancy***

In 1996, a group of authors in an article for “U.S. News and World Report”, wrote that among the top 20 most demanded experts in the future would be the forensic accountants. They were described as bloodhounds “sniffing” at the financial reports for criminal activity. Forensic accountancy can be defined as application of accounting skills and techniques for discovering financial relations and information about financial transactions that could be of use for disclosing criminal cases where the “crime” is hidden in financial documents, like invoices and payment orders. Forensic accountancy is being taken up in cases of grounded suspicion about illicit payments, fictitious or double payments, made on the bases of fictitious or falsified documents, contracts, invoices, bills and receipts. The aim of the forensic accountancy is determining the existence of criminal activities on the part of the suspects, and particularly determining the way of preparing financial documentation,

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<sup>16</sup> Lee T. , *Corporate Audit Theory*, Chapman and halt, London, 1993, pg. 8.

signing, endorsing payments and the flow of finances. It is particularly applied in cases of comprehensive financial investigation for the purpose of defining the flow of crime proceeds and determining the final user of the financial resources that are the target of the criminal activities.

### **ABUSE OF POSITION OF TRUST IN THE COURSE OF FINANCIAL AUDIT AND OTHER TYPES OF EXPERT EVIDENCE**

In line with the afore-mentioned methods, technical means and methods corresponding to the technological level of development in the sphere of criminalist expertise, are in use. It is essential to notify that, beside the methods, instruments and apparatus, the importance of the ethical code of evidence experts has to be mentioned in what is known as application of professional rules, objective notification and fact determination, critical review and assessment as well as impartial deduction and thinking, because it is absolutely unlawful to come to conclusions that are not in correspondence with the results obtained through application of professional knowledge, expertise and modern technology.

Very often “the power of expertise” is misinterpreted as absolute evidence, and even though there are relevant evidence supplied in the pre-trial procedure according to which it is claimed that the crime has been done, actually what is proved is completely the opposite. In fact, through the evidence expertise, the concrete criminal behaviors are defined and the perpetrators are identified. In case there are suspects that through the process of expertise are proven not guilty, the conviction is overthrown in a criminalist procedure known as elimination upon evidence expertise accomplished. The power of such evidence represents a reason for emergence of corruption in the judiciary, but also emergence of corruption among the individuals with an authority to perform evidence expertise.

There are situations when the necessary expertise need to be widened so as to cover the overall functioning of the legal entity for a given period of time, or to perform a complex review of several different areas in evidence expertise – treasury, accounting, archive functioning etc. The order for expert evidence, in complex cases, has to precisely determine the type of expertise in accordance to the professional segment, and for the purpose of reaching various opinions about one single matter cross-referencing the professional capacities of various experts. As a consequence, there would be diversified interpretation of same facts in the findings and would cause significant problems in the process of evidencing.

The comparison of the bookkeeping and the factual conditions requires determining the factual state from the very beginning, then, comparing it to the situation in the books, which is most often done in a process of inventory of financial and material condition of the given legal entity.

The authority, that is to say the court that ordered the experts evidence is obliged to provide the evidence material. In situations dealing with documents, they have to be submitted as originals, too, because, according to experts' reports from practice, when expertizing handwriting, a signature, a stamp or a seal, it is only performed upon original documentation. So, the obligation to determine the relevant facts about someone's criminal activity involves the original documents, but unfortunately, this represents a big problem, as the perpetrators are most often very well aware of what should be kept in their offices and premises – they usually keep a second copy, whereas for the original, it is always said to be submitted to the legal entity or another company in the form of a request, an invoice and similar documents. But this problem is definitely easy to solve, knowing that all business documentation is nowadays stored in computers – contracts, invoices, cards etc. Through computer forensics, all the documents can be downloaded from the computer memory, of course if the computer contains the required documents is available.

## **FORENSIC GRAPHOLOGY**

“The expertise of documents is a broad area of criminalist and technical investigations by application of specific methods and modern technical means. The document can be expertized in order to determine the identification of the signature, the handwriting, the reference number, the typewriter used, the printer it was printed on, the stamps and seals, for the purpose of discovering traces of intervention and corrections, deleting or adding and so on.<sup>17</sup> In theory, this is known as inspection of documents or graphanalysis which understands “examining of documents directed towards discovering criminal acts and their executors, as well as providing professional and scientific evidence to assist the judiciary bodies”. The subject of graphanalysis involves: graphology of handwriting, signatures and perhaps, figures, numbers, seals, stamps and marks; determination of type and brand of typewriter used, forensic physical and chemical examination, identification of added items, corrections, writing material and paper used, linguistic analysis and other inspections of documents, and lately, inspection of the computer and printer the documents were proceeded on, as well as the paper the documents were printed on.

Handwriting graphology is one of the instruments of forensic identification and is based on the fact that every individual's handwriting is relatively unique and permanent. The individuality of handwriting is manifested in the wholeness of its general and specific features and the permanence of these features, thanks to what it

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<sup>17</sup>Алексик, Ж., „Вештачење фалсификата докумената, рукописа и новца“, Књига одбраних дела, Београд 1996, стр. 379.

is possible to determine the origin of the handwriting on the document that is under inspection.

When performing handwriting inspection, the theory has accepted the following questions to be taken into consideration, as formulated by Albert Osborn<sup>18</sup>:

- Is the handwriting genuine?
- Is the signature put on the usual place?
- Are the signatures of all relevant persons genuine and are they put in the order as stated in the document?
- Is the text of the document authentic?
- Is the handwriting somehow distorted or unnatural in any way?
- Are there traces of pen or indigo paper used?
- Is the document signed before or after folding?
- Are there traces on the document of mechanical or chemical deleting and are there any changes or additions made?
- Is the document written at once or are there parts of it added at later stages?
- Who is the signatory of the document with critical handwriting?

In handwriting expertise, several methods have been used are still in use, like: graphologist or calligraphic method, graphometric method, graphic method etc.

The financial investigations are procedures that are conducted in parallel with the crime investigation and are aiming at disclosure of crime proceeds, identification of property for confiscation and to temporarily freeze the property of the perpetrators in order to perform the final confiscating process.

## **COMPUTER FORENSICS**

The financial investigation conducted by the financial intelligence is performed by involving large computer systems and networks assisted by specific software solutions, programmed in coordination with certified international standards applied by institutions entrusted with such authority. The computer system used for following financial transactions known as data mining refers to a system of automatized tools and techniques from the sphere of artificial intelligence that facilitate the search of a large amount of information and for the purpose of discovering the hidden and invisible connectivity among them, which is otherwise very difficult to be grasped by simple observation.<sup>19</sup>

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<sup>18</sup>Osborn S. A. *Questioned documents*, London 1929 и Симоновиќ Љ. , *Криминалистичко вештачење документа*, Београд, 1956, стр. 4 - 6.

<sup>19</sup>Watkins C. R. , Reynolds K. M. , Demara R. , Georgiopoulos M. , Gonzales A., Eaglin R., *Tracking dirty Proceeds : Exploring Data Mining Technologies as Tools to Investigative Money laundering*, Police Practice and Recherche, 4, 2003, pg. 169.

In the recent years, the concepts of data mining are progressing in various ways and in various legal systems, but it is always with the same purpose of following the money flows, regardless of whether it has something to do with criminal activity with elements of money laundering or following the money deriving from other criminal undertakings. It is about the identical phenomena, criminal phenomena more precisely, so that the application of these concepts and tools is justified in both situations.<sup>20</sup> There are various patterns of application of the above systems. One of them is applied in the USA and is based on analyzing the reports on great financial transactions of cash in order to identify the potential activities and schemes of criminal activity related to money laundering and circulation of proceeds of crime. In fact, the computer system browses the banking reports on financial transactions on the basis of 336 parameters for identification of suspicious indexes of potential “criminalization” of transaction, of the signees or the accounts. Similar systems are in use in other countries, and the system introduced in the North Rhine-Westphalia, a Federal State in Germany, and then was spread in other states all through Germany, is particularly interesting. It is based on central exchange of data from external data bases. This means determining the economic conditions of connectivity of the suspect, based on available public computer data bases in the state bodies and institutions. The system provides the services with the big picture of the financial condition of the suspect within a relatively short period of time. The system, in its functioning relies on the available data bases around the globe and uses the Internet as a medium. Actually, the increased number of such instruments is based on the statistical techniques and the technique of artificial intelligence. According to Watkins and his collaborators, the most popular techniques involve linear and logistic regression, a group analysis, inductive algorithms, neuronal networks and genetic algorithms.<sup>21</sup>

## **FINDINGS AND RECOMMENDATIONS**

The forensic science studies the methods and techniques used in the course of the criminal acting of economic financial crime perpetrators. Since the evidence of such crime are contained within the business documentation, the forensic investigation covers several areas and has to be systematized in a document in the form of a written analysis of the overall criminal realization, with an emphasis on the ways of criminal activity, the applied methods and techniques, then, an analysis of disrespect of legal

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<sup>20</sup> Жарковић М., Лајић О и Ивановић Свонимир, Кривичнопрвени и криминалистички аспекти примене овлашћења на увид у стање банкарских рачуна и рачунарску обраду добијених података у финансијским истрагама, Супротстављање савременом организованом криминалу и тероризму, Криминалистичко 'полицијска академија, Београд, 2011, стр. 140.

<sup>21</sup> Watkins C. R. , Reynolds K. M. , Demara R. , Georgiopoulos M. , Gonzales A., Eaglin R.. pg. 172.

solutions, separating the fictitious documentation, and finally, based upon the analysis, giving recommendations to the evidence expert regarding the grounds for existence of crime.

As the evidence expertise is completed, the expert has the obligation to submit a written reply to the received order for performing the expertise, composed of two parts: findings and recommendations.

In the findings, the expert presents all the facts supported by corresponding documents that are of immediate significance for the defining and argumentation of the object of expertise. The preparation of findings and recommendations document, in fact is analyzing and elaborating the whole documentation of importance for the object of expertise.

“The expert’s recommendation is actually a summary, or concluding provisions and determinations of the expert with regards to the object and aim of the expertise. The recommendations should never contradict with the findings and has to be prepared in a single variant, supported by the argued professional thinking of the expert, based on the elements of the findings”.<sup>22</sup>

The findings and the recommendations of the expert are subject to assessment as every other evidence by the prosecutor, before the accusation is filed by the court council in the process of criminal trial and adopting the conviction.

The assessment of the evidence value of the findings and recommendations is performed following the principle of free estimation of evidence.”The free estimation of evidenced derives from the court not being related to following any rules. But in assessment of the findings and recommendations of the expert, the court has to abide by the general principles of human thought and the rules of experience and logic, at the same time applying the rules of the profession involved in providing the findings and recommendations”<sup>23</sup>

## CONCLUSION

The forensics of the economic financial documentation represents a complex process applied by the investigators after the primary information about economic financial crime acts. The process starts with an insight into the documents and an analysis of data found in those documents, then continues with a number of expert evidence sessions for the purpose of providing relevant evidence material needed for the judiciary to serve as a ground for forming the judgment and adopting the corresponding sanctions, whether imprisonment or money fines, confiscation of

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<sup>22</sup> Цуклески, Г и Николоска, С. , Економска криминалистика, График Мак принт, Скопје, 2008, стр. 209.

<sup>23</sup> Крцковски, М. , *Некои аспекти на материјално - финансиско веитачење*, Безбедност бр. 3, Скопје, 1986, стр. 263.

criminal proceeds and property. The very process of investigation actually involves application of several forensic methods and techniques, based upon scientific findings, technology and practice. With regards to revealing economic financial crime, in accordance with the criminal practice, forensic accountancy, forensic audit, dactyloscopic forensics and computer forensics are applied, either as individual procedures involving individual licensed experts or a team of licensed experts, engaged to perform a comprehensive audit of economic financial documentation and achieving the aims of the investigation. The principle objective of the investigation of economic financial documents is providing firm and invincible evidence needed for the judiciary in the process of adopting the final verdict. The economic financial crime is a crime perpetrated by individuals who have abused the position of trust. The perpetrators take the advantage of the position for personal gain, and this has to be proved by the investigators, based upon relevant evidence. The quality of the material provided directly influences the verdict to be reached by the court. The societal reaction towards the economic financial crime perpetrators is realized through the investigators and the judiciary is to be grounded on firm evidence, with a sole aim of confiscating the illicitly gained property and riches as top fine.

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## **GENERAL VICTIMOLOGY AND VICTIMS OF NATURAL DISASTERS**

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### **ABSTRACT**

In this paper, the authors first explain the meaning of the term “victim”, noting that the occurrence of human suffering arising from one’s own or another’s illicit conduct, omission or failure to act, unpredictable or unfortunate circumstances has always been part of the development of human society and human life. Although victimology is primarily focused on examining the personality of a victim, his/her activities and interaction between the victim and the victimization mechanism, there is a need to focus on collective and abstract victims, large-scale civilian casualties caused by violating the norms of International Humanitarian Law, victims of specific forms of socially deviant behavior (such as prostitution and drug-abuse) and the growing number of victims of natural disasters. These specific types of victimization are studied within the framework of general victimology, which is predominantly aimed at providing victim support and assistance. Thus, the theoretical approach embodied in academic discussions on the subject matter of victimology has been put into practice by envisaging the joint action of EU Member States within the European Commission’s Humanitarian Aid and Civil Protection (ECHO). The *modus operandi* of this institutional mechanism has been evident in Serbia in the past few months, particularly starting from 13<sup>th</sup> May 2014 till March 2016, when parts of Serbia and Bosnia and Herzegovina were struck by extreme floods. The concept of general victimology, which is often inconspicuous as compared to the concept of penal

victimology, seems to have departed from the purely theoretical approach and increasingly become an important element in the explanation of human suffering and disclosing the role of the state and public institutions in preventing the victimization of its citizens.

**Key words:** general victimization, natural disasters, victim.

## INTRODUCTION

The occurrence of human suffering, due to others' or their own unauthorized actions, omissions, or, incidentally, or unfortunate circumstances, is accompanied by the development of human society and the individual. Hence, the word "victim" refers to the one who suffer. The word victim in the Serbian language has a somewhat broader, but also a more concrete meaning, with the suffering of someone as one of the significance of sacrifice. Therefore, in linguistic terms, it is possible that the victim means "what is offered as a gift to a particular deity as a sign of gratitude or to gain the grace of that deity", then to a person who is affected by war destruction or by the execution of warfare, as well as the person submitting suffering and distress, and that is the victim of the family and the house, the victim of alcohol, or the victim of fascism. However, material sacrifice, money sacrifice, and great sacrifice, nevertheless signify renunciation of something, as well as selfless giving, or even self-sacrifice (Novi Sad, 2007:375). Therefore, it is not an unusual dilemma, so often expressed in a written word in the field of victimology, if is the term victim appropriate to indicate someone's suffering or, moreover, too extensive, given the above mentioned linguistic definitions.

The field of victimology, as a special scientific discipline, has numerous debates and analyzes of intellectuals, activists of non-governmental organizations and lawmakers, and in this "hot blend" numerous tensions arise (Walklate, 2007:29-30). Some authors note that victimology is "a specific and respectable academic discipline, as a new branch of the science of the victim, but with a transparent and distinctive diapason, a comprehensive and interdisciplinary research process"(Ramljak, Simović, 2006:3). Or, "Victimology is, the simplest of all, the science of the victim" (Šeparović, 1985:11). Nevertheless, regardless of the central orientation towards studying the personality of the victim and all its activities in interaction with the mechanism of victimization (victimization), that is, the phenomenological and etiological features of a certain personality and the process of her suffering, there is the need for the study of collective and abstract victims, violations of the norms of international humanitarian law, or victims of certain forms of deviance, such as prostitution or narcotics, but also, more and more, victims of natural disasters, for example.

In 2000, Ben-David presented Victim's Victimology as a new orientation, based on the need to perform victim-based research and practice. This orientation focuses on the performances of victims and points to the importance of a scientific methodology that will be applied in relation to the expressed needs and interests of the victims themselves, and represents an example of change, in which self-awareness of the need of victims becomes the primary focus, and not their rights, as it imposes society (Ronel, 2008:4).

The old paradigm, which puts the rights of victims at the forefront, can be viewed as an expression of pure morality in relation to the victim, while the new paradigm emphasizes on aging morality. Aging includes not only the protection of the rights and interests of victims, but also the creation of opportunities that will meet their needs. The current theory in victimology expresses this paradigm, emphasizing the area that is focused on action, as well as the field of academic and scientific interest. The main action is aimed at transforming perception at any level, from individual to institution, to cultural and social determinations.

Then, in the victimological work of the recent date, it is clearly pointed out that "we mislead ourselves if we think that the behavior of the corporation is irrelevant, even in relation to the narrow definition of criminality. In many ways, the misconduct of the corporation appears to be far more premeditated than most of the street crimes that we commonly accept as criminal acts and as victimization. That is why Miers notes that "Victimology has too many voices to allow any coherence in the way of its shared understanding of the world", while Rok observes its "Catholic" nature. Pointing to even broader concepts within the discipline, Canadian victimist Fattah insists on separating what he calls "humanistic victimology" from "scientific victimology" (Sumner, Israel, et al. 1996:, 9-34). Namely, by making this difference, Fattah places priority on the basis of the comparison of the claims of victimization given by those belonging to the victims' protection movements, on the one hand, and those whose perceptions of victimization are more impartial, academic, or more scientific, on the other hand. This outcome best illustrates the theoretical and scientific claim that the difficulty in determining the notion of a scientific discipline is related to determining the content of its subject, the methods used in studying the subject, the various ideological concepts and approaches of researchers. (Konstantinović-Vilić, Vesna Nikolić-Ristanović, 2003:18). Until the early nineties of the 20th century the number and variety of the perceptions of groups and individuals who advocated the rights of victims in those countries grew, as well as the process of political concentration of victims' interests (Walklate, 2007:29-30).

## **THE DEVELOPMENT OF VICTIMOLOGICAL VIEWS - FROM PENAL TO GENERAL VICTIMOLOGY**

In the development of victimology, it is possible to identify several different directions, whose subject and time definitions vary, depending on the approach of certain victimologists (Konstantinović-Vilić, Nikolić-Ristanović, Kostić, 2009:461). The interest of the first victimologists continues to affect the formation of one of the main routes that continues even within today's victimology. This current is called the penal victimology, in relation to what is called general victimology. For followers of penal victimology, the field of interest is defined by criminal law: victimology is the science of victims of unlawful behavior, incriminated by criminal law provisions. Research in the field of this victimology approach links data relating to the causes of the crime, with the data relating to the role of the victim in the occurrence of the crime. Penal victimology requires a dynamic, interaction between the victim and the perpetrator. A very appropriate, alternative name for this approach would be interactive.

Second, the main course of victimology is commonly called general victimology. Like penal Victimology, this direction was first explicitly explained by Mendelson. In 1956, in one of his post-war papers, Mendelson presented his general teaching about what he then called "victimity", which should be reduced by preventive activity and victim assistance. In later papers, Mendelson proposed the establishment of a victim clinic where victim assistance would be provided, based on a special personal, social and cultural theory of rehabilitation (van Dijk, 1999:3). With this, Mendelson's interest is rooted from crime and crime prevention, toward prevention and alleviation of victimhood, in the broadest sense. Mendelson believed that subjects of the study should include not only victims of crime and abuse of power, but also victims of accidents, natural disasters and "other Gods will". He advocated for the development of general victimology, as a discipline on his own grounds, independent of criminology and criminal law, which will help states to minimize human suffering. This attitude, of course, came from Mendelson's personal experience as a victim of a violation of basic human rights during the Second World War. In parallel with this overlooked global change, clinical testings, involving victims of crime and disasters, have spread over the last twenty years. The key segment in this research field is how to help people under traumatic stress, or how the consequences of post-traumatic stress should be prevented or treated. Regardless of the fact that criminologists, lawyers for criminal law and social psychologists have made an important contribution to this particular scientific knowledge, however, Van Dijk believes that most "work in this field has been done or done by psychiatrists and clinical psychologists." (van Dijk, 1999:3).

The scope of this type of research is not limited to victims of crime. The exact nature of serious life events that causes traumatic stress is of little importance. Therefore, attention should be focused on treatment and prevention, or alleviation of harmful consequences. Disorders of post-traumatic stress were also observed in victims of accidental events, as well as natural disasters or traffic accidents.

In many countries, general victimology is institutionalized with the advocacy of victims and access to certain services in developed countries of the world. Critical Evaluation Studies, done by independent researchers, are vital to improving the performance of these services. Victimologists, deputies of the penal conception, usually do not share the "artificiality" in providing professional assistance to victims, posing "natural" issues that relate to the theoretical basis and the effectiveness of the assistance provided. They can also help maintain a balance in giving exaggerated claims about the status of the victim by particularly interested groups.

At the end of his critical attitude, Van Dijk observes that in some clinical researches of crime victims, the criminal nature of victims' problems has been neglected. Instead, attention is focused on the clinical symptoms of the patient. Lawyers are sometimes glad to accept medical treatment for victims. If the issues of victims of crime can be successfully transferred to the profession that provides treatment, then the criminal justice system "does not need to be fatigued and able to occupy itself exclusively with the relationship between the state and the perpetrator". In that case, there are no political pressures to change the existing criminal proceedings. And therefore, Van Dijk emphasizes once again the role of punitive victimologists and their cooperation with feminist-oriented victimologists, in providing support against such professional coalitions that do not act in the best interests of the victim.

In general, on this topic, and even more broadly, many criminologists have presented other critical points. Thus, Cressey gives a rather strict critical attitude in 1992, on victimology in general, and on the attitude towards victims: "Victimology is ... a non-academic program under which the conglomerate of ideas, interests, ideological attitudes and research methods ... is characterized arbitrarily is the disagreement between the two equally desirable orientations towards human suffering - humanistic and scientific ... (However), a humanistic approach tends to be condemned because it is considered more propaganda, and less science, and the scientific tendency is to be condemned because it is not sufficiently focused on social action. It would be better if each of the settings of the victimologist is excluded, if it is separated from another, and if it forms a communion outside the shadow of a victimological umbrella." (Elias, 1996:9).

In fact, Cressey's opinion is a sharp statement similar to that of Van Dijk at the expense of general victimology and the clinical approach to the victim. Namely, by interpreting Cressey's indignation, Elias further explains that this kind of Cressey's approach came from an overrepresented victimological attitude by the victims'

representatives, whose "urge" to promote a policy for the benefit of the victim "affects our ability to conduct an objective scientific research".

Cressey's reflections found her exhortation to Fattah, who points out that his victimology has gone too far from theory and science and "has become too ideological, activist and politically oriented. Victims' representatives are sometimes so preoccupied with painting a blistering image so that they distort the crime, its stroke, its frequency and its victims.". Fattah presents an illustration of the danger of a "missionary jar," often practiced by the victim's representatives: "the Crusade" against the abuse of children often led to false accusations; presumption of guilt, excessive separation of children and unnecessary fear and suspicion among parents, those who professionally care for children and children. Victims' representatives also risk stigmatizing the victims as helpless beings, providing undue special treatment for them, taking into account that in any victim society they should have the right to help.

Similar to the views of Cressey and Fattah, Harding points out that his criticism is that the politicization of victimology has distorted the criminal justice, with fatal consequences for both approaches. The Victims' Rights Movement, Harding stresses, promotes rights selectively - for certain victims, as well as the unjustifiable assumption that the rights of victims are more important than rights or values in the whole society. In this way, a false fight between the interests of the victims and the interests of the perpetrators is immortalized, promoting an ineffective, conservative criminal policy.

## **VICTIMS OF NATURAL DISASTERS WITH AN EMPHASIS ON SERBIA**

Basic study of the subject and purpose of victimology, understood either as penal or as general victimology, leads to the definition of its basic tasks. According to Šeparović, victimology, mainly penal or general scientific discipline about the suffering of an individual, has a triple task: to analyze the multiplicity of the victim's problem; explain the causes of starvation; and, develops a set of measures to reduce the suffering of people. The suffering of man Šeparović is viewed as a consequence, that is, "that final effect, or threat of damage to a person's good, regardless of whether it is a human individual, or entire group of people, and also for legal entities that consist of a group of people who work, represent, or use it" (Šeparović, 1985:13-14).

The concept of general victimology also refers to the suffering of people under the influence of natural disasters, or accidents. One way of theoretical approach, represented in academic debates on the subject of victimology, has given a clear practical definition of the way in which the member states of the European Union are organized. Namely, the European Commission has clearly organized the

implementation of humanitarian objectives and civil protection (European Commission - Humanitarian Aid and Civil Protection). European cooperation in civil protection encompasses: good coordination, effective and successful response, as a result of the withdrawal of aid resources from Member States; the preservation of human and financial resources by avoiding duplication of effort, and thus ensuring that assistance meets the real needs of States that are affected by accidents; providing assistance to prepare for the avoidance of accidents, by raising awareness of the population, organizing training, exchanging experts and exercising in simulated accidents.

The method of operation of this mechanism has been visible in the last few months, more precisely since May 13, 2014, when extreme floods hit the areas of Serbia and BiH. According to the European Commission's assessment, over 3,000,000 inhabitants were affected by the consequences of flooding in both countries. Hundreds of thousands of citizens were killed by losing their basic means for life, and were forced to evacuate from their homes, due to floods, landslides and mud deposits. According to the demands of Serbia and BiH, addressed to the European Commission for the Provision of Humanitarian Aid, the European Union has released 3,000,000,000 € for humanitarian aid, targeting the most vulnerable categories of the population.<sup>24</sup> The European Commission, together with Slovenia and France, organized a donors conference in Brussels on 16 July 2014 to raise funds for Serbia and BiH. At the conference, a total of € 1,846,000,000 was collected, of which € 995,200,000 for Serbia. At the conference a report on this year's floods, adopted at a session of the Government of Serbia on July 15, also has been presented.

At the same time, the Serbian Government formed the Office for the Assistance and Restoration of Flooded Areas.<sup>25</sup> The Office carries out expert, administrative and operational tasks for the needs of the Government and the tasks that are common to ministries and special organizations, relating to: coordination, monitoring and reporting in connection with the reception and distribution of humanitarian and other assistance addressed to the Government for flood-affected; elaboration of criteria, as well as procedures for allocating aid; preparation of periodical and final reports on the granted assistance; coordination and preparation of partial and unique report on damage assessment; coordination of the preparation of priority, partial and unique plan for the rehabilitation of areas affected by floods; coordination of all necessary previous actions and coordination of implementation, monitoring and reporting on the implementation of flood relief plans; coordination of the preparation of priority, partial and unique plans for the construction of areas affected by floods; coordination of all necessary previous actions and acts for the implementation of plans for the

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<sup>24</sup> *Floods in Serbia and BiH*, [http://ec.europa.eu/echo/files/aid/countries/factsheets/serbia\\_floods\\_bih\\_en.pdf](http://ec.europa.eu/echo/files/aid/countries/factsheets/serbia_floods_bih_en.pdf)

<sup>25</sup> „Official Gazette“, no. 55/2014.

construction of areas affected by floods; coordination, monitoring and reporting in relation to public procurement procedures necessary for the execution of construction plans; elaboration of criteria and criteria and reporting procedures in the implementation of construction plans; coordination, monitoring and reporting in relation to the final parts of the construction plans; preparation of periodic and final reports on the implementation of construction plans, as well as all other activities related to the assistance and reconstruction of flooded areas and monitoring the fulfillment of obligations that ministries, special organizations and government services have in relation to the affairs of assistance and reconstruction of flooded areas. It is envisaged that the Office will cooperate with all state bodies, territorial autonomy bodies and local self-governments, public enterprises, public agencies, institutions and organizations in the field of assistance and reconstruction of flooded areas.

Starting from the existence of a unique Yugoslav legal space, until the constitution of Serbia as an independent state, in June 2006, a number of laws and bylaws were adopted regulating issues of mechanisms for protection and compensation of the population due to the effects of natural disasters. In 1992, Serbia passed the Law on the Use of Remediation and Protection Products from Natural Disasters (which ceased to be valid on the date of the entry into force of the Restructuring Act after Elementary and Other Disasters of 2015).<sup>26</sup> It is interesting that this Law, from 1992, was preceded by two instructions, namely: Instructions on the establishment of a work unit for the protection of elementary and other major disasters in peace, as well as the Instructions on a uniform methodology for assessing damage from natural disasters.<sup>27,28</sup>

Later, the Law on Ratification of the Agreement between the Government of the Republic of Srpska and the Government of the Russian Federation on cooperation in the field of humanitarian response in emergency situations, prevention of natural disasters and technical disasters and removal of their consequences was adopted.<sup>29</sup> This legal text was preceded by "positive experiences of cooperation within the framework of the Agreement between the Federal Government of the Federal Republic of Yugoslavia and the Government of the Russian Federation on cooperation in the prevention of industrial disasters, natural disasters and the elimination of their consequences from July 23, 1996". In addition, Serbia has also passed the Law on Confirmation of the Loan Agreement (Risk Insurance Project in the case of natural disasters for Southeast Europe and the Caucasus) between Serbia

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<sup>26</sup> „Official Gazette“, no. 50/92.

<sup>27</sup> „Official Gazette SRS“, no. 34/78.

<sup>28</sup> „Official Gazette SFRJ“, no. 27/87.

<sup>29</sup> „Official Gazette – international agreements“, no. 10/2010.

and the International Bank for Reconstruction and Development.<sup>30</sup> The latest in a series of documents, which were adopted before floods in Serbia in May 2014, was the Decree on mandatory assets and equipment for personal, mutual and collective protection against natural disasters and other disasters.<sup>31</sup>

In Serbia, the Law on the elimination of consequences of floods in the Republic of Serbia has been adopted.<sup>32</sup> The reasons for passing the law are "primarily" in the need to ensure the normalization of the conditions of life on flooded and landslides in the affected parts of the territory of the Republic of Serbia in order to ensure basic existential conditions for families and individuals whose housing facilities have been demolished or seriously damaged, to create conditions for the restoration of economic and agricultural activities, and to repair damage to infrastructure facilities in the flooded area. In order to re-establish a sustainable way of doing business and to deal with the consequences of floods, it is necessary to provide a legal framework for the acceleration of procedures of relevance to the reconstruction process as well as more flexible conditions for the application of those system solutions that enable it. At the same time, the adoption of a special law is also a path and mechanism for ensuring transparency in the use of donor and other resources provided for the assistance and reconstruction of flooded areas.<sup>33</sup>

A newer legal text clarifies and concretizes the way to eliminate the consequences of natural and other disasters is the Restoration Law after Elementary and Other Disasters of 2015.<sup>34</sup> The law has a total of 37 articles and it regulates the process of reconstruction and provision of assistance to citizens and business entities that have suffered material damage due to elemental and other disasters. It is interesting that the Law stipulates that the right to assistance, under the same conditions as domestic citizens, are also owned by foreign nationals and stateless persons who, in accordance with the law, have the right to temporary residence or permanent residence in the Republic of Serbia (Article 2). The term pecuniary damage refers to the physical damage or destruction of immovable or movable property on the territory of the Republic of Serbia in the ownership of the citizen or economic entity, which occurred as a direct consequence of the elementary and other disasters. Also, the concept of elementary and other disasters is defined, so this event is caused by the effect of natural forces or human activity, which interrupts the normal development of life to an extent that exceeds the regular ability of the individual and the local community to recover without the help of the state and causes material damage is more than 10%

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<sup>30</sup> „Official Gazette – international agreements“, no. 8/2011.

<sup>31</sup> „Official Gazette“, no. 3/2012.

<sup>32</sup> „Official Gazette“, no. 75/2014.

<sup>33</sup> [http://www.parlament.gov.rs/upload/archive/files/cir/pdf/predlozi\\_zakona/2346-14.pdf](http://www.parlament.gov.rs/upload/archive/files/cir/pdf/predlozi_zakona/2346-14.pdf), retrieved: 22.7.2014.

<sup>34</sup> „Official Gazette“, no. 112/2015.

of the budget of the local self-government unit and which has been proclaimed by the Government as such (Article 5).

The Law emphasized several important principles in exercising the right to reconstruction. These are: the principle of equality of citizens in exercising the right to assistance; the principle of gender equality; special protection of vulnerable groups; the principle of the public; and, the principle of building a better one. The principle of equality of citizens in exercising the right to assistance in Art. 6 stipulates that every citizen has the right to assistance in the case of elementary and other disasters under the conditions and in the procedure prescribed by this law, on equal terms with other citizens and without discrimination on any basis. It is not considered as a discrimination the application of legally prescribed measures to protect particularly vulnerable groups and citizens. According to the principle of equality of the sexes, it is pointed out that in carrying out the tasks under this law, the competent bodies shall take special care of the implementation of the principles of gender equality, and in particular to ensure that no decision, measure or action is incited or leads to a more unfavorable position of women. In addition, special protection for vulnerable groups is foreseen, and consequently in the order of resolving requests and granting assistance, priority should be given to citizens with disabilities, that is, in whose family the household is a disabled person or a person with seriously impaired health, single parents, citizens in whose household is one or more children, social assistance beneficiaries, pensioners, women and the unemployed (Article 8).

The principle of the public is essentially determined so that all data relating to the type and amount of damage, the procedures for granting aid, aid beneficiaries, the amount and type of assistance, as well as grants, budgetary grants, humanitarian aid and other issues related to state aid Citizens after the natural disaster shall be made available to the public in accordance with the law (Article 9). Finally, the principle of building a better one means that the authorities involved in the preparation and implementation of the reconstruction will strive that the process of reconstruction of facilities and infrastructure implies the construction of a better system that will make objects, infrastructure and society as whole more resistant to elementary and other disasters (Article 10).

## **CONCLUSION**

In the first ten years of the 21st century, the world became a participant and witness of global climate changes, whose consequences for the population have become increasingly visible. An approach to general victimology, often invisible to the concept of penal victimology, as if from a purely theoretical, university approach is becoming more and more important in the domain of human suffering. It is even possible to make a further shift, in the assertion that the comparison of these two

bifurcation of victimology is outrageous, because they exist in parallel, sometimes they are cut in common points, such as the approach of the cohort, but always in the same ambient environment - the role of state and state institutions in preventing victimization of the population.

The Constitution of Serbia, when prescribing jurisdiction of the state, in Art. 97 par 1 (9), stipulates that "the Republic of Serbia shall regulate and provide: sustainable development; system of protection and improvement of the environment; protection and improvement of the flora and fauna; production, trafficking and transportation of weapons, poisonous, flammable, explosive, radioactive and other dangerous substances". In the future, state authorities and institutions will have the opportunity to, in a favorable normative milieu, after passing laws and by-laws, after the floods of May 2014, and repeated events from March 2016, to fully fulfill the constitutional and legal role, in terms of the law and the powers that they have in that regard. Checking the accomplishment of their tasks can no longer be in ad hoc activities of removing consequences, but in preventing the consequences of natural disasters on population.

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## EU POLICY ON FIGHTING HYBRID THREATS

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### ABSTRACT

The European Union’s security environment has changed dramatically. Many of the current challenges to peace, security and prosperity originate from instability in the EU’s immediate neighborhood and changing forms of threats. In recent years, the risk of hybrid threats to the EU and its Member States has increased.

The hybrid threats are a mix of conventional and unconventional, military and non-military, overt and covert actions. They are used by State and non-State actors with the aim to sow confusion and create uncertainty whilst remaining below the threshold of formally declared warfare. Hybrid threats range from cyberattacks on critical information systems, to the disruption of critical infrastructure such as energy supplies or financial services, to undermining public trust in government institutions or exploiting social vulnerabilities.

Concerns about hybrid threats were first reflected in NATO’s new Strategic Concept of 2010. Recently, the concept of hybrid threat has been revived in relation to Russia’s actions in Ukraine and the ISIL/Da’esh campaign in Iraq.

The primary responsibility for combating hybrid threats is on Member States because the vulnerability of countries is different. But many member states are facing common threats that can be tackled more effectively at European level by using EU policies and instruments.

The article deals with the questions: What are hybrid threats? What is the EU’s response to hybrid threats. What can the EU and NATO cooperation do to counter hybrid threats?

**Key words:** EU, hybrid threats, NATO, security.

### INTRODUCTION

*The international security environment has seemingly departed from a post-cold war period of everlasting peace and has instead evolved into a volatile and increasingly grey area of war and peace. Security challenges arising from both hybrid wars and hybrid threats are high on security agendas in Europe as well as internationally.*

The EU is facing one of the greatest security challenges in its history. Threats are increasingly taking non-conventional forms, some physical such as new forms of terrorism, some using the digital space with complex cyber-attacks. Others are more subtle and are aimed at the coercive application of pressure including misinformation

campaigns, and media manipulation. They seek to undermine core European values, such as human dignity, freedom and democracy.<sup>35</sup>

Today's security environment could be characterised as "an era of hybrid threats", with old and new elements of tactics and strategy blended together.<sup>36</sup> Hybrid activities are becoming a frequent feature of the European security environment. The concept of hybrid threat has been revived in relation to Russia's actions in Ukraine and the ISIL/Da'esh campaigns going far beyond Syria and Iraq. However, elements of hybridity can be traced in many other dimensions of the current security environment.

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By one definition, hybrid threats mean "using multiple instruments of power and influence, with an emphasis on nonmilitary tools, to pursue its national interests outside its borders."<sup>38</sup> The term appeared at least as early as 2005, and was used specifically to describe Hizbollah's strategy in the 2006 war with Israel.<sup>39</sup> Since there are so many kindred terms for it, and have been through the years, it probably makes sense not to focus on the definition but rather to pay most attention to the specific threats and interconnections involved now – and into the future.<sup>40</sup>

Concerns about hybrid threats were first reflected in NATO's new Strategic Concept of 2010 and incorporated in the NATO Capstone Concept, which defined hybrid threats as 'those posed by adversaries, with the ability to simultaneously employ conventional and non-conventional means adaptively in pursuit of their objectives'.

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Hybrid threats are at their very core interlinked, operating domain-spanning activities that the threat actors, nation states or non-state actors conduct in order to advance their agenda and attain their goals. Whilst building resilience to these threats and bolstering capabilities are predominantly Member State responsibilities, the EU has worked to build up capabilities to counter them, including by working with international partners such as NATO.

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<sup>35</sup> JOINT REPORT TO THE EUROPEAN PARLIAMENT AND THE COUNCIL on the implementation of the *Joint Framework on countering hybrid threats - a European Union response*, JOIN(2017) 30 final, Brussels, 19.7.2017

<sup>36</sup> Hanna Smith, *In the era of hybrid threats: Power of the powerful or power of the "weak"?*, Strategic Analysis October 2017, The European Centre of Excellence for Countering Hybrid Threats, p.2

<sup>37</sup> See: Countering hybrid threats: EU-NATO cooperation, available at [http://www.europarl.europa.eu/RegData/etudes/BRIE/2017/599315/EPRS\\_BRI\(2017\)599315\\_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/BRIE/2017/599315/EPRS_BRI(2017)599315_EN.pdf), p.2.

<sup>38</sup> Christopher S. Chivvis, "Understanding Russian 'Hybrid Warfare' And What Can Be Done About it," RAND, March 22, 2017, 1, available at [https://www.rand.org/content/dam/rand/pubs/testimonies/CT400/CT468/RAND\\_CT468.pdf](https://www.rand.org/content/dam/rand/pubs/testimonies/CT400/CT468/RAND_CT468.pdf).

<sup>39</sup> Gregory F. Treverton, Andrew Thvedt, Alicia R. Chen, Kathy Lee, and Madeline McCue, *Addressing Hybrid Threats*, Swedish Defence University, 2018

<sup>40</sup> See : Damien Van Puyvelde, "Hybrid War – Does It Even Exist?" NATO Review, 2015, available at <http://www.nato.int/docu/review/2015/Also-in-2015/hybrid-modern-future-warfare-russia-ukraine/EN/>.

<sup>41</sup> NATO Countering the Hybrid Threat, available at: <https://www.act.nato.int/nato-countering-the-hybrid-threat>, accessed 20.08.2018

## DEFINING HYBRID WARFARE AND HYBRID THREATS

'Hybrid warfare', sometimes known as 'hybrid threats', became an inevitable buzzword in recent years, used by policy-makers and academics to describe a broad panoply of seemingly different threats. The term 'hybrid warfare' is a very present among policy-makers, but the staff and at national levels within NATO, it is dismissed and consciously avoided. While there is no single perception of what 'hybrid warfare' is, the focus is on concrete responses to threats posed by Russia and, to a lesser extent, ISIL. Cooperation with partners, particularly with the EU, is perceived as necessary having in mind the limits to NATO capabilities and competence in countering threats which are often civilian in nature. In the EU, there seems to be even more confusion regarding the adopted 'hybrid threats' terminology. While the term 'warfare' seems consciously avoided, the adopted Joint Framework on Countering Hybrid Threats largely repurposes actions which were previously carried out in the framework of EU's policies on terrorism, critical infrastructure protection or cyber-security. Some new proposals nonetheless address the need for more situational awareness and better information-sharing within the EU, and with partners. It is precisely EU-NATO relations which exhibit the most telling signs of being influenced by 'hybrid'.

Only a few months after hybrid warfare tactics were used in the territory of Eastern Ukraine, NATO Heads of State and Government met in Newport, Wales on 4-5 September 2014. The leaders of the Atlantic Alliance stated, in the Declaration published after that Summit meeting of the North Atlantic Council (NAC), that: "We will ensure that NATO is able to effectively address the specific challenges posed by hybrid warfare threats..."<sup>42</sup>

For many people, it was the first time they saw the adjective 'hybrid' alongside substantive warfare. Before and since the Summit, hybrid warfare has been defined in various terms, as there are many different ways that type of warfare can be used. In August 2015, the Defence and Security Committee of the NATO Parliamentary Assembly defined hybrid warfare as "the use of asymmetrical tactics to probe for and exploit weaknesses via not military means (such as political, informational, and economic intimidation and manipulation) and are backed by the threat of conventional or unconventional military means. These tactics can be scaled and tailored fit for the particular situation".<sup>43</sup>

The first part of the misconception around "hybrid warfare" is the term itself. There are various definitions of hybrid warfare. For example, one definition is that "hybrid warfare is a conflict executed by either state and/or non-state threats that employs multiple modes of warfare to include conventional capabilities, irregular tactics, and criminal disorder".

From an academic point of view a broadly accepted definition of "hybrid warfare" does not exist yet. One reason could be that by nature the characteristics of this new type of threat is evolving nearly on a daily basis. However, amongst analysts there

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<sup>42</sup> Federico Yaniz, *Projecting Stability: Hybrid warfare and cooperation with the EU*, Atlantic Treaty Association, February 2, 2018

<sup>43</sup> *Ibid.*

are common elements describing this phenomenon of new threats by “violent threats that are simultaneously carried out by state- and non-state actors along all conventional and unconventional lines of operation within a not exclusively military but also diplomatic, information and economic dimensions of conflict in order to achieve a political goal”. All the individual elements, for example information warfare, cyber-attacks, conventional military aggressions and destabilisation operations are individually well known but the synchronized, combined approach adds a new dimension to our understanding of aggression.

A critically important aspect of hybrid warfare is to generate ambiguity both in the affected population under attack and in the larger international community. The aim is to mask what is actually happening on the ground in order to obscure the differentiation between war and peace. This ambiguity, the lack of full attribution, can paralyse the ability of an opponent to react effectively and mobilise defences as it becomes unclear who is behind an attack. Even more, ambiguity can divide the international community, limiting the speed and scope of a response to the aggression.<sup>44</sup>

Hybrid warfare can be more easily characterised than defined as a centrally designed and controlled use of various covert and overt tactics, enacted by military and/or non-military means, ranging from intelligence and cyber operations through economic pressure to the use of conventional forces. By employing hybrid tactics, the attacker seeks to undermine and destabilise an opponent by applying both coercive and subversive methods. The latter can include various forms of sabotage, disruption of communications and other services including energy supplies. The aggressor may work through or by empowering proxy insurgent groups, or disguising state-to-state aggression behind the mantle of a "humanitarian intervention". Massive disinformation campaigns designed to control the narrative are an important element of a hybrid campaign. All this is done with the objective of achieving political influence, even dominance over a country in support of an overall strategy.<sup>45</sup>

In broad terms, hybrid warfare can be understood as a creative combination of civil and military ways and means that are deployed in a synchronized manner. The political aim of state or non-state actors that conduct hybrid warfare is to preserve or create nondemocratic regimes and increase strategic options to enhance their power in international relations

The term ‘hybrid threat’ is a metaphor that captures complexities and dilemmas related to a changing global environment. As such, it is a useful concept that embraces the interconnected nature of challenges - i.e. ethnic conflict, terrorism, migration, and weak institutions); the multiplicity of actors involved - i.e. regular and irregular forces, criminal groups; and the diversity of conventional and unconventional means used -i.e. military, diplomatic, technological. Hybrid threat is a phenomenon resulting from the convergence and interconnection of different elements, which together form a more complex and multidimensional threat.

In an analysis devoted explicitly to what he called “not-so-new warfare,” Frank Hoffman, of the U.S. National Defense University, defined the hybrid threat as, “Any

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<sup>44</sup> Food-for-thought paper "Countering Hybrid Threats", EEAS(2015) 731, p.3.

<sup>45</sup> *Ibid.*, p.2

adversary that simultaneously employs a tailored mix of conventional weapons, irregular tactics, terrorism, and criminal behavior in the same time and battlespace to obtain their political objectives.”<sup>46</sup> The “hybrid threat” term has likewise already been adopted in U.S. Marine corps, Army and Navy doctrines along with national-level planning documents.<sup>47</sup>

In 2010, the NATO Military Working Group (Strategic Planning & Concepts) approved the following definition: “A hybrid threat is one posed by any current or potential adversary, including state, non-state and terrorists, with the ability, whether demonstrated or likely, to simultaneously employ conventional and non-conventional means adaptively, in pursuit of their objectives.”<sup>48</sup>

Hybrid threats are methods and activities that are targeted towards vulnerabilities of the opponent. Vulnerabilities can be created by many things, including historical memory, legislation, old practices, geostrategic factors, strong polarisation of society, technological disadvantages or ideological differences. If the interests and goals of the user of hybrid methods and activity are not achieved, the situation can escalate into hybrid warfare where the role of military and violence will increase significantly.<sup>49</sup>

According to the European Centre of Excellence for Countering Hybrid Threats (Hybrid CoE)<sup>50</sup> the definition for hybrid threat is: “Hybrid threats can be characterized as coordinated and synchronized action that deliberately targets democratic states’ and institutions systemic vulnerabilities, through a wide range of means (political, economic, military, civil, and information). Activities exploit the thresholds of detection and attribution as well as the border between war and peace. The aim is to influence different forms of decision making at the local (regional), state, or institutional level to favor and/or gain the agent’s strategic goals while undermining and/or hurting the target.”<sup>51</sup>

General Valery Gerasimov, Russia’s Chief of General Staff in his often cited 2013 article stated that, “the rules of war have cardinally changed,” and that the effectiveness of “non-military tools” in achieving strategic or political goals in a conflict has exceeded that of weapons.<sup>52</sup> According to General Gerasimov, this new generation of warfare includes the following elements:

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<sup>46</sup> Frank Hoffman, “On Not-So-New Warfare: Political Warfare vs. Hybrid Threats,” War on the Rocks (blog), July 28, 2014, available at: <http://warontherocks.com/2014/07/on-not-so-new-warfare-political-warfare-vs-hybridthreats/>.

<sup>47</sup> *Ibid.*

<sup>48</sup> Andis Kudors, *Hybrid War – A New Security Challenge for Europe*, available at, [https://www.eerstekamer.nl/overig/20150320/background\\_notes\\_hybrid\\_war\\_a\\_new/document](https://www.eerstekamer.nl/overig/20150320/background_notes_hybrid_war_a_new/document)

<sup>49</sup> COUNTERING HYBRID THREATS, available at: <https://www.hybridcoe.fi/hybrid-threats/>

<sup>50</sup> The initiative to establish Hybrid CoE originates from the Joint Communication by the European Commission and the High Representative to the European Parliament and the Council “Joint framework on countering hybrid threats – a European Union response”, decided in Brussels on 6 April 2016. The initiative was supported in the Common set of proposals for the implementation of the Joint EU/NATO Declaration, endorsed by the Council of the European Union and the North Atlantic Council on 6 December 2016. Hybrid CoE is a leading facilitator and enabler building participants’ capabilities and enhancing EU-NATO cooperation in countering hybrid threats.

<sup>51</sup> Hybrid threats, available at: <https://www.hybridcoe.fi/hybrid-threats/>

<sup>52</sup> Valery Gerasimov, “The Value of Science in Anticipating” [in Russian], Military-Industrial Courier, February 27, 2013, available at: <http://www.vpk-news.ru/articles/14632>.

- Military action is started during peacetime (without declaring war);
- Non-contact clashes between highly maneuverable specialised groups of combatants;
- Annihilation of the enemy’s military and economic power by quick and precise strikes on strategic military and civilian infrastructure;
- Massive use of high-precision weapons and special operations, robotics, and technologically new weapons;
- Use of armed civilians;
- Simultaneous strikes on the enemy’s units and facilities throughout all of its territory;
- Simultaneous battles on land, air, sea, and in the information space;
- Use of asymmetrical and indirect methods;
- Management of combatants in a unified information system.<sup>53</sup>

## **EU RESPONSE TO HYBRID THREATS**

In recent years, the security environment has changed dramatically. The EU and its Member States have been increasingly exposed to hybrid threats that comprise hostile actions designed to destabilise a region or a state. There has been a strong call for the EU to adapt and increase its capacities as a security provider. At an informal meeting in Riga, in February 2015, EU Defence Ministers called for greater unity and concrete action at EU level. In May 2015, the European External Action Service circulated a Food-for-thought paper on “Countering Hybrid Threats”<sup>54</sup>, which reaffirms that the EU needs to be able to recognise the overall effect of hybrid threats, and counter them by building more resilience. This document outlines a possible way ahead for the EU to better support member states, and itself, in countering hybrid threats, in accordance with the direction given by Defence Ministers at their meeting in Riga in February 2015. It should be read as a chapeau document and in the context of the decision taken to bolster EU Stratcom in response to hybrid threats.<sup>55</sup>

The Foreign Affairs Council of 18 May 2015 invited the High Representative to present a joint framework with actionable proposals to help address hybrid threats and foster the resilience of the EU, its Member States and partners. In June 2015, the European Council re-stated the need to mobilise EU instruments to help counter hybrid threats in a comprehensive way, making better use of all instruments at the EU’s disposal such as -diplomatic, military, economic, technological. This led to the joint framework on a European Union response to countering hybrid threats, presented in April 2016, and welcomed in the Foreign Affairs Council conclusions of 19 April 2016. This Joint Framework on countering hybrid threats -a European Union

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<sup>53</sup>Michael Kofman and Matthew Rojansky, A Closer look at Russia’s “Hybrid War” *KENNAN CABLE No. 71* April 2015

<sup>54</sup> *Countering Hybrid Threats, Food-for-thought paper*, European External Action Service (EEAS), Council of the European Union, 8887/15 (Brussels, 13 May 2015).

<sup>55</sup> *EU Defence Ministers in Riga call for unity in addressing European security threats*, available at: <https://eu2015.lv/news/media-releases/666-eu-defence-ministers-in-riga-call-for-unity-in-addressing-european-security-threats>

response<sup>56</sup> (Joint Framework) forms an important part of the EU's overall more integrated approach to security and defence. It contributes to the creation of a Europe that protects. While the Joint Framework reaffirms states' primary responsibility for countering hybrid threats related to national security and defence and the maintenance of law and order, it also states that threats with a cross-border dimension (i.e. to communication networks, infrastructure, etc.) can be more effectively addressed through cooperation at EU level, making the full use of EU instruments and the potential of the Lisbon Treaty.

The EU Global Strategy for EU Foreign and Security policy, also, elaborated the need for an integrated approach to link internal resilience with EU's external actions, and called for synergies between defence policy and policies covering the internal market, industry, law enforcement and intelligence services. The implementation plan on security and defence – one of the elements of the defence package that resulted from the debate about the implementation of the EU global strategy – stressed the possible use of Common Security and Defence Policy (CSDP) missions and operations to provide expertise and assistance to strengthen partners' resilience and counter hybrid threats. Possible areas of engagement include strategic communication, cybersecurity and border security. The European defence action plan presented by the Commission in November 2016 and endorsed by the European Council in December the same year, puts forward several concrete initiatives that contribute to strengthening EU capacity to respond to hybrid threats, such as launching a European Defence Fund, fostering investment in the defence supply chain, and reinforcing the single market for defence.<sup>57</sup> In July 2016, the European Commission and EEAS presented the EU operational protocol for countering hybrid threats – the so-called 'EU Playbook' – which outlines the modalities for coordination, intelligence fusion and analysis, informing policy-making processes, exercises and training, and cooperation with partner organisations, notably NATO.<sup>58</sup> Namely, the document details the procedure for an EU response to a hybrid threats. The first report from the Commission and the High Representative on the implementation of the Joint Framework to the European Parliament and the Council was endorsed on 19 July 2017.<sup>59</sup>

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<sup>56</sup> Joint Communication to the European Parliament and the Council, *Joint Framework on countering hybrid threats - a European Union response*, JOIN(2016) 18 final, p.2.

<sup>57</sup> JOINT REPORT TO THE EUROPEAN PARLIAMENT AND THE COUNCIL on the implementation of the Joint Framework on countering hybrid threats - a European Union response, Brussels, 19.7.2017, JOIN(2017) 30 final, p.2

<sup>58</sup> This document is prepared in order to implement Action 19 of the Joint Framework on countering Hybrid Threats, which foresees a " common operational protocol between Member States, the Commission and the High Representative is to outline effective procedures to follow in case of a hybrid threat, from the initial identification phase to the final phase of the attack, and mapping the role of each Union institution and actor in the process."See: document SWD(2016) 227 final.

<sup>59</sup> JOINT REPORT TO THE EUROPEAN PARLIAMENT AND THE COUNCIL on the implementation of the Joint Framework on countering hybrid threats - a European Union response, Brussels, 19.7.2017, JOIN(2017) 30 final

## JOINT FRAMEWORK- EU SOFT POWER IN ACTION

The Joint Framework offers a comprehensive approach to improve the common response to the challenges posed by hybrid threats to Member States, citizens and the collective security of Europe. It brings together all relevant actors, policies and instruments to both counter and mitigate the impact of hybrid threats in a more coordinated manner. In particular, it builds on the European Agenda on Security adopted by the Commission in April 2015, as well as on sectorial strategies such as EU Cyber Security Strategy, the Energy Security Strategy and the European Union Maritime Security Strategy.<sup>60</sup>

The Joint Framework defines hybrid threats: “While definitions of hybrid threats vary and need to remain flexible to respond to their evolving nature, the concept aims to capture the mixture of coercive and subversive activity, conventional and unconventional methods (i.e. diplomatic, military, economic, technological), which can be used in a coordinated manner by state or non-state actors to achieve specific objectives while remaining below the threshold of formally declared warfare. There is usually an emphasis on exploiting the vulnerabilities of the target and on generating ambiguity to hinder decision-making processes.”

The Joint Framework brings together existing policies and proposes twenty-two operational actions aimed at:

- Raising awareness by monitoring and assessing EU vulnerabilities, including through developing security risk assessment methodologies and promoting risk-based policy formulation. That includes, among other things, establishing a European Centre of Excellence for designing strategies to counter hybrid threats, creating an EU hybrid fusion cell, raising public awareness about hybrid threats through strategic communication, and closer dialogue and cooperation with other stakeholders such as NATO, regional organisations and the private sector.
- Building resilience - i.e. the capacity to withstand stress and recover from shocks or crisis into critical infrastructure networks (e.g. energy, transportation, space), protecting public health and food security, enhancing cybersecurity, tackling radicalisation and violent extremism, strengthening strategic communication, developing relevant defence capabilities, and improving relations with third countries.
- Preventing, responding to crisis and recovering - Strengthening the ability of Member States and the Union to prevent and respond to crisis, and for coordinated recovery. The EU will make full use of existing mechanisms such as the European Emergency Response Coordination Centre or EU Integrated Political Crisis Response (IPCR), and Treaty-based instruments like the Solidarity Clause or Mutual Assistance Clause. Common Security and Defence Policy is an important element of the EU approach, in particular with regard to civilian and military training, advisory missions to strengthen the capacities of states under threat, strengthening early warning capabilities

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<sup>60</sup> European Commission - Press release, *Security: EU strengthens response to hybrid threats*, Brussels, 6 April 2016, IP/16/1227

and contingency planning, support for border control management, and specialised assistance in areas such as chemical, biological, radiological or nuclear (CBRN) risk mitigation or non-combatant evacuation.

- Increasing cooperation with NATO- stepping up the cooperation between the EU and NATO as well as other major partner organisations such as UN and OSCE in a joint effort to counter hybrid threats, while respecting the principles of inclusiveness and autonomy of each organisation's decision making process. Cooperation with NATO to ensure complementarity of measures undertaken, including on situational awareness, strategic communication, and cybersecurity.<sup>61</sup>

The Joint Framework also called for the creation of an EU Hybrid Fusion Cell to offer a single focus for analyzing hybrid threats.<sup>62</sup> The EU Hybrid Fusion Cell should offer a single focus for the analysis of hybrid threats, established within the EU Intelligence and Situation Centre (EU INTCEN) of the European External Action Service (EEAS). The EU Hybrid Fusion Cell is critical in initially identifying a threat before a full crisis emerges.

The Joint Framework aims to facilitate a holistic approach that will enable the EU, in coordination with Member States, to specifically counter threats of a hybrid nature by creating synergies between all relevant instruments and fostering close cooperation between all relevant actors. This Joint Framework is designed to provide a robust foundation to support Member States in countering hybrid threats collectively, supported by a wide range of EU instruments and initiatives and using the full potential of the Treaties

On July 19, 2017, the European Commission released an update on the steps taken to implement the 2016 Joint Framework on countering hybrid threats.<sup>63</sup> The EU Hybrid Fusion Cell was created to provide all-source analysis on hybrid threats. Cooperation with non-member states also increased, with the launch of a pilot risk survey in Moldova to identify key vulnerabilities and target assistance to those areas.<sup>64</sup>

## **EU-NATO COOPERATION ON HYBRID THREATS**

The analysis of complex challenges facing the EU and NATO led both organisations to develop a comprehensive approach that blends all relevant actors and available instruments: military forces, diplomacy, humanitarian aid, political processes, economic development, and technology.

Countering hybrid threats is about gaining new understanding of such threats and the innovative use of existing capabilities, many of which – like economic development, the fight against corruption or eliminating poverty – reside in nonmilitary governmental and intergovernmental agencies, private sector and international

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<sup>61</sup> *Ibid.*

<sup>62</sup> Joint Communication to the European Parliament and the Council, *Joint Framework on countering hybrid threats - a European Union response*, JOIN(2016) 18 final, p.4.

<sup>63</sup> JOINT REPORT TO THE EUROPEAN PARLIAMENT AND THE COUNCIL on the implementation of the *Joint Framework on countering hybrid threats - a European Union response*, Brussels, 19.7.2017, JOIN(2017) 30 final

<sup>64</sup> [http://europa.eu/rapid/press-release\\_IP-17-2064\\_en.htm](http://europa.eu/rapid/press-release_IP-17-2064_en.htm)

nongovernmental organisations. Acknowledging the need for dialogue and coordination with likeminded partners in countering hybrid threats, the EU's joint communication and EU playbook identified a number of areas for closer EU-NATO cooperation, including situational awareness, strategic communications, cybersecurity, and crisis prevention and response. The commitment to a deeper partnership with NATO in countering hybrid and cyber threats was also expressed in the European Union global strategy of June 2016. EU-NATO cooperation was discussed at the European Council on 28 June 2016, and contributed to the adoption of the EU-NATO Joint declaration at the NATO Summit in Warsaw (8-9 July 2016). A number of concrete proposals were circulated in advance of the NATO summit in Warsaw, but have not been formally adopted. In April 2016, a group of 10 NATO member states (Croatia, Denmark, Germany, Latvia, Lithuania, Norway, Poland, Romania, the United Kingdom and the USA) presented a 'food for thought' (FFT) paper on NATO-EU counter hybrid teams (CHTs). The paper proposes CHTs, including a Brussels-based 'hub' (modelled on the NATO-EU joint analysis platform proposed in the German FFT paper in October 2015) and CHT 'spokes', established at the request of individual countries.<sup>65</sup>

According to the proposal, counter hybrid teams – in complement to the ongoing process of strengthening deterrence and defence – would be relatively small, and include officials from NATO, EU Member States and EU institutions with expertise in emergency response, counter-terrorism, border management, intelligence analysis, energy security or strategic communications. Their main functions would be information fusion and analysis to enhance situational awareness in support of the decision-making process, preparation for, and resilience against hybrid threats, and response to hybrid threats.

The Presidents of the European Council, the European Commission and the Secretary-General of NATO signed a Joint Declaration in Warsaw on 8 July 2016 with a view to giving new impetus and new substance to the EU-NATO strategic partnership. The Joint Declaration outlined seven concrete areas, including countering hybrid threats, where cooperation between the two organisations should be enhanced. The EU-NATO declaration outlines the new areas for practical cooperation to strengthen capacity to deal with hybrid threats, in particular through building resilience, situational awareness, and strategic communications.

In the EU-NATO joint declaration are stressed priorities in the cooperation against hybrid threats such as:

- Ability to counter hybrid threats, including by bolstering resilience, working together on analysis, prevention, early detection, through timely information sharing and, to the extent possible, intelligence sharing between staffs; and cooperating on strategic communication and response. The development of coordinated procedures through respective playbooks will contribute to implementing these efforts;
- Coordination on cyber security and defence, including in the context of their missions and operations, exercises and on education and training;

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<sup>65</sup> Countering hybrid threats:EU-NATO cooperation, available at: <https://www.scribd.com/document/371691471/EPRS-BRIEF-2017-599315-EN>, pp. 6-7

- Coordination on exercises, including on hybrid threats, by developing parallel and coordinated exercises;
- Defence and security capacity building and fostering resilience of partners in the east and south.<sup>66</sup>

A common set of 42 proposals for implementation was subsequently endorsed by both the EU and NATO Councils and a first report, showing substantial progress, was issued in June 2017.<sup>67</sup>

## CONCLUSION

Faced with constantly evolving challenge such as hybrid threats, the European Union and NATO have taken several steps to strengthen their respective capabilities and pursue common objectives through closer cooperation. The EU-NATO joint declaration adopted in July 2016 in the margins of the Warsaw NATO Summit represents a clear step forward in this regard. The document outlines new areas for practical cooperation, in particular with regard to hybrid threats, building resilience in cybersecurity, and strategic communications.

The basic premise for closer EU-NATO cooperation in countering hybrid threats is that effective response and resilience against a wide range of threats require a mix of military and non-military capabilities. Given that hybridity assumes operations under the threshold of an armed conflict, the EU's soft power is particularly valuable.

While countering hybrid threats requires a mix of soft and hard security measures aimed at building resilience, there is also a risk that too close alignment of the EU response to hybrid threats with NATO's approach – which is primarily a military alliance – risks shifting the optics towards a military prism. Consequently, one of the key tasks is identifying roles and the comparative advantages of partnerships with other regional organisations.

The EU and NATO can and should play complementary and mutually reinforcing roles in supporting international peace and security. NATO allies are determined to make their contribution to create more favourable circumstances through which they will:

- fully strengthen the strategic partnership with the EU, in the spirit of full mutual openness, transparency, complementarity and respect for the autonomy and institutional integrity of both organisations;
- enhance practical cooperation in operations throughout the crisis spectrum, from coordinated planning to mutual support in the field;
- broaden political consultations to include all issues of common concern, in order to share assessments and perspectives;

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<sup>66</sup> *Countering hybrid threats: EU-NATO cooperation*, available at:

<https://www.scribd.com/document/371691471/EPRS-BRIEF-2017-599315-EN>, p. 6.

<sup>67</sup> *Progress report on the implementation of the common set of proposals endorsed by NATO and EU Councils on 6 December 2016, 14 June 2017*, available at:

[https://www.nato.int/nato\\_static\\_fl2014/assets/pdf/pdf\\_2017\\_06/20170619\\_170614-Joint-progress-report-EU-NATO-EN.pdf](https://www.nato.int/nato_static_fl2014/assets/pdf/pdf_2017_06/20170619_170614-Joint-progress-report-EU-NATO-EN.pdf)

- cooperate more fully in capability development, to minimise duplication and maximise cost effectiveness.

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# **THE EUROPEAN FEDERALISM RECONSIDERED: A FEDERALIST APPROACH FOR TERMINATING THE EUROCRISIS**

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## **ABSTRACT**

This paper analyzes the contemporary processes for redefinition of the European Union, primarily caused by the global economic crisis, the crisis in the Eurozone and the EU's democratic deficit. In this regard, it comes to defining and locating the place of the contemporary European federalism in the political design of the EU, and the need for applying the Community method instead of the intergovernmentalism in solving the problems.

Therefore, as a central subject of this paper appears the Spinelli group plan, otherwise a group consisted of the most distinguished European Federalists, who through their actions tend to “push” the federalist paradigm for modeling of the EU. The special attention is given to the general benchmarks for federalist modeling of the EU, the strengthening of its democratic capacity and scrutiny, remodeling of its financial - fiscal policy domain and incentives for installing the European finance minister, as a “pilot” of such policy.

**Key words:** European federalism, Spinelli group, eurocrisis, federal union.

## **INTRODUCTION**

This paper argues about the contemporary European federalism, as an emerging political concept for possible terminating the Eurozone crises. In that context, we will present the main parameters of the contemporary European federalism as a political concept, which aims to resolve the current eurocrisis, and to consolidate the Union as

such. This political concept, is one of the many possible concepts directed toward the consolidation of the Eurozone, but also for consolidation and improvement of the European Union governance, its democratic efficiency and scrutiny, transparency, and most important of all, creating *a ring of solidarity among the EU member states with high sense of fiscal and financial accountability and responsibility*. The financial problems of the Union, according to European federalists, are not caused only by financial, but also by political factors. Within that, the Union must accept the stance, will build itself in a politically solid, functional and responsible actor, or it will “sink” in the ocean of irresponsible intergovernmentalism and the national egotism, which the dream for European unity pushes down. On that basis, as a fundamental document which will be analyzed within this paper is the Spinelli Group plan for terminating the eurocrisis.

## **THE CONTEMPORARY EUROPEAN FEDERALISM: THE ORIGINS AND ITS MEANING**

The contemporary European federalism represents a socio – political and economic concept, formally originated during the Second World War, politically initiated with the promulgation of the Ventotene Manifesto. Today, this Manifesto is used by the European federalists as their basic political document. Within this paper, I use the term “contemporary”, to make a difference among the various interpretations of federalism in history, regarding the present European federalism interpretation. The Ventotene Manifesto genesis is extraordinary and very interesting to know and it is connected with the illegal activities of its creators, the federalists: Altiero Spinelli, Eugenio Colomi and Ernesto Rossi, during the fascists rule in Italy. The full title of the Manifesto is: *Towards a free and united Europe - a draft Manifesto*, which as a political document, deeply elaborates the *crisis* of modern civilization, the European unity as a post – war task, and the need for European society reforms, all together through the establishment of European democratic federation. So, it must be emphasized that the *crisis as such*, has a special role in the contemporary European federalism, firstly declared in the Manifesto through the crisis of modern civilization and the nation – state itself, and today embodied in the European financial and debt crisis. Further in the text, we will not analyze the Manifesto structure, but only will stress the meaning of the crisis as such, which has special attention of the federalists, because I used the Manifesto only to present the generic basis of the contemporary European federalism in order to differentiate it in relation to the other federalist interpretations today.

The theorist Roberto Castaldi (2010) emphasized that: “The basic push of the European unification process [always] was linked to the historical crisis of the nation state (...) namely the impossibility for the European nation-states to ensure their

economic development and security by themselves” (p. 4); so through the establishment of European federation, finally, the European nation – states will succeed to ensure their political, social and economical preferences. According to the contemporary European federalists, the current Eurozone crisis represent a crisis of the EU intergovernmental régime, which directly stems from “the crises of national powers” (Castaldi, 2010, p. 4); and their obvious inability to prevent and resolve the present financial and debt crisis within the Europe. In that sense, the only acceptable structural solution, for terminating the Eurozone crisis is creation of a European federation. Along with the *European Federalist Movement* (founded in Milan in 1943 by a group of activists led by Altiero Spinelli); the European federalists, “has often been to identify clearly and precisely the supranational character of the crisis, and then propose solutions that involved a strengthening of the [European] unification process” (Castaldi, 2010, p. 7). Furthermore, the recent happenings regarding the financial crisis in the Eurozone, seriously threat not only the euro status as such, but the status of the whole Union as well, its prospects and the future of its citizens. Because “since the beginning of the financial and economic crisis in 2008, the European Union has been in a permanent condition of crisis and uncertainty” (Castaldi, 2010, p. 7). Likewise, the whole mess around the financial crisis regarding the PIGS-countries (Portugal, Italy, Greece and Spain); succeeds to undermine the belief in the European unification project and its positive dimension for preserving the peace, stability and economic progress of the European continent. In that sense, the German daily “Die Welt” (2012); briefly illustrated such messy and chaotic situation, starting from the fact that: “In Portugal, Greece, Spain and Italy, half of the people under 25 don’t have jobs. (...) Or retirement benefits. One often hears about a ‘lost generation’” (Lachmann, Dictatorships by experts section, para. 4). This situation is closely related with the emergence of modern technocratism, which tend to neutralize the representative democracy and to impose a system of *dictatorship by experts*, who will appear as a “saviors” of the European nation – states economic and political crisis. So, the Europeans must ask themselves: “Is this really the Europe [they] want? A Europe that, on top of it all, doesn’t even respect the democratic rights of its citizens?” (Lachmann, Dictatorships by experts section, para. 5). This kind of dictatorship by experts, within the EU, is seen particularly in Italy and Greece: “Italy’s government is currently led by ‘experts’, starting with Prime Minister Mario Monti, who, like his Greek counterpart, Lucas Papademos, and the president of the European Central Bank, Mario Draghi, is a former Goldman Sachs banker” (Lachmann, Dictatorships by experts section, para. 5). Accordingly, the theorist Tony Barber emphasized: “In the name of saving their currency union, European policymakers prefer the suspension of politics as usual in Greece and Italy and its replacement with *non-partisan, managerial expertise*” (Leonard, 2011, p. 3). Based on this, obviously is confirmed that the crisis is a corner stone of the European

federalism political philosophy. In addition, the theorist Roberto Castaldi (2010) added: “The concept of crisis has a fundamental theoretical value (...) the crisis functions as a catalyst for decisions. It is the nature of the crisis which determines the type of possible decision, and eventually progress” (p. 5). Or as Great Albert Einstein (2012) once said: “In the middle of every difficulty lies opportunity” (View Quote section, para. 1). Obviously, the federalists seem to use the current Eurozone crisis (as a synonym for difficulty), for achieving their own ideological goal (as a synonym for opportunity for establishing a democratic European federal union).

The current president of the Union of European Federalists (UEF) Andrew Duff (2011); in his recently published book *Federal Union now*, says that: “Europe is in trouble. Its individual states are too weak to get out of trouble by themselves and on their own account” (p. 1); thus implying the need for application upon the Eurozone crisis the federalist political concept. Because “a federal EU will have acquired a much larger capacity to lend and borrow money, to raise loans and issue bonds to invest in European public good” (Duff, 2011, pp. 2-16). In that context, Andrew Duff accompanied with the European federalists, once again insist for the extension and fostering as much as possible the *Community method* in various areas of the Union activities, as the only method for consolidation of the eurocrisis, and as an efficient tool for incremental building of a European democratic federation. But, I must stress that the *contemporary European federalism, initiated by the Ventotene Manifesto and its substantial values, does not tend to establish a centralized and arbitrary type of European federation*. Accordingly, the contemporary European federalists agree that: “The European federal union of the future will be a complex multi-level parliamentary democracy. No one legislature will be subordinate to another but coordinate partners in the governmental process” (Duff, 2011, pp. 2-16). Namely, the Community method means “pooling of national sovereignty in certain defined respects and the empowerment of supranational institutions to advance and give effect to joint solutions to shared problems” (Duff, 2011, pp. 2-16). With the Lisbon Treaty, the Community method “whereby the European Commission initiates policy on the basis of the common interest of all the states, is extended into the areas of justice and interior affairs” (Duff, 2011, p. 6). Thus, the Community method should not be confused with the Monnet method, which descriptively speaking represents a method of *integration by stealth*. The theorist Giandomenico Majone (2009); used the label “cryptofederalism” (p. 72); about this method, to denote a type of federalist revisionism, characterized by this roundabout approach to the political integration of Europe. This approach (where Jean Monnet is central figure) is highly different from the orthodox (Hamiltonian) federalist strategy, mainly recognizable through the work of the prominent European federalist Altiero Spinelli. In fact, Monnet used the expression “United States of Europe” more as a tribute to the USA, a country he knew well and loved, than as a definite ideological commitment (Majone, 2009, p. 73). This

method, according to Majone (2009): “Consists in pursuing political integration, not by frankly political means, but under the guise of economic integration” (p. 73); and it primarily represents a product of “quasi-constitutional principles derived from the founding treaties and from neofunctionalism” (Majone, 2009, p. 74). Unlike the European neofunctionalism, the *Spinellian integration concept* is mainly based on the struggle for adoption of an EU constitution as an ultimate political asset for founding a European democratic federation, as well as, through gradually reforming and upgrading of the existing constitutive treaty, such as the Lisbon Treaty, in more federalist direction, or as Andrew Duff (2011) also said: “It is obvious that the new European federal constitution will be based largely on the existing EU treaties” (p. 5).

### **THE SPINELLI GROUP PLAN: ESSENTIALS**

The Spinelli Group represents a political group, which operates on various levels. At first, this Group is composed of a *Steering Group*, which is the core group of founding members, consisted of 34 convinced and proven pro-Europeans. Secondly there is a *MEP Spinelli Group* where every Member of European Parliament (MEP) who is prepared to withstand the pressure of their national government and support the European interest is welcome to join in it (“The Spinelli Group”, 2012); of which can be separated two of the most prominent federalists within the European Parliament, the MEPs Guy Verhofstadt and Andrew Duff, who are determined toward the promotion and affirmation of the pro-European, federal and post-national agenda. And thirdly, there is a *Spinelli Network Group*, where every citizen who agrees with the Spinelli Group Manifesto, participates in it (“The Spinelli Group”, 2012). In that sense, the Spinelli Group members believe that this is not the moment for Europe to slow down, but on the contrary, to accelerate the European integration in more structural and institutional way, because:

More than ever, the challenges we face today are worldwide: Climate change, resource exhaustion and environmental destruction, economic and financial regulation, nuclear threat and collective security, fairer trade, peace-building (...) Striving for shared peace and prosperity, we managed to work together and combine forces, thus fostering unprecedented prosperity, democracy and reconciliation on the continent. National states gave away sovereign powers to institutions in order to reach common goals and an “ever closer” Union. (“The Spinelli Group”, 2012).

Accordingly, the Spinelli legacy deeply accepts the need for building an “ever closer” Union, and thus highly affirms the Community method and the immanence for adopting an EU constitution, in order to establish a European democratic federation, which in its essence is opposite to Monnet’s neofunctionalist approach. In particular, the Monnet neofunctionalism accepts the principle of integration by stealth, or integration followed not by political, but by economic means. In contrast, the Spinelli

Group members deeply endeavor “to oppose the current tendency to increasingly resort to intergovernmentalism in European decision making” (Shadow Council conclusions [SCc], 2011, p. 1); motivated by “the tension between the Community method on the one hand and intergovernmental cooperation on the other continuous to render the Union less effective than it might and should otherwise be” (Duff, 201, p. 4). This kind of situation, according to federalists, amounts to nothing more than bargaining between the national interests, at the expense to European supranational interests. In that sense, The Spinelli Group Plan, provided within the *Shadow Council conclusions: A federal step forwards to end the eurocrisis* (2011) stipulates 12 (twelve) points, which represents an initial / basic steps for undertaking the bigger steps forward, in order to consolidate the current crisis situation within the Eurozone, and to enhance the supranational reasoning of the Union as well.

The first point, affirm the need for constitution of an *economic and fiscal union*, as an initial step towards the establishing a *European political union with a strong democratically legitimized institutions* (SCc, 2011, p. 2). This means that the EU member states must permanently join in the process of building an economic and fiscal union, and thus, they “must apply and respect the rules, procedures and discipline of the system” (SCc, 2011, p. 2). This point, promote the federalist effort for founding a fiscal union (according to fiscal federalism theory), with high level of fiscal responsibility, as opposed to the current trend of intergovernmental irresponsibility, and thus strengthening the democratic scrutiny of the Union’s economic, financial and political system also. Traditionally, according to the theorists [Jesus Ferreiro, Giuseppe Fontana and Felipe Serrano](#) (2008); the theory of fiscal federalism is concerned with three essential aspects:

- The sharing of functions between the different levels of government (particularly at four levels: Supply of public goods and services; redistribution of income; macroeconomic stabilization; and taxation);
- The identification of welfare gains resulting from fiscal decentralization; and
- The use of the instruments of fiscal policy (particularly issues associated with taxation and intergovernmental transfers). (p. 6-24)

On that basis, it must be underlined that the use of term federalism in economics is somewhat different to its normal use in political science. In the latter, “it refers to a political system with a constitution that guarantees set of principles and proceeds to the sharing of competences between the various levels of power” as the theorist Wallace Oates said (Ferreiro; Fontana; Serrano, 2008, p. 2). In the economic terms, the fiscal federalism essentially deals with “the questions that involve the vertical structuring of the public sector” (Ferreiro; Fontana; Serrano, 2008, p. 3). Thus, in accordance with the theorist Rui Henrique Alves and Oscar Afonso (2008), the fundamental aim is “to find the *most suitable way of sharing responsibilities* and of using instruments through the various levels of ‘government’, so as to optimize their

performance” (p. 3). Therefore, in line with the fiscal federalism theory, according to the theorist Richard M. Bird, a fiscal federal union encompasses the following performances:

- Expenditure assignment: Who should implement which spending programmes,
- Revenue assignment: Who should levy which taxes,
- How to mitigate vertical imbalances between the revenues and expenditure of sub-national government,
- Whether and how to offset horizontal imbalances between needs and capacities of units at the same level,
- Who determines the capacity to borrow and according to what rules, and
- The nature of the underlying political and institutional system and its ability to settle differences. (Begg, 2009, p. 20).

But is very important to stress that the contemporary European federalism, do not accept the centralist type of fiscal federalism, but the decentralized one, because the centralism (whether in political or in economic sense) is one of the federalist philosophy antipodes. Also, the decentralized type of fiscal federalist system is more suitable and closer to the EU *Sui generis* nature, which in its essence is opposite to the nation – state centralist logic. In that sense Richard M. Bird, also asserts that “the aim should be to decentralize as far as possible, a principle he equates with subsidiarity as used in the EU” (Begg, 2009, p. 20). In that context, Ludger Kuhnhardt offers a quote by Oswald Nell-Breuning, a European political theorist who developed the principle of subsidiarity, which as such, can be used as a definition of it: “In a Europe of Europeans, no less than in any other comparable political structure the size of a continent, the centralization of tasks should take place only when and where they cannot be accomplished as well or better on a lower level” (Friesen, 2012, p. 15). Accordingly, the principle of subsidiarity, “states that matters ought to be handled by the smallest (or, the lowest) competent authority” (Ilik, 2008, para. 9). Likewise, the Union institutions are instructed to “respect (...) the principle of subsidiarity” (Friesen, 2012, p. 15); as they carry out their responsibilities. Within that, the theorist Vito Tanzi emphasized: “We have been spending too much time looking down from the central government’s layer. It is time to look up from that layer” (Begg, 2009, p. 21). Thus, the thesis about the decentralized fiscal federal union, according to the previous mentioned theorists is very suitable and also acceptable for the Union as such, and for the federalists as well, because the principle of subsidiarity itself represents a corner stone of the contemporary European federalism as a political concept. Along with this principle, the European federalists also support the solidarity between the member states but accompanied by their fiscal liability and

responsibility, achieved through the coordination process within the Union supranational structures. Hence, the solidarity does not mean irresponsibility.

Further, the 6<sup>th</sup> and the 12<sup>th</sup> point of the Plan, affirms the need for establishing a certain type of *European Federal Reserve system*, which will have “to manage Eurobonds and oversee the fiscal convergence of member states” (Begg, 2009, p. 21); and also the need for founding a *Union budget* “that [will be] financed by own [European] resources, including a financial transaction tax (FTT), thereby providing greater autonomy to the Union” (Begg, 2009, p. 21). Such commitments of the Plan reflect the federalist endeavor for establishing a *financial autonomy of the Union*, especially in the sense of budgetary and financial ownership, as an assumption for its efficiency in the promotion of the cohesion, convergence, growth, competitiveness and employment across the Europe. The federalists also go further in promotion of new options to spread the load, precisely with installing the EU energy tax, an aviation tax, the proceeds of auctioning greenhouse gas emission allowances etc. (Duff, 201, p. 10). Within this, the effort for founding a European Federal Reserve system and an autonomous EU Budget, is strictly in line with the fiscal federalism theory, which “contends that the central government should have the basic responsibility for the macroeconomic stabilization function and for income redistribution in the form of assistance to the poor” (Oates, 1999, p. 3). Within this, it is very important to stress that the European federalists, prefer *decentralized* fiscal federal system, where the decisions about the collection and expenditure of the taxes are taken by the common institutions, and also shared by the participating governments and other sub-national units *via* the subsidiarity principle, regarding the federalist theory. Otherwise, the commitment for establishing a European Federal Reserve is not a new idea, but also it is firstly proposed by Jacques Delors, formerly stipulated in the *Delors Report*, submitted in April 1989 when:

[T]he reports recommended that the separate European national central banks be merged into a new European central bank organized along Federal Reserve lines (...) The existing central banks would become part of a European version of the Federal Reserve system with a status much like that of the Federal Reserve banks in the United States. (Dowd, 1990, p. 1).

On that basis, the theorist George A. Selgin, stand on position that the building of a European Federal Reserve system, would worsen the political and economic system of the Union, because it presupposes political and monetary centralization of powers, which in its essence is opposite to the federalist outlook for decentralized fiscal federal system. But the main argument of the federalists, in favor of a European Federal Reserve, arises from the need for “help European governments stabilize prices and other nominal magnitudes by allowing them to ‘coordinate’ their monetary policies” (Selgin, 1990, p. 27). In that sense, it is very important to underline that the federalists do not accept centralized form of monetary policy-making, but their effort

is to build a fiscal federal system, where the Union will be able to *coordinate, not to instruct the member states* for the Union sake. Thus, building a fiscal federal system based upon the principle of subsidiarity, aiming to involve every European, regional, national and sub-national actor in making of the European monetary policy in one hand, while “imposing” the sense of European ownership over the monetary policy and fiscal accountability on the other. Despite this stance, the theorist Selgin (1990) warned:

[T]his view of the ‘objective function’ of European governments and their monetary authorities *is extremely naïve* (...) [Because] is governments’ desire to extend—and never to relinquish—their monetary powers and perquisites, not in order to secure monetary stability, but to enhance the power of politicians and bureaucrats and to serve their fiscal ends. (p. 30).

Accordingly, the European federalists must clear their political vision, especially between the concepts of decentralization *versus* centralization, and the principle of subsidiarity *versus* the top-down control also. Because, the idea for founding a European Federal Reserve system maybe looks like simple solution for the current Eurozone crisis, but if it is centralist constituted, it may do more harm than bring benefits for both the Union and member states financial and political status. So, the European federalists need to be more cautious in their claims and commitments, and they must hold stronger to the subsidiarity principle, in order to find an adequate solution for building a decentralized model of fiscal federal union. In that context, the (possible) European dimension of taxation policy “will help to ease distortions in the internal market and re-orientate the budget debate towards the EU added value in accordance with the principle of subsidiarity” (Duff, 2011, p. 10). Because the main idea is not to create a European super – state, totalitarian or bureaucratic by its nature, but to establish a functional, decentralized fiscal federal union, with full fiscal accountability, and with recognizable democratic scrutiny over the monetary policy-making process. Within that, the MEP Andrew Duff (2011) added:

[F]iscal innovation of this sort would not only liberate EU finance from the control of the state governments but also make a direct fiscal and democratic connection between the EU level of government, citizens and business [which indicate to the subsidiarity principle] (...) [Also] a proper federal budget of the EU will serve to reduce fiscal pressure by lowering the costs. (p. 10)

On that basis, also arise and the question about the EU banking system. Thus, with the 7<sup>th</sup> and the 8<sup>th</sup> point, the Plan brings up the issue about the *EU banking system* and the need for recapitalization of the European banks as well: “In order to restore trust between banks, free up interbank lending and guaranteeing savers for dangerous collapse” (SCc, 2011, p. 2). In that context, the federalists believe that such recapitalization should also serve to foster a non-speculative and socially responsible behavior that benefits the real economy. They also advocate the adoption of “a

credible European action plans for tackling bank secrecy, tax avoidance and tax evasion at least the Common market” (SCc, 2011, p. 2).

While through the 5<sup>th</sup> point of the Plan, the Spinelli Group, affirm the need for launching a *Eurobond market*, which should enable “the mutualisation of government debt” (SCc, 2011, p. 2); as foreseen in the Maastricht Treaty, aimed at reducing the average rate currently paid, increasing the market and providing greater liquidity and stability. In that context, the historical mistake for today debt crisis occurred within the Eurozone, according to prof. Kevin Featherstone (2012); is located in the German ordoliberal philosophy, or as he said:

So then and later at Maastricht the German ‘ordoliberal’ philosophy was adopted instead, which asserted that a stability culture could only be built bottom-up from within member states. States must create the best environment for free market competition, with measures based on market principles of ‘sound money, sound finances’. Such credibility was the prime responsibility of national governments to maintain. (para. 6).

Hence, the logic denied a European-level responsibility, as opposed to the Keynesian economics, which primarily advocates an *active policy responses by the public sector*, “including [monetary policy](#) actions by the central bank and [fiscal policy](#) actions by the government to stabilize output over the [business cycle](#)” (Sengupta, Monetary and Fiscal Policies section, para. 1). In contrast, the central tenet of ordoliberalism is that the governments should regulate the markets in such a way that “market outcome approximates the theoretical outcome in a perfectly competitive market (in which none of the actors are able to influence the price of goods and services)” (Dullien; Guérot, 2012, p. 2). But at the same time, the ordoliberalism rejects “the use of expansionary fiscal and monetary policies to stabilize the business cycle in a recession and is, in that sense, anti-Keynesian” (Dullien; Guérot, 2012, p. 2). In that context, [Ulrike Guérot and Sebastian Dullien](#) (2012) stated: “Ordoliberalism is a central reason for the peculiar German approach to euro crisis resolution which often has led to conflict with other European countries” (p. 2). Consequently, Kevin Featherstone (2012) in his published article: *The Maastricht Roots of the Euro Crisis*, explained: “The new reforms mainly stress punishments for Eurozone states guilty of bad behavior (...) Austerity is the language of penalties for not abiding by ordoliberal precepts of good-housekeeping” (para. 9). According to federalists, such ordoliberal matrix, predominantly advocated by Germany, enabled the occurrence of today Eurozone crisis and thus the EU inability for resolving it. In that direction, Andrew Duff (2011) concluded that: “Unbridled market forces no longer serve the interests of Europe (...) So the markets must be dealt with by a combination of *tough regulation and sound common economic policies*, which will include fiscal measures” (p. 12); because the present institutional arrangements, established by the Treaty of Maastricht (mainly ordoliberal) and confirmed by the Lisbon Treaty as well, are no

longer working. In line with Duff's stance for tougher market regulation, is the previous mentioned theorist Kevin Featherstone also, who thinks that with the absence of *economic governance* also comes the rejection of (Neo-Keynesian) options for returning to economic growth and the consolidation of the Eurozone and the Union as such. Therefore, The Spinelli Group plan stipulates some general provisions about founding an *EU economic governance*, starting from the obvious lack of a particular "European government to develop, launch and run a significant [fiscal] plan" (Castaldi, 2010, p. 8); because "no European institution is yet endowed with the relevant fiscal powers and the corresponding democratic efficiency" (Castaldi, 2010, p. 8). Based on that, the federalists advocate revision of the Treaty of Lisbon, and thus providing a system for co-optation and coordination and management, among the Eurozone and non-Eurozone members, as a highly important system tool, for establishing a fiscal and financial stability for the future.

In accordance with that, the second, the third and the 4<sup>th</sup> point of the Plan, affirm the Spinelli Group determination for *reorganization of the Commission, installation of the Euro finance minister and communitarization of the European Financial Stability Facility (EFSF) and European Stability Mechanism (ESM)*. The strive for reorganization of the EU Commission is motivated by the federalist commitment for installing a mechanism for nomination of "a senior member as the Euro finance minister who would chair the Eurogroup and head a group of commissioners charged with implementing economic governance at least within the Eurozone" (SCc, 2011, p. 2). In that sense, the Euro finance minister will be responsible for economic and financial affairs "the job of chairing the Council of finance ministers (Ecofin) along the lines of the High Representative for foreign and security affairs of the EU" (Duff, 2011, p. 19). The Euro Finance minister also, would be the sole external representative of the euro, as legally provided by the Article 138 (2) of the *Consolidated version of the Treaty on the Functioning of the European Union (CvTFEU)* (2012); as follows: "The Council, on a proposal from the Commission, may adopt appropriate measures *to ensure unified representation* within the international financial institutions and conferences. The Council shall act after consulting the European Central Bank" (p. C 83/107). Or as MEP Andrew Duff (2011) emphasized: "*He or she* will run a fiscal policy aimed at supporting (...) growth" (p.17). So, the newly empowered Commission will be able to insist on evidence-based analysis of national economies and it should launch a concerted campaign against tax evasion, corrupt public administration and international organized crime (Duff, 2011, p. 17). In addition, it must be stressed that within a federal union, all legislative power is to be shared equally between the Parliament and the Council, and in the case of the EU: "The executive power in matters of fiscal and economic policy as well as in foreign and security policy will be shared between Council and Commission" (Duff, 2011, p. 17). Therefore, unifying the chairmanship

of the European Council, Ecofin and Council of foreign Affairs Ministers “would seem eminently sensible: ‘Co-ordinate partners in the governmental process’” (Duff, 2011, p. 17). Concerning the communitarization of the EFSF and the ESM, it is important to underline that the Spinelli Group propose a system of majority voting within the decision-making process. Such Community method in the EU decision-making process according to the federalists could be based “on the IMF system where votes are weighted in line with the member state’s contribution to the fund” (Duff, 2011, p. 17). Moreover, the federalists are even more motivated by the IMF statement addressed to the Eurozone members, as follows: “National policy makers in the euro area need to move away from the illusion that a national approach to fiscal, financial and structural issues preserves sovereignty in a monetary union. Instead they should focus on the fact that interconnectedness requires more common thinking from an area wide perspective” (Duff, 2011, p.17).

On that basis, the Spinelli Group efforts are directed towards the “transformation of the intergovernmental EFSF/ESM into a genuine European Monetary Fund of a federal type, brought fully within the ambit of the EU Treaties, to verify sound national budgetary policies and to facilitate transfers to help the structural adjustment of the weaker countries” (Duff, 2011, p. 17). In parallel, the debt restructuring will be a precondition for access to the ESM. The federalists also declared that they are ready to manage the mutualisation of the government debt, and “to reshuffle of the adjustment plan imposed on Greece” as well, as it is written in the 9<sup>th</sup> point of the Plan, particularly “in order to ensure the ability of the Greek society to cope with the shock including a possible greater contribution from hitherto protected segments of the society” (SCc, 2011, p. 2).

While through the 10<sup>th</sup> and 11<sup>th</sup> point, as second last points of the Plan, the federalists propose adopting a *Community Act for Growth and Convergence* and a *Growth and investment plan* as well, that uses project bonds and the reallocation of unused structural funds with lower co-financing requirements. The latter, according to the Spinelli group “would primarily contribute to exit the decade-long recurring cycle of crisis by providing for the modernization and the ecological transformation of the European economy” (SCc, 2011, p. 3). Namely, in line with the federalist perception, the aforementioned Community Act “would build on mandatory convergence between the member states on high levels objectives in fields such as labor and wage-policy, taxation, pension systems, investment and policies for social cohesion” (SCc, 2011, p. 3). Likewise, this Act is planned to be adopted through the *co-decision procedure* with aim “to respond to the need for democratic accountability” (SCc, 2011, p. 3); of the Union, as a “big step” towards a more democratic scrutiny and transparency in the decision-making process, well as financial, fiscal and monetary accountability, both the member states and the Union as a whole.

## CONCLUSION

Based on the above mentioned, we must underline that the path for consolidation of the Union in monetary, fiscal, financial or political sense is very complex and uncertain issue as well. That involves not only step-by-step solutions (typical for the neofunctionalists), but a “big step” solution also, recognizable for the Spinellian federalists. But, not in a direction of creating a European super-state, but in favor of creating a democratic and united Europe as an ideal, founded on the highest civilizational values, such as: Peace, democracy, freedom and liberty etc. In that sense, I can conclude that the Spinelli Group plan, latently generates a decentralized type of (fiscal) federalism, closely related to the *cooperative federalism* concept in general, in which the Union structures, national, state, and local governments will interact cooperatively and collectively to solve common problems, rather than making policies separately but more or less equally, within the Community method framework. Accordingly, this federalist concept, assumes mutual control, cooperation and coordination between the Union and the member states as well, instead the top-down control within the fiscal and monetary domain. Moreover, the cooperative (fiscal) federalism can provide a mechanism for financial and fiscal accountability, if it is stipulated within an obligatory document, which can be adopted at a convention-type Conference. Concerning the democratic legitimacy, this type of Conference will have to be composed of European as well as the member states representatives, on which will be defined the competences of the Union and those of the member states also, while strictly respecting the principle of subsidiarity. This involves creating an institutional and legal basis for enforcing the budgetary rules, or shifting additional economic and fiscal policy powers “towards Brussels so that the final institutional set-up would resemble more closely a fiscal union with de facto euro area finances minister” (Leonard, 2011, p. 5). In that direction, it is essentially important to stress that the European federalists and the contemporary European federalism as a political concept, highly affirms the principle of subsidiarity, from which implementation, directly depends and the decentralized nature of the possible EU (fiscal) federal union, advocated by the Spinelli group.

On that basis, we can conclude that the Plan by its provisions generates a more flexible kind of federalism, cooperative one, directed towards the establishment of a decentralized and lean federal union, highly opposite to the centralist federalism logic. This type of (fiscal) federal union, will only supplement both the EU and the member states as well, while giving them a more democratic, efficient and responsible character. Otherwise, through the installing of Euro finance minister and the creation of an autonomous EU budget as well, according to the federalists, the Union will acquire more democratic capacity and scrutiny, and also efficiency in spending of its structural funds. Therefore, the Spinelli group plan can be treated only

as a short *supplemental concept* for the consolidation of the EU in a more democratic, efficient and functional way, within the Community method framework, based on the subsidiarity principle, seeking to ensure a systemic basis for terminating the eurocrisis. Thus, the EU future is *neither in dissolution nor centralization of its powers*, but in the creation of a mutual-controlled and decentralized type of federal union, directed towards the strengthening of the EU financial and economic efficiency, fiscal accountability and democratic scrutiny.

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# CONSTITUTIONAL COURT OF THE REPUBLIC OF MACEDONIA AND FREEDOM OF EXPRESSION

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## **ABSTRACT**

The paper aims to assess the impact of the ECHR on the decisions of the Macedonian Constitutional Court in defamation cases involving a politician. It focuses upon the following questions: Does the Court refer to the European Convention on Human Rights (ECHR) and the case law of the European Court of Human Rights (ECtHR) in its decisions? Does it interpret the right to freedom of expression in the light of the Convention? In order to answer the questions, the paper analyses the defamation case law of the ECtHR developed under Article 10 of the ECHR (freedom of expression) and the decisions of the Macedonian Constitutional Court in defamation cases involving a politician (concrete disputes). The analysis shows that it is questionable whether the Constitutional Court seriously considers the defamation case law of the ECtHR.

**Keywords:** freedom of expression, defamation, Constitutional Court of the Republic of Macedonia, ECHR, European Court of Human Rights

## **INTRODUCTION**

The Constitutional Court of the Republic of Macedonia (CCRM) protects the freedoms and rights of the individual and the citizen relating to freedom of conviction, conscience, thought and public expression of thought, political association and activity, as well as to the prohibition of discrimination among citizens on the ground of sex, race, religion or national, social or political affiliation. The paper focuses on freedom of expression. It attempts to assess the impact of the European Convention on Human Rights (ECHR) – ratified by the Macedonian Parliament on 10 April 1997 – on the Court’s case law concerning defamation (cases involving a politician). However, this does not mean that the paper quantifies the impact of the Convention on the case law of the Court. The analysis provided in the paper is primarily qualitative in nature. The paper, first, analyses the case law of the ECtHR developed under Article 10 of the ECHR in order to find out how the European Court of Human

Rights (ECtHR) has interpreted “for the protection of the reputation or rights of others” (defamation exception) as a justified and necessary restriction on freedom of expression. Then, it analyses (using the on-line database of the CCRM) the decisions of the CCRM (concrete disputes) in defamation cases involving a politician (reached from ratification of the ECHR till 2017) in order to establish whether it (in these decisions) has based its interpretation of freedom of expression (Article 16 of the Constitution) on the general legal principles contained in the ECHR.

Much has been written on the approach of the ECtHR to defamation (see e.g. Kozlowski 2006; Macovei 2004; Mowbray 2004; Ovey and White 2006; Loucaides 2007; Goldhaber 2007; Voorhoof and Ó Fathaigh 2014) and on the impact of the ECHR on the case law of national courts. The existing literature reveals that the constitutional courts of the States Parties to the ECHR frequently refer to the case law of the ECtHR in their decisions (see: Gerards and Fleuren 2014; Hale 2012; Repetto 2013; Keller and Sweet Stone 2008; Steiner 1995-96; Burkov 2007; Anagnostou & Psychogiopoulou 2010), albeit some “purely perfunctory, ritualistically and rhetorically” (Sadurski 2009, 442). At risk of some over-generalization one may observe that national courts apply the standards and criteria developed by the Court in Strasbourg under Article 10 of the ECHR when deciding defamation cases. There are countries where national courts transform the Convention standards to standards that are more easily applicable in domestic law (see, Geraards and Fleuren 2014, 243-44), but not in a manner that could be defined as a deviation from the Court’s case law.

The paper attempts to find out whether the CCRM applies the set of factors developed by the ECtHR when balancing freedom of expression and reputation or rights of others. Based on the analysis of its decisions it argues that in defamation cases involving a politician the CCRM reads the ECHR selectively and fails to seriously consider all the arguments advanced by the ECtHR under Article 10 of the Convention. In order to explain this criticism (summarized in the conclusion) Part I of the paper discusses the scope and content of freedom of expression, as guaranteed by Article 10 of the ECHR while Part II examines the protection of this freedom at national level. Part III analyses the decisions of the CCRM in defamation cases involving a politician.

## **THE EUROPEAN CONVENTION ON HUMAN RIGHTS AND FREEDOM OF EXPRESSION**

Article 10 of the ECHR provides that “*everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless*”

*of frontiers. This Article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises*". The ECtHR interprets this article broad enough to encompass the substance of the ideas and information expressed and the form in which they are conveyed (*Sokolowski v. Poland* 2005 § 44) and to include various forms of expression (artistic, commercial, political, etc.).

The freedom of expression, as protected by Article 10 of the ECHR, is "applicable not only to "information" or "ideas" that are favourably received or regarded as inoffensive or as a matter of indifference but, also to those that offend, shock or disturb" (*Dichand and Others v. Austria* 2002 § 37). It "constitutes one of the essential foundations of a democratic society" (*Lingens v. Austria* 1986 § 41) within the meaning of the Convention" and it is one of the basic conditions for progress of a democratic society (*Lingens v. Austria* 1986 § 41), as well as, for "each individual's self-fulfillment" (*Lingens v. Austria* 1986 § 41). Therefore, it is hardly a surprise that the ECtHR requires the state both to take positive measures (see, *Özgür Gündem v. Turkey* 2000 § 43) to protect freedom of expression, even in the sphere of relations between individuals (*Lingens v. Austria* 1986 § 43), and to restrain from arbitrary interference with the exercise of the rights protected by the article 10 of the ECHR (*Özgür Gündem v. Turkey* 2000 § 42, 43). Public authorities may interfere with the exercise of the rights only if such interference is: (1) prescribed by law (the law must meet the following requirements: to be an adequately accessible (*The Sunday Times v. UK (no. 1)* 1979 § 49) and to be formulated with sufficient precision to enable the citizen to regulate his conduct: the citizen must be able – "if need be with appropriate advice" (*Barthold v. Germany* 1985 § 45) – to foresee the consequences of its action); (2) pursued legitimate aim (in the interests of national security, territorial integrity or public safety; for the prevention of disorder or crime; for the protection of health or morals; for the protection of the reputation or rights of others; for preventing the disclosure of information received in confidence or for maintaining the authority and impartiality of the judiciary); and (3) necessary in a democratic society (to answer a pressing social need (*Financial Times Ltd and Others v. UK* 2009 § 60) and to be proportionate to the legitimate aim pursued (*Financial Times Ltd and Others v. UK* 2009 § 60)).

As mentioned above the paper focuses on protection of the reputation or rights of others as legitimate aim for restricting freedom of expression. More precisely, it focuses on defamation cases involving a politician, which have been examined by the CCRM (from ratification of the ECHR by Macedonia till 2017). The Court in Strasbourg has clearly established that defamation proceedings constitute an interference with freedom of expression that has legitimate aim. When assessing whether the interference with freedom of expression by a judicial decision – criminal or civil – qualifies an applicant's statement as defamatory, is necessary in a democratic society it takes in consideration "the case as a whole, including the content

of the impugned statements and the context in which they were made” (*Yankov v. Bulgaria* 2003 § 129). In order to assess the proportionality of the interference it takes into account the following elements: (1) the nature of the interference including the nature and severity of the penalty imposed (*Scharsach and News Verlagsgesellschaft v. Austria* 2003 § 30); (2) the position of the person who made the impugned statements (in this context, it bears noticing the Court has recognized the essential role that the press plays in a democratic society – a vital role of “public watchdog” (*Dichand and Others v. Austria* 2002 § 40) – which may sometimes require a certain degree of exaggeration, or even provocation); (3) the position of the person who was subject of defamation (the limits of acceptable criticism are wider as regards a certain categories of persons as such (for instance, a politician (see, *Dichand and Others v. Austria* 2002) or civil servant exercising its powers (see, *Nikula v Finland* 2002 § 48) than as regards a private individual (*Dichand and Others v. Austria* 2002 § 42)); (4) the subject matter and nature of the impugned statement (whether or not the statements contribute to public debate; whether the impugned statement is a statement of fact or a value judgment) and (5) the reasons given by the national courts (*Scharsach and News Verlagsgesellschaft v. Austria* 2003 § 31). The ECtHR takes into account other factors as well when assessing the proportionality of the interference (for instance: the means by which the impugned statement is disseminated; whether or not the statement reaches smaller audience).

The ECHR is sensitive to interference with freedom of expression in matters of public interest and provides additional protection of freedom of expression in the area of political speech or public debate. As Voorhoof (2015) observed the ECtHR “is still maintaining high standards of freedom of expression, media pluralism and protection of journalists” and in the cases of “defamation of public persons and criminal convictions of journalist or publishers, the Article 10 case law of the Strasbourg Court secures a higher and more robust level of protection” (Voorgoof 2015).

Although there are cases where one can identify a more restrictive approach of the ECtHR to freedom of expression (see e.g. Voorhoof and Ó Fathaigh 2014; Flaus 2009), it can hardly be said that it is not sensitive to interference with freedom of expression. The approach of the CCRM to freedom of expression will be discussed below, but first I will analyze the treatment of this freedom in the Macedonian Constitution.

## **FREEDOM OF EXPRESSION UNDER THE CONSTITUTION OF THE REPUBLIC OF MACEDONIA: ARTICLE 16**

Article 16 of the Macedonian Constitution provides that: *Freedom of personal conviction, conscience thought and public expression of thought is guaranteed. Freedom of speech, public address, public information and the establishment of*

*institutions for public information is guaranteed. Free access to information and the freedom of reception and transmission of information are guaranteed. The right of reply via the mass media is guaranteed. The right to a correction in the mass media is guaranteed. The right to protect a source of information in the mass media is guaranteed. Censorship is prohibited.*

According to the Constitution freedom of personal conviction, conscience, thought and public expression of thought cannot be a subject to any restrictions (not even during the state of war or emergency), which implies that the right to freedom of expression is an absolute right. However, the CCRM has reiterated many times that this right is not an absolute right, that is, that it is subject to restrictions, explaining its position (in the majority of its decisions) by referring to international law (including to the ECHR). It has stated many times the limits of the exercise of freedom of thought and public expression of thought “*should be sought in the wholeness of the Constitution and its determinations considering thereby the international instruments ratified in accordance with the Constitution*” (CCRM 2011, no. 107/2010). Furthermore, in one of its recent decisions (case concerning the forcible removal of the journalists from the Parliament’s Plenary Hall) it read Article 16 of the Constitution in conjunction with Article 10 of the ECHR. In this decision it explicitly stated that “*the exercise of freedom of public address and freedom to receive information, which are guaranteed by Article 16 of the Constitution of the Republic of Macedonia and Article 10 of the ECHR, as constitutive elements of freedom of expression are not absolute, that is, they are subject to restrictions provided in paragraph 2 of Article 10 of the ECHR*” (CCRM, 2014, no. 27/2013).

## **THE MACEDONIAN CONSTITUTIONAL COURT AND FREEDOM OF EXPRESSION: DEFAMATION CASES INVOLVING A POLITICIAN**

The CCRM reached five decisions (decisions on merits) in defamation cases involving a politician in the period under discussion in this paper (from ratification of the ECHR by Macedonia till 2017) and it did not find a violation of freedom of expression in any of these cases.

On 23.02.2011 (Decision No. 146/2010), the CCRM rejected the application for protection of freedom of expression submitted by a person (Jani Makraduli) who had been found guilty of defamation for a statement made in the capacity of the vice president of a political party, (acting in the name of the party) at the press conference in the official premises of the party. Namely, he asked the Director of the Security and Counter Intelligence Directorate (a controversial politician, member of the Executive Board of the ruling party at that time and cousin of the President of the

Government at that time) whether he had abused its position to interfere with the work of the Macedonian stock exchange and whether the public suspicions that he had abused the Ministry's facilities for recording conversation for such purposes are true. The statement was broadcast on the national television A1 (in the news). As we mentioned above, the Court did not find a violation of freedom of expression. It completely ignored the ECHR and the case law of the ECtHR (it did not refer to it) in its decision.

On 12.09.2012 (Decision No. 155/2011) the CCRM reached a decision in a case which involves the same subjects as in the previous one. In this case, too, Makraduli (vice president of a political party and Member of the Parliament) was found guilty of defamation for a statement made at the press conference implying that the Director of the Security and Counterintelligence Directorate had been involved in a corruption scandal (public auction – sale – of construction land). The applicant had presented certain evidence and he filed criminal charges concerning this statement.

The CCRM did not ignore the ECHR this time. It referred to Article 10 of the Convention (by quoting it) and concluded that the regular courts had taken into consideration the Convention when deciding on the issue. The Court applied the proportionality test. It used the factors (at least formally) defined by the ECtHR to balance freedom of expression and reputation or rights of others, including the fact that the applicant, as a Member of the Parliament, had wide freedom of expression because elected representative of people “represent the electorate, draw attention to their preoccupations and defend their interest” (*Piermont v France* 1995 § 76). In this context, one paragraph of the decision deserves a particular attention. Namely, the Court accepted that the impugned statement was part of the public debate, but it added that:

... the question is whether the presentation of information about the public auction for alienation of a construction land in property of the Republic of Macedonia ... has any influence or significance for the public, as a contribution to better understanding of the subject of the public debate. The question is relevant because in that context, it is sometimes possible, that the public interest requires a higher threshold of tolerance for statement that affect individuals and their personal values (CCRM 2012, no. 155/2011).

Although one may find it very hard to fully understand the Court's reasoning due to technical ruling and mechanical language, such a position of the CCRM raises a dilemma whether it considered that the significance of this information for the public was such that it did not require a higher threshold of tolerance.

Similar to these two cases is the case where the leader of smaller opposition party submitted application for protection of the public expression of thought because he had been found responsible for defamation (under the Law on Civil Liability for Insult and Defamation) for statements asserting that the President of the Government

had sent letter to the UN General Secretary proposing a new name for the country. The impugned statement was published in a newspaper. On 25.06.2014 (Decision No. 47/2014), the CCRM reached a decision rejecting this application for protection of the public expression of thought as well. The Court referred to Article 10 of the ECHR mainly to support its argument that the state may interfere with the exercise of the freedom of expression in certain circumstance including to protect the reputation and rights of others. In addition, it concluded that the reasons given by the regular courts who had found the applicant responsible for defamation are acceptable and that the state's interference with the freedom of public expression of thought is proportional to legitimate aim of protecting the reputation of others. However, the CCRM did not mention the fact that a politician is required to display a greater degree of tolerance to criticism than a private individual (ordinary citizens) despite the fact that the subject of defamation in this case was the President of the Government at that time. So, it seems reasonable to assume that the Court did not take this fact into account or at least it did not give appropriate weight to it when assessing the proportionality of the interference in the exercising of freedom of expression. On the other hand, the ECtHR, has constantly reiterated that:

the limits of acceptable criticism are wider with regard to a politician acting in his public capacity than in relation to a private individual, as the former inevitably and knowingly lays himself open to close scrutiny of his every word and deed by both journalists and the public at large, and he must display a greater degree of tolerance *Dichand and Others v. Austria* 2002 § 37).

It seems that the CCRM used the ECHR to support its argumentation – in particular, the fact that the freedom of expression can be subject to restriction – and the conclusions of the ordinary courts in other two defamation cases involving a politician as well. In the first case (Decision No.138/2012; 26.12.2012) the journalist was found guilty of defamation (criminal defamation) for a text published in a newspaper. The journalist wrote an article in a weekly newspaper accusing the family members of the Minister for Foreign Affairs at that time (Antonio Miloševski) of involvement in certain suspicious activities within the Association of Drivers. The title of the article was: How the Association of Drivers became family business of Antonio Miloševski. In the second case (Decision No. 164/2012; 14.10.2015), a journalist and its editor were found responsible for defamation (civil defamation) because the newspaper (the same newspaper as in the first case) published the statements made by the former Ambassador of the Republic of Macedonia in the Czech Republic accusing the Director of the Security and Counterintelligence Directorate of involvement in illegal activities. The Ambassador accused the Director for number of activities, including threats to his life and certain involvement in his family drama (custody battle and kidnaping of his child).

If one analyzes the decisions one can observe that the CCRM accepted the arguments of the regular courts. It referred to Article 10 of the ECHR, however, it is questionable whether it truly understands the role that (according to the ECtHR) the press plays in a democratic society. The ECtHR has recognized the essential role that the press plays in a democratic society - a vital role of “public watchdog” (*Dichand and Others v. Austria* 2002 § 48), and has reiterated many times that “any restriction on freedom of expression must be convincingly established” (*Thoma v Luxembourg* 2011 § 48). The constitutional courts are required to look at the interference in question in the light of the case as a whole and adequately state the reasons why the decisions of the ordinary courts do not constitute a violation of freedom of expression. It seems that the CCRM in these two cases failed to follow the guidelines of the ECtHR and to seriously consider all the arguments advanced by the Court in Strasbourg under Article 10 of the ECHR. For instance, in the first case, the Court of Appeals concluded that the accused had committed the crime of defamation with intent and just before the elections in order to create in public a negative distorted picture of a young and successful politician (see, CCRM 2015, no.164/2012). The Constitutional Court failed to make any comments on such observation. The conclusion (the wording) of the Court of Appeals implies that it seems to have taken into consideration the fact that the article was written just before the elections as yet another argument against the accused, which does not coincide with the position of the ECtHR (see, for instance, *Brosa v Germany* 2014). Political debates are most welcome and desirable in that period. In the second case, the CCRM provides no comment on the regular courts’ argument that the applicants did not distance from the ambassador’ statements. Such obligation has not been established in the case law of the Strasbourg Court. On contrary, the ECtHR argues that “a general requirement for journalists systematically and formally to distance themselves from the content of a quotation that might insult or provoke others or damage their reputation is not reconcilable with the press’s role of providing information on current events, opinions and ideas” (*Thoma v Luxembourg* 2011 § 64). Moreover, it has established that Article 10 of the ECHR as such “does not prohibit discussion or dissemination of information received even if it is strongly suspected that this information might not be truthful” (*Salov v Ukraine* 2005§ 113). According to the Court to suggest otherwise “would deprive persons of the right to express their views and opinions about statements made in the mass media and would thus place an unreasonable restriction on the freedom of expression set forth in Article 10 of the Convention” (*Salov v Ukraine* 2005 § 113).

When it comes to the second case three more points regarding the second case deserve attention. First, the regular courts concluded that the defendants could not recall to a reliable source and that they did not act in good faith in accordance with the ethics of journalism. It is not quite clear why a former country ambassador (whose statements were published in the impugned article) is not a reliable source. Second, the Court of

Appeals concluded that the allegations that the Director was involved in illegal activities that affect the applicant is not a matter of public interest. The Constitutional Court did not disagree with this. One may agree with Griffin that “the argument that adopting a public life forfeits a private life is ridiculous” (Griffin 2008, 240). Of course, not everything related to a person or relevant to a person is of public interest. As the ECtHR in the case *Nilsen and Johnsen v Norway* (1999 § 47) stated “even in debate on matters of serious public concern, there must be limits to the right to freedom of expression”. But, one may find it very hard to argue that the journalist and the editor in this case overstepped those limits. Moreover, as Risteski et al. (2017, 23-24) observed the argumentation of the regular courts is not even in compliance with the Law on Civil Liability for Insult and Defamation adopted in Macedonia, which defines all forms, institutions and activities of exercising state power as matter of public interest. Finally, the Court did not find it necessary to examine whether there are a special ground for dispensing the press from its obligation to verify factual statements that were defamatory for private individual or public officials in both cases. On the other hand, there are cases where the ECtHR considered whether special grounds exist for dispensing the press from its ordinary obligation to verify factual statements that were defamatory for private individual (see *McVicar v the United Kingdom* 2002) or indeed public officials (see *Alithia Publishing Company LTD & Constantinis v Cyprus* 2008 § 67). It seems that in these two cases the CCRM over-emphasized the obligation of the press to prove the facts despite the general tendency of the ECtHR to reduce the duties and responsibilities of the journalist (see, also, Flauss 2009), particularly in the cases involving politicians. For example, in the case *Flux v Moldova* it concluded that despite the applicant’s (journalist) inability to prove some of the facts which it had reported, the interference with its right to freedom of expression was not “necessary in a democratic society” (*Flux v Moldova (No. 7)* 2009).

## CONCLUSION

The paper analyzed the decisions of the CCRM in defamation cases involving a politician in order to assess the impact of the ECHR on its interpretation of freedom of expression (protected by Article 16 of the Constitution) in these cases. The analysis showed that the CCRM referred to Article 10 of the ECHR in the vast majority of cases, but it did not explicitly refer to the case law of the ECtHR in any of them. It reads the ECHR selectively, fails to seriously consider all the arguments advanced by the ECtHR under the Convention and, sometimes it defines or understands the concept of public interest in a way that does not coincide with the case law of the ECtHR.

Also, the analysis of the decisions of the CCRM in defamation cases involving a politician, revealed that the Court failed to develop a visible and coherent set of factors to balance the freedom of expression and reputation or rights of others, and, at the same time, it applies the factors defined by the ECtHR selectively and mechanically. It seems that the CCRM uses the ECHR to justify the judgments of the ordinary courts – in particular, to justify “the protection of rights or reputation of others” as a legitimate aim for restricting the freedom of expression, because, according to the Constitution freedom of personal conviction, conscience, thought and public expression of thought cannot be a subject to any restrictions.

Therefore, it is hardly a surprise that the ECtHR decided Makraduli cases (discussed above) differently, that is, in the case *Makraduli v Macedonia* the Court in Strasbourg found a violation of freedom of expression by Macedonia while the CCRM rejected the applications for protection of freedom of expression submitted by the same applicant (see, Decision No. 146/2010 and Decision No. 155/2011)

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## **EXPLORING THE PATTERNS OF SERIAL MURDER: THE CASE OF THE MACEDONIAN “RASKOLNIKOV”**

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### **Abstract**

Multiple murder, especially serial murder as part of that phenomenon, has been a center of interest and discussion since past times. Its complexity and the sophistication of serial killers, their criminal minds and modus operandi, media coverage and film portraits have given an important place of it in urban culture, with even many attempts to unveil the human nature of serial killers. Researches have shown that serial killers are mostly males, have an average IQ, and differ in their preference of possible victims and methods of murder.

Murder in the Republic of Macedonia is not unknown to statistical data, but still an unsolved enigma in criminological books, especially female perpetrated murders. On the other hand, serial murders until recent years were an unheard term along police hallways and were eventually seen and heard of on big TV screens. But, few cases in the last years opened the possibility of an individual analysis of serial murder and its creator.

The paper gives an overview of the past researches of serial murder, its patterns, typologies and possible etiological understandings. In the second part, the paper analyses the multiple murders of a, by definition, serial killer, whose case in the public was known as the Macedonian “Raskolnikov”.

**Key words:** pattern, Republic of Macedonia, serial murder, typology.

### **INTRODUCTION: THE TERM OF MULTICIDES AND SERIAL HOMICIDE**

Sometimes, in different context of different researches, homicide and murder are used as interchangeable terms, with murder being the unlawful killing of one human being by another, and homicide being any unlawful killing, with killing in self-defense, capital punishment and killing in time of war being lawful (Holmes and Holmes, 2010).

Multicides or multiple murders are happening very often in today’s societies, especially in modern countries, such as the United States. Which patterns collide

among different cases, and which ones exclude any possibilities of similarity between killers? What is their motive? What energy drives them through the processes of taking lives?

Today, serial killers commit their crimes because of several of reasons, taunting even scientific thought, emerging a need for a broader definition which could include all types of them and their crimes (Hickey, 2016).

Hickey (1986) defined serial killers in a way that includes every person who through premeditation has killed three or more victims over a period of time (days, weeks, months, years) (Hickey, 2016: 35). Although in its core and essential meaning, every definition should include any offender, with no importance of their gender, who kills over some period of time minimum of two victims (FBI, 2008). FBI's (2008) definition of serial killing includes unlawful killing of two or more victims by the same offenders in separate events (FBI, 2008: 12). Such definition identifies the minimal number of killings necessary to be considered as serial murder and allows different categories of persons who commit multiple homicides to be characterized as serial killers.

Serial murder occurs when an individual kills two or more people over a period of time. There is no connection or relationship between the offender and his/her victim, every other murder has no connection to the initial murder and victims are a symbol to the murderer having some kind of value for him/her (Messerschmidt, 2006:126).

The term serial murder refers to the killing of a number of people, usually three or more, over the course of more than a month (Vito & Mhaas, 2012: 265).

Serial homicide includes acts of murder, which are happening over a period of time (Aslimoski & Stanojoska, 2015: 59).

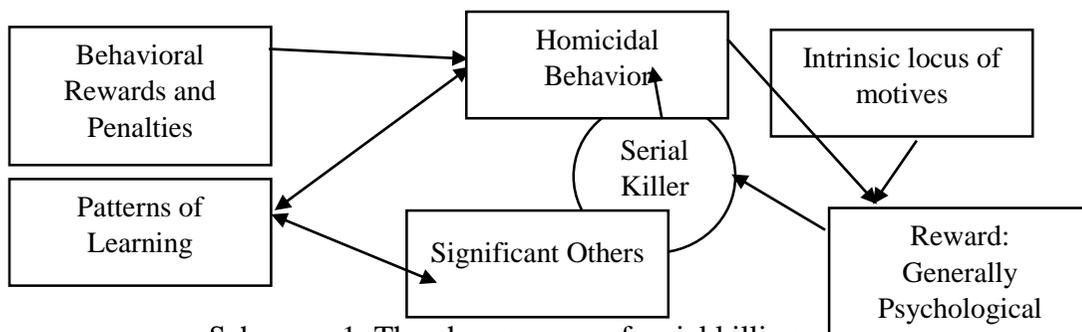
Macedonian Criminal Code does not contain a definition using the term of serial homicide, but has a paragraph in article 123 (paragraph 3) where the incrimination of unlawful, premeditated killing of two or more persons is incorporated. The sanction for such acts is a minimum of ten years of imprisonment and maximum to a life time of imprisonment.

The data from the State Statistical Office of the Republic of Macedonia (1995 – 2017) is showing a decreasing trend of murderous acts, with only two cases of serial killers in our country (one sentenced to imprisonment and the other still unknown, although there was a person which was accused for serial murder, but later on he was found dead in his prison cell, drowning himself in a bucket full of water). But what is interesting is that there was another case of multiple murders where a young male (a drug addict) was killing older women, which were living alone, in an attempt of robbing them. A number of them have survived the violent acts, but another didn't. The public prosecutor did not characterize these acts as serial homicide in his accusation, but as different acts of murder for financial gain, although the forensic analysis has shown identical pattern of acting and modus and instrumentum operandi, and identical profile of victims. It is now the well-known case of the "Macedonian Raskolnikov".

## TYOLOGIES OF SERIAL KILLERS

There are many different reasons and motives which move serial killers into their murderous acts. Although, popular culture and filmography have built a myth of male serial killers whose prime motive is their sexual desire and some type of paraphilia, and that they are only sexual predators, today we can find different motives among different types of serial killers, such as: anger, criminal enterprise, financial gain, ideology, power thrill, sexual motive, psychosis (Hickey, 2016).

Using patterns of their behavior, US criminologists have identified between 2 and 11 different types of serial killers/murder. Wille (1974) has identified 10 different types of murderers covering a long range of biological, sociological and psychological categories: depressive, psychotic, affected with organic brain disorder, psychopathic, passive aggressive, alcoholic, hysterical, juvenile, mentally retarded, sex killers. On the other hand, Lee (1988) has used a variety of motives to identify different types of serial killers: profit, passion, hatred, power or domination, revenge, opportunism, fear, contract killing, desperation, compassion, ritual killers (Hickey, 2016). The mass and serial killer are different. The first one suffers from psychosis and in most cases can be considered as insane, but the latter one very rarely has any indications of mental illness, and can be described as an obsessive-compulsive person, because of the pattern and style serial killers have (and do not change) (Danto, 1982).



Scheme n.1: The phenomenon of serial killing

Holmes and DeBurger (1988) using the “core characteristics” from the Scheme n.1 (the authors have drawn it using the explanations of Holmes and DeBurger who have developed four different types of serial killers: visionary (every killing is an act which has been triggered by visions or voices); mission – oriented (every killing is a part of a bigger mission to destroy some group of people); hedonistic (thrill seekers: creature comforts and lust murderers); power/control-oriented type (not a sexual domination, but an ability to control and exert power over victims) (Hickey, 2005).

Using data from crime scenes of serial killings, Ressler et al (1988), have identified the types of “organized” and “disorganized” murders. The “organized” type has a high IQ, is a socially and sexually capable person, is a geographically mobile, plans his crime, controls his emotions during the murderous act, sometimes returns to the crime scene, his victims are strangers, moves the body to another place or exposes the body to draw attention. On the other hand, the “disorganized” has a low IQ, is a socially immature person and nocturnal killer, the crime scene is around his area of living or working, experiences changes in personality, also returns to the crime scene.

Later on, this dichotomy is explored in a wider construction of offenders' behavior or victimization patterns. There are four different possibilities with factors which influence the constructing of typologies: A – specific victims and specific methods (Ted Bundy); B – variety of victims and specific methods (David Bullock); C – specific victims and variety of methods (Richard Cottingham) and D – variety of victims and variety of methods (Herbert Mullin) (Hickey, 2016).

Mobility is an important characteristic of serial killers, especially if we apply the organized-disorganized dichotomy, and using their degree of mobility we could delineate three distinct groups: traveling serial killers (cover very wide area); local serial killers (stay in a region); and serial killers who do not leave their area of living or working (Hickey, 1986).

### **THE CASE OF THE MACEDONIAN “RASKOLNIKOV”**

Viktor Karamarkov who is also known as the Macedonian “Raskolnikov” committed 4 murders and 2 attempted murders in a period of 8 months during 2009. The last five of them were committed in a short period of time of only 13 days during the month of October in 2009. The serial murders are not his only criminal activity, prior to them he was known to the criminal justice institutions and law enforcement authorities because he was convicted 8 times in 4 years from 2004-2008 for thefts.

The 28<sup>th</sup> year old lived in the capital city of Macedonia - Skopje together with his mother. His neighbors described him as a quiet boy who kept it to himself, as a best student in his generation during high school, highly intelligent, he liked to read books especially the Russian classics and that's why he identified himself with the character from Fyodor Dostoevsky's book Crime and Punishment – Raskolnikov and also he was known for the respect he expressed towards the elderly people (Crvenkovska, 2009).

His life style was built around his constant need of psychoactive substances and in the 2-year period before and during the serial murders he created a system that will provide him with financial means to buy psychoactive substances (begging, he kept notes of the places he went to beg and never went on the same place twice), he had good social connections, a place to live and also he had several sexual relationships with girls of his age.

According to the psychiatric expert report Karamarkov is a person with average intellectual capacity, who does not show any psychopathological elements in his character. He has an inadequate person structure, because he is introvert when it comes to frustrations, he is hypersensitive, socially incompatible with hedonistic needs, emotionally unstable and shows characteristic of an addict of psychoactive substances. But, experts say that even though Karamarkov was a long-term addict of psychoactive substances, in *tempore criminis* he was able to make the judgment about the crimes and he understood the meaning of his actions, he was able to manage his behavior and to predict the consequences that derive from them. According to his statements given during the police investigation, expert examinations and afterwards, experts think that he has an excellent recollection of the events which suggests that the use of psychoactive substances had no effect on his memory or on his judgment about his actions before and after the committed crimes (Expert report, 2009).

### ***The murders***

Viktor Karamarkov committed the murders in a ‘unique’ way, by replicating the murder that was committed by the fictional character from Dostoevski’s book – Raskolnikov.

During the police interrogation he claimed “I don’t know how many I have killed”, but the official number of his victims is 6. Four of them were murdered and the two others survived his murderous acts. The profile of his victims is the one of elderly woman that leaves alone in her apartment or house. His first victim is an 83-year-old woman Ljubica Hristova, the second victim Marija Atanasovska a 79-year-old woman had grievous bodily injuries from the attack, but was saved from her son in law, Vera Bogoevska a 73-year-old was his third victim and she died several days after the attack. Karamarkov failed short in his attempt to murder his fourth victim Smilja Petrovska a 73-year-old, because the victim was found by a friend and received proper medical care that saved her life. His last two victims were not as lucky as the previous one, Sanije Suljemani (43) and Elena Miova succumbed to the injuries from the attack.

### ***Modus operandi***

The MO was a mix of his need to make a quick financial gain so he can satisfy his needs to consume psychoactive substances, the fictional life of Raskolnikov and the way he chooses his victim and the main character of the Hollywood movie named „Candyman” who killed women with a rusty hook. Karamarkov, who among his friends was known as the “candyman-shekjerko”, approached his victims in the same way, by going from door to door with a ledger in his hands trying to get some financial help for his ill mother. That was a way to gain trust from his victims. Then his victims would go inside their home to get some money and he would walk behind them waiting for the right moment to pick up his hidden axe, which was covered with paper and above the layer of paper plastered with duct tape, and hit them with the dull part of the axe in their head with several heavy hits. After his victims were on the ground he took their gold earrings and chains, and took the key from the door and locked it from the outside, after which he threw the key several meters from the location of the apartment or house. In two of the cases he saw that the victims were wearing gold chains and that’s why he decided to follow them waiting for them to be alone so he can attack and steal their gold.

At first, no one knew that they had a serial killer at large. The first murder was committed at the beginning of March 2009, and the second in October 2009. The forensic and pathologic team saw similarities at the both crime scenes, but also at the injuries that the victims have sustained, their depth, the item that was used for inflicting them etc. what they did not know was that in between the two murders there were two victims with the same injuries and same way of attack, but were lucky enough to survive it. After the second murder the time in between murders started to become shorter and shorter and he committed two more murders in the next 13 days from the second murder.

The killer sold the gold for a small price, so he can get some amount of money and use them to buy narcotics for his daily needs. According to the final court decision, Karamarkov made around 18.000 denars from the sale of the gold items.

There were two indications that he was the murderer. First, when he was trying to sell a television he left his axe on the counter, but the seals man put at in his warehouse. The second one was his attempt to sell the stolen gold. Also, he left a lot of witnesses behind him that recognized him after his picture was spread out across all media outlets in the country and abroad.

In the first given statement before the law enforcement authorities, Karamarkov said that he felt guilt after each murder and went to church to silently pray. After his last murder he went to church once again, trying to pray and make a confession, but the guilt was too much for him and he tried to take his life by consuming a large dose of narcotics. After this attempt he was taken to a hospital and apprehended by the police. His last words during the interrogation were that he feels remorse for what he has done, and after his confession he felt a relief on his soul.

## **DISCUSSION AND CONCLUSION**

As we already elaborated in the previous parts of this paper, there are two different variables which are changeable and in accordance to it the main characteristics (victims and MO) are built up. Analyzing the MO and victims' characteristics of Karamarkov's murders, we could conclude that he could be classified in group A, with specific victims and specific methods of killing.

What is a serial murder? And who is a serial killer? A serial killer is every person who murders three or more persons over a period of time disregarding his motive (which is mostly for his psychological gratification). The events should be separate with down time between them. The number of victims in Karamarkov's case are six (four murdered and two who survived his attack) and even if we take into account the four victims who were killed, we have over three victims. The murders were committed over a period of time, namely starting in March 2009 (the first one) a cooling period of 7 months and then a second murder in October 2009. The last two attacks were in a period of 13 days, which shows a shorter cooling period. But, it should be taken into account that Karamarkov was a drug addict and his addiction to drugs and need for taking them have influenced his cooling periods and murders, which takes us to the conclusion of his financial motives.

The MO of Karamarkov, shows an identical pattern of injuries, using the same instrumentum operandi at every crime scene. Actually, he even used the same approach to every victim, asking older women for financial help for his ill mother.

Also, his victim's profile is identical, with every victim being at an older age, living alone in an apartment or a house, willing to help him and wearing a larger amount of gold.

Having all these characteristics, it is obvious that Karamarkov's murders are a multicide, opening the dilemma why Macedonian authorities haven't characterized these crimes as such, especially when all forensic reports conclude that it is a serial event.

Karamarkov has been sentenced on a life imprisonment, for four murders for financial profit and two murders in attempt.

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## CHALLENGES FOR HUMAN RIGHTS IN FINANCIAL SECTOR IN REPUBLIC OF MACEDONIA

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### ABSTRACT

The financial sector is essential for the economy on both national and global level. This sector includes wide range of businesses, from commercial banking through insurance companies to the investments funds. In the modern society this sector affects everyone, and so do its services. This is why the UN has specifically created Guiding Principles on Business and Human Rights, to be used in the banking and financial services sectors, requiring businesses to take steps to address adverse human rights impacts with which they are involved, not only directly caused by the businesses, but also indirectly linked to their operations, products/services and customers.

The paper provides an overview of the key financial subsectors where human rights are mostly applied in the Republic of Macedonia and highlights the responsibility to respect the human rights in these sectors. Also, few of the most possible risks for the human rights in this sector are examined in the paper; such as customer privacy, supply chains and modern slavery, customer's discrimination, corruption and bribery, customer due diligence etc. Increasing the awareness for human rights protection in these sectors can not only lead to better function of human rights in all businesses across sectors, but can also be a catalyst to economic growth, by making businesses focus on embedding human rights in their core activities.

**Keywords:** human rights, financial sector, human well-being, financial services, business

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## **INTRODUCTION**

One of the most overlooked, but essential sector for enforcing human rights is the financial sector. The financial sector is an essential part of economic systems on both national and global level. In today's ever-changing, modern economic environment, financial subsectors affect everyone. This sector includes wide range of entities, from regulatory bodies such as central banks, through commercial banking and insurance companies to the investments funds. Therefore, all financial subsectors have a significant impact on human rights worldwide.

The United Nations, as early as 1948, have created the Universal Declaration of Human Rights (UN 1948). This declaration concerns all people and businesses, all economies, sectors and subsectors. In that sense, the financial sector and its subsectors are also subjects of this Declaration, with obligation and duty to respect, to protect and to fulfil human rights. However, defining how human rights can be protected within the financial sector can be difficult. This is why the UN has specifically created Guiding Principles on Business and Human Rights, to be used in the banking and financial services sectors, requiring businesses to take steps to address adverse human rights impacts with which they are involved, not only directly caused by the businesses, but also indirectly linked to their operations, products/services, business partners and customers.

Macedonian financial entities have obligation to respect the Universal Declaration of Human Rights and use the Guiding Principles on Business and Human Rights in doing business. Even more, the fundamental values shared in the Declaration are involved in the national laws and regulation. Respect of human rights is a vital component for responsible and sustainable business. The key financial subsectors are consequently addressed in terms of their composition and their enforcement of the Universal Declaration of Human Rights and the Guiding Principles on Business and Human Rights.

### **IDENTIFYING THE FINANCIAL SUBSECTORS IN MACEDONIA RELATED TO HUMAN RIGHTS CHALLENGES**

The International Monetary Fund (IMF) has given a broad divisional definition of financial sector, which can be generally employed in any given economic environment (ISWGNA 2004, 5). According to their definition, any economy's financial sector can be generally divided in a maximum of nine subsectors, as follows:

- i. Central bank
- ii. Deposit taking companies (other than Central bank)

- iii. Money market funds
- iv. Investment funds (other than Money market funds)
- v. Other financial intermediaries
- vi. Financial auxiliaries
- vii. Other financial institutions
- viii. Insurance companies
- ix. Pension funds.

However, it is generally accepted that this is a broad definition, and not all economies must follow suit in defining their financial subsectors. That being said, the general disposition of the financial sector may vary from economy to economy, but the main “ingredients” are as listed above, sometimes multiplied in larger economies, or combined in three or four subsectors in smaller economies.

The financial sector in Macedonia can be said to have been in its infancy until recently, and it is slowly beginning to develop in the past few years. Therefore, when dissecting it into subsectors, it is expected that it will have fewer of the components described by the IMF. However, the main six subsectors of the Macedonian financial sector include

- i. The Central bank – the National Bank of the Republic of Macedonia
- ii. Other depository institutions – commercial banks and lending institutions (saving houses)
- iii. Money market funds
- iv. Other financial institutions (non-money market funds) – investments funds, brokerages, exchange offices
- v. Insurance companies
- vi. Pension funds

These components, as cradles of human rights issues, will be further discussed in detail in this portion of the paper.

The Central Bank of Macedonia (NBRM) is independent money-issuing institution responsible for price stability, stability of the national currency (the Macedonian denar), stability of the financial system, general liquidity of payments within the country and abroad, and the conduct of monetary policy and foreign exchange policy. The NBRM has been praised by international institutions in its ability to remain independent and not politically influenced throughout the transitional period in Macedonia. It is considered to be the unbiased financial subsector in Macedonia. (Humphries and de Vet 2014)

In terms of other depository institutions, currently there are 14 private and one state-owned banks and two saving houses in operation in Macedonia (US Embassy 2017). Saving houses, as of 2013, are operating as financial companies, but are nevertheless under the same operating laws as the commercial banks - National Law for Banks and Banking Law.

Money market funds are collective investment plans which are created in order to raise funds for corporations/companies, in the manner of issuing shares or stocks to the public. In Macedonia, one such market is the Macedonian Stock Exchange (MSE). The MSE works with investments of primary money market, specifically stocks/shares of companies, whereas transferable debt instruments (bonds) are not yet available on the Macedonian money market. Shares are ordinary or preferred, and there is a specific set of companies that trade with specific reporting requirements, aside from the regular free money market.

The financial subsector of other institutions operates on the basis of non-money market funds, which include investment funds, auxiliary investing institutions, exchange institutions and similar. This subsector consists of collective investment schemes, including hedge funds, ETFs, funds of funds. This subsector, aside from exchange and loan offices, is rather new in Macedonia, and it is yet to become regulated in a proper manner. The Law for investment funds for example, has been announced to be created and brought before the lawmaker by August 2018, but as of the last date of revising this paper, this Law has not been passed yet. What is important to note is that this subsector is involved in both short and long term financing, which is why there is a necessity of better regulating its activities. Its relation with human rights is tight, and there is a lot of room for malevolent activities without the proper legal regulations of the subsector.

The subsector of insurance companies is one more of the less mature financial subsectors in Macedonia. Whereas non-life insurance companies have been active for over 20 years, the life insurance and investment portion of this subsector has begun its activity merely 11 years ago, and can be said that it is now, as of 2018, at the beginning of its growth stage. However, as the insurance market has grown, specific regulations of the market have been set into place, which creates a more favorable environment in terms of human rights. At this moment, this subsector is overseen by two state agencies, the Macedonian Pension and Insurance Agency (MAPAS) and the Agency for supervision of insurance of Macedonia (ASO), and includes 16 insurance companies, 35 insurance brokerage companies and 11 insurance representative companies. (ASO 2018) Additionally, commercial banks, which are covered under the second subsector, are also available for operating in this sector as well.

In terms of pension funds as a financial subsector, there is one government-managed pension fund, which is applicable for all Macedonian citizens. It is organized as a public pension fund. Other than this, two other types of pension funds have emerged in Macedonian financial sector in the past decade. Second-tier pension funds, which are obligatory pension funds, but are privately managed, exist in Macedonia. At this moment, only two such pension funds exist – KB Prvo penzisko drustvo and Sava

Penzisko Drustvo<sup>69</sup>. The second-tier pension fund system implies that all employed citizens are obliged to enter either of these two funds, but the management and investment planning is made by a privately owned managing company. The Third tier also involves the same two investing companies, KB Prvo penzisko drustvo and Sava Penzisko Drustvo (MAPAS 2018), but is voluntary and can be entered freely by interested citizens. As it can be seen, it is a very small subsector, which is largely in the hands of government and bank management.

As it can be seen, Macedonia's financial sector is rather small, and yet beginning to grow. There are a lot of challenges for many legal practices in this subsector, but it is of uttermost importance that the implications for human rights be taken into consideration. Given the current sectorial situation and the overall lack of financial literacy of the average Macedonian citizen, the challenge for respecting human rights in finance is immense.

## **HUMAN RIGHTS ISSUES IN FINANCIAL SUBSECTORS**

As the previous part pointed out, the financial subsectors in Macedonia are closely connected to human rights, be it in terms of customers, consumers, employees or the general public. Therefore, there is a number of challenges human rights face within daily interactions in the financial subsectors. This portion of the paper will strive to depict the main challenges human rights face in the financial subsectors of Macedonia.

Some of the most crucial entanglements of human rights in finance occur with the banking subsector (lending services). On a global level one of the major issues that human rights face in this subsector is the discrimination of lending based on nationality or religion. Additionally, the targeting of prospect borrowers that cannot in fair terms return a loan is a basis for discrimination in the banking/lending subsector. So far, such cases have been rare, given that the banks as primary participants of this subsector have very strict guidelines and legal requirement for borrowers' assessment. However, a challenge occurs as other non-banking lending institutions begin to enter the market. These lending companies offer small loans, as "operating cash flow" loans to individuals, at an interest rate that sometimes can go as high as 200% of the original loan. As Vohwinkle has analyzed, such companies have affordable loans for people to make ends meet until next payday, and usually quote interest rate on a monthly basis (Vohwinkle 2018). Whereas a bank loan would

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<sup>69</sup> As of 2018 Sava Penzisko Drustvo is the official second-tier private pension fund. This fund was formerly known as NLB Penzisko Drustvo, and has been managed by NLB – a Macedonian bank, which is the management structure of the other private pension fund in Macedonia as well. For now, the acquisition of NLB Penzisko Drustvo by Sava implies a stronger independence of this subsector from the subsector of commercial banking.

have between 13 and 15 percent interest rate on an annual level, the same rate on a monthly level is applied to these loaners. Therefore, the pitfall of returning a loan on time can create a 12-fold interest rate spread. It is striking that there are no clear regulations as to how assess prospect borrowers for these companies. In that sense, people who are less financially literate can be tricked into borrowing such funds, which can lead to their financial downfall. Legally imposing ethical standards on such companies is a challenge for human rights.

When discussing any financial subsector, it is important to look into their members' due diligence practices. What is crucial is to ensure that UNHCR's Guiding Principles should be respected in terms of examining all clients – lenders, borrowers, depositors, insurers – whether they are in fringe with any human right. How this may impact human rights may vary depending on the type of customer, but the main areas companies in all subsectors should focus include environmental issues, financial abuse in the past, exploitation of others (workers, the community, minors etc.), and possible negative social impact. Ideally, such clients should be avoided by financial subsectors, because any option for financing such clients may elongate the clients' violation of human rights. However, legally it is very difficult to impose such a regulation that can oversee due diligence of the financial sector in terms of human rights. Once again, the main basis for this due diligence is the ethical code of the financial subsector.

One other type of due diligence that is significant for human rights is the companies' internal due diligence. A majority of the financial sector makes its profits by re-investing its assets into various projects, be it infrastructure, other money markets, construction, new company investment or research and development. It is crucial that companies within their own operations make due diligence for these issues, as they can infringe human rights by their operations. For example, investments in projects that use underage workers, forced labor, do not pay equal pay or discriminate them in any way, is an investment against human rights. In the UK, USA and EU, light is shed on investments connected to human trafficking and modern slavery (Jergitch 2017). Additionally, more and more focus is given on investments that might lead to forced relocations, expropriation, displacement, or investments that can lead to price increases which affect vulnerable groups and minorities. Moreover, construction and infrastructure projects that do not take the environmental or social impact can be in breach of human rights. Therefore, all financial subsectors should carefully choose their investment projects, having in mind not only financial profit but also social, environmental and human rights impact. It is important to state that re-investing companies, such as insurance companies in Macedonia are mostly branches of international insurance companies, and as such, comply with strict guidelines for internal due diligence, which implies that all of their investments are made with care not to infringe any human rights whatsoever. However, as to legal guidelines, other

than general anti-discrimination law and regulation connected with this issue, there are none that safeguard investments' impact on human rights.

When it comes to protecting human rights from within, financial subsectors are faced with protecting human rights for their employees as well (UDHR 1948, 2, 23). Therefore, employment discrimination based on gender, race, nationality or religion should not exist. The financial sector has historically been male-dominated industry. In this sense, for a long time gender discrimination in the financial sector has been a problem worldwide. A particularly problematic issue has been the employment policy of employing women that are not "in childbearing position". Even today, in the United States, which is very promoting of non-discriminatory laws and regulations, only 20% of financial sector positions are filled by women, with a miniscule percentage by members of the LGBTQ community (Jaekel and St-Onge 2016). This is a situation in a time when US financial sector improves inclusion policies – flexible hours, parental leave, and mentoring scheme for "different" employees. In Macedonia, where such extended additions to vulnerable groups of employees are not available, the discrimination on gender basis is not unusual. One other issue that is also connected to gender discrimination, is the disrespect for equal pay rights. Women in financial subsectors' companies traditionally receive lower wages for the same level of work that they do as their male counterparts. According to the last statistical data available from Macedonia's State Statistical Office, annual gross earnings for women are on average 11% lower than men's annual gross earnings (Macedonian State Statistical Office 2014). Furthermore, the percentage of women in top management position is much more concerning. For example, the authors have analyzed managerial structure of insurance companies in Macedonia, and have come up with the conclusion that only 17% of all management positions (Supervisory Board and Board of Directors) are filled with women. In pension funds, this percentage is somewhat higher, given that 30% of executive managers are women, whereas for example in the commercial subsector the percentage of women on top managerial positions is 25%. In contrast, over 60% of middle management and second line management positions in all financial subsectors are filled with women in the same financial subsector, showing that women can and are often chosen for significant and meaningful positions, but are more rarely considered in high managerial and end-line decision-making positions, as opposed to men. At this point, it is important to note that although anti-discrimination laws exist, their proper enforcement, especially in the financial sector, and in particular when discussing gender biases, is very difficult.

Another issue that needs close focus when discussing human rights in financial sector is the issue of corruption and bribery (UDHR 1948, 8, 17, 25, 26). Corruption can occur in state-owned companies, or when doing business with politically connected individuals. The results of corruption and bribery in financial subsectors can be

negative impacts on vulnerable communities, marginalized groups, and any citizen in particular, by misusing funds appropriated for education, health or any general societal benefit. Moreover, bribery and corruption can lead to preventing participation in the democratic process. Companies and institutions operating in financial subsectors must be certain that any possibility for corruption and bribery is appropriately addressed according to national and international norms of transparency and accountability. The Law for prevention of corruption (2002) prescribes the measures and instruments for prevention of such activities of corruption. The State Commission for Preventing Corruption is in charge of ensuring that the afore-mentioned Law is enforced, and financial institutions are thoroughly subjected to obeying and enforcing this Law.

Some of the more indirect forms of endangering human rights are by imposing the risk of contributing to forced labor, human trafficking or modern slavery (UDHR 1948, 4). This is a risk that all companies, organizations and institutions, regardless of the sector they operate in, must assess and protect from. Therefore, one of the most significant tasks to undertake is to map the underlying risks and remediate violations where possible. The risk of financing or using companies within their supply chain that enforce modern slavery, human trafficking and similar disrespects to basic human rights exists in Macedonia's financial subsectors as well. While entities cannot be responsible for all working conditions in all suppliers, it is important to identify the most severe violations and take action to prevent them.

Last but not least, the privacy of data is a major issue for all financial subsectors (UDHR 1948, 12). The sensitivity of data which is used in any financial service is high, and fraudulent behavior regarding such data can be high. Macedonian Law for Protection of Personal Data (2005) is the main legal framework under which the privacy of both employees and clients is protected. Under this Law, all companies, institutions and organizations have specific system and guidelines how to save, collect and use private data, and therefore any infringement of human rights by using private data is punishable by law. Although this issue is rather new, it is thoroughly regulated and financial institutions respect the obligations and recommendations according to law and other regulation.

## **CONCLUSIONS AND RECOMMENDATIONS FOR POSITIVE IMPACT**

Ensuring that human rights are respected, protected and fulfilled is a rather vague and challenging task in the financial sector. As it can be concluded from the analysis of this paper, Republic of Macedonia has adequate normative and institutional frame for human rights protection. Although on the financial subsectors level there a number of suitable legal instruments for protecting human rights, not all issues are equally

and successfully covered. There are still many prospects for a positive impact of financial subsectors on human rights.

One of the most promising prospect for positive impact is the focus on investing in positive infrastructure projects. Many components of the financial subsectors in Macedonia are investing funds in different projects. One of the best methods in promoting human rights is to aim those investments in projects that benefit people of the society. As it has been mentioned before, a portion of the subsector involving insurance companies, is concerned with investing in positive infrastructure projects. It should be the aim of all other subsectors to cooperate with developers, civil society organizations and the government as well, in order to prioritize large-scale infrastructure projects, so that the greatest investment focus will be on projects that provide most societal good. Such projects include purification projects (air, water), clean energy usage, sanitation, rural communities' road development, education (schools), medicine (hospitals, remedies) and so on. Ensuring access to these basic resources is an opportunity particularly well suited to the financial sector.

Another issue that needs special focus in Macedonian financial subsectors, especially the subsector involving insurance companies, is the elimination of discriminating policies, based on gender, sexual orientation, religion, or nationality. One particularly recurring discrimination is the lack of employment of women on top or executive managerial positions. Given that over 60% of middle management in all financial subsectors are women, it is clear that there is a quiet discriminatory policy when employing female top managers. There is much to be done on this issue, not only in terms of legal regulations, but also in terms of perception of female workers in the field of finance.

Additionally, one of the crucial prospects to endorsing human rights is the possibility to create programs that promote financial inclusion and especially financial literacy, by which more opportunities for fair lending will rise. In that sense, financial subsectors, especially those directly involved in lending (banks and other lending institutions) can contribute to economic growth through fair and respectful financing to populations that lack access to finance right now.

It must be noted that the entire issue of investing, which represents half of all financial sector activities, must focus on socially responsible investing. Investment principals held by all financial subsectors need to take into great consideration social and environmental impacts.

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# **ADMINISTRATIVE INFRASTRUCTURE OF THE COMMON FOREIGN AND SECURITY POLICY OF THE EUROPEAN UNION**

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## **ABSTRACT**

The goal of this paper is to describe and analyze the administrative component of the Common Foreign and Security Policy of the European Union as a very important, although not so much emphasized segment of this policy. The results and effects of the CFSP are very important for the European integration and unification process, and the administrative architecture is an essential part of it.

In the paper as the most frequent methods we will use the historical method, method of content analysis and comparative method which we will use for determination of the characteristics of the different periods of administrative development of the CFSP. At the end, we will summarize the main achievements of the administrative institutions and bodies related to the CFSP and we will suggest some modalities for its improvement and better visibility on the world political scene.

**Key words:** security, European, administration, foreign, policy

## **INTRODUCTION**

The Common Foreign and Security Policy of the European Union (CFSP) is one of the key, but at the same time one of the most ambiguous policies of the Union. The “breaking of the spears” between the inter-governmentalists and federalists, in addition to some of the other policies, is also on the Common Foreign and Security Policy. Delegation of national sovereignty in this sensitive area has always been a difficult and painful process, which, after more than 70 years since the establishment of a project called the European Community, is one of the key obstacles to the full unification of member states and the creation of a European ‘super-state’.

Despite all the political labyrinths through which the CFSP passes, today, after the adoption of the Lisbon Treaty, it has completed an institutional and administrative structure that is an important link in the chain of its effective and efficient functioning, i.e., in the realization of its objectives and the promotion of its values and interests. Of course, the most remarkable component in the development and advancement of the CFSP is the political will of the member states without which qualitative development is not possible, but it is also necessary to consider the administrative structure that can facilitate its development and generate a positive outcome in the EU's political environment.

The profiling of the European Union's external political identity on the global stage is one of the key challenges of the Union today, and the functionality of the institutional and administrative structures of the Common Foreign and Security Policy of the EU is an important tool for achieving this goal.

CFSP is one of the most controversial areas of EU activity. This is partly because of the close association of foreign policy and defence with national sovereignty, the long histories of many member states as world powers in their 'own territories, and the wide range of bilateral relationships between member states and other parts of the world. The EU's foreign policy is also hampered by its lack of many of the organs of a conventional state - most fundamentally, the lack of national territory, interests and culture to promote. Although the replacement of EPC with CFSP attempted to address many of these problems, the retention of foreign policy as a 'non-Community' matter based on unanimous decisions makes it a still highly 'intergovernmental' area. This failure to agree common CFSP principles is in marked contrast to the EU's economic evolution, with the single European currency and market.

## **HISTORICAL DEVELOPMENT OF THE ADMINISTRATIVE STRUCTURE OF COMMON FOREIGN AND SECURITY POLICY OF THE EUROPEAN UNION**

The chronology of the CFSP starts at the beginning of 1950s, when the first initiatives for a 'security and defence unification' had been launched. This period is full of controversial attitudes, decisions and strategies of the European officials (Presidents, Prime Ministers, etc.), but still, the building of the main carriages of this policy was exactly in this period.

Although the first proposal to create a European Defence Community was given by French President Charles De Gaulle, it was rejected by the French National Assembly in 1954 (Teasdale, 2016). There was no mention of foreign or defence policies in the Treaty of Rome and only limited competences were envisaged for external relations (Articles 113-116 of the Treaty of Rome). Despite the decision of the founding fathers

of the Community not to pursue a co-ordinated foreign policy, from the 1960s it was becoming increasingly evident that there was scope for co-operation and concerted action on the part of the member states. At the Hague Summit of 1969 the foreign ministers of the Community were requested to consider methods to increase co-operation between the member states in foreign policy. This led in 1970 to European Political Co-operation (EPC) that was based on intergovernmental co-operation, or consensus between the governments of the member states, and operated outside the framework of the Community institutions. The first recognition of EPC in the Treaties was in the Single European Act of 1987, which stated that the member states would jointly attempt to formulate and implement a common foreign policy, though still on the basis of intergovernmental co-operation. (Bindi, 2006)

The Maastricht Treaty assumed that the Western European Union would develop into the EU\ defence army, and refers to the WEU as 'an integral part of the development of the European Union'. With the Maastricht Treaty a three-pillar system of the European Union was created, and the second pillar was exactly the Common Foreign and Security Policy of the Union.

The Amsterdam Treaty established a High Representative, or individual responsible for the Common Foreign and Security policy, for a five-year period, who assisted the Council by helping to formulate and implement decisions and, where necessary, acting on behalf of the Council at the request of the Presidency. The Nice Treaty contained new CFSP provisions relating, in particular, to an increase in the areas that fall under the qualified majority vote, and an enhanced role for the EU in crisis management. The European Council of Helsinki in December 1999 took key decisions on rendering the ESDP operational. The ESDP was to form part of the CFSP, but with responsibilities for: the development of a temporary bureaucratic framework for the ESDP; the creation of an EU capacity to respond independently to crises and prevent conflicts and eventually to run military operations; and the establishment of a Rapid Reaction Force. The new political and military bodies for the day-to-day running of the ESDP became: A Political and Security Committee (PSC or COPS after its French acronym) that keeps track of the international situation, defines the CFSP, and, in the event of crisis, is responsible for the political and strategic control of the operation, though subject to control by the Council. This is composed of national representatives of senior ambassadorial level. The EU Military Committee (EUMC) composed of Chiefs of Staff, which is responsible for giving military advice and recommendations to the PSC. The EU Military Staff (EUMS) provides military expertise and support. There is also a Civilian Planning and Conduct Capacity, which is the permanent structure responsible for an autonomous operational conduct of civilian CFSP operations. The 1999 European Council also decided on what is known as the Helsinki Headline Goal, which required the member states to develop the capability of deploying a Rapid Reaction Force

(RRF) of up to 60,000 troops within 60 days for at least a year to deal with the Petersburg peacekeeping tasks. (Grevy, Heely and Keohane, 2009)

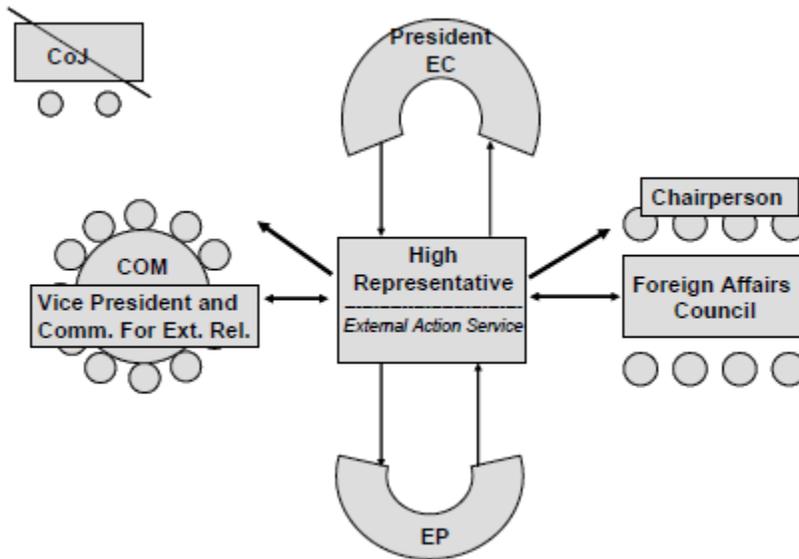
In 2004 a European Defence Agency was established and has four principal tasks: to develop defence capabilities in the field of crisis management; to promote and enhance EU armaments co-operation; to strengthen the EU defence technological and industrial base, and to enhance European defence research and technology. From January 2007, the EU Operations Centre within the EU Military Staff came into operation with the capacity of commanding missions of limited size. Before the 2009 Lisbon Treaty EU competences were divided between the European Community and the other two pillars (Police and Judicial Co-operation in Criminal Matters (PJCCM) and the CFSP), and various Directorates-general of the Commission were involved in external relations. The result was overlap of responsibility and bureaucratic rigidity (Margaras, 2010).

One of the main aims of the Lisbon Treaty was to create new institutional structures to overcome this lack of cohesion and effectiveness. The Lisbon Treaty established a new High Representative of the EU for Foreign Affairs and Security Policy responsible to both the Commission and Council and bringing together various aspects of EU external action. The High Representative is President of the Foreign Affairs Council and Vice-President of the Commission. The newly established European External Action Service supports the High Representative. The Political and Security Committee remains the main body discussing and managing CSDP missions, but the High Representative working with the PSC is to ensure military and civilian co-ordination of such tasks. (European Security Review, 2008)

We will see in future how/if the Lisbon Treaty could be a generator of intra-institutional and inter-institutional cooperation, but also a promotor of institutional effectiveness, efficiency, coherence and unity.

## **INSTITUTIONS, BODIES AND SERVICES IN CFSP**

The institutional architecture of CFSP has been subject to major innovations and amendments, although some basic underlying features remain.



**Figure 1. The institutional architecture of CFSP**

Source: Wessels and Bopp, 2008

The Lisbon Treaty inserted the High Representative as the new contact partner of the EP (instead of the Commission or the Council Chairman) who shall regularly inform it and to whom it can address questions and recommendations (Art. 36 TEU). Furthermore, the frequency of debates within the EP on CFSP and CSDP matters has been upgraded to twice instead of once per year. Since its beginnings, the European Council and its rotating presidency have interpreted their role as representation and ‘voice’ of the Union and have regularly adopted declarations on all major international developments. Even if these declarations often refer to merely compromising statements that can be interpreted in various different ways, the European Council remains a central institution for orientation and reference.

The Lisbon Treaty divides the former General Affairs and External Relations Council into two separate bodies: the General Affairs Council and the Foreign Affairs Council (Art. 16 (6) TEU). This overdue division reflects the growing number and complexity of CFSP issues the Council has to deal with. But this division of labour also holds some open risks: as the General Affairs Council shall prepare the meetings of the European Council together with its president and with the Commission (Art. 16 (6) TEU), it is also involved in foreign affairs insofar as they are on the agenda of the sessions of this major decision-maker. The work description of the Political and Security Committee (PSC) as part of the institutional structure of the Council (Art. 38 TEU) has basically remained unchanged except that it shall act not only at the request of the Council but also of the High Representative and that it shall work under

the responsibility of both institutions. The PSC shall also assist the Council in the implementation of the Solidarity Clause (Art. 222 TFEU) and here, if necessary, cooperate with the new Standing Committee for Justice and Home Affairs (Art. 71 TFEU). The tasks designed to it overlap partially with the tasks of the High Representative – an ambiguity in the text that leaves much room for interpretation (see below). Similarly, the division of competences between the PSC and Committee of Permanent Representatives (COREPER, Art. 16 (7) TEU) is not clearly defined, which might lead to concurring tensions between these two institutions preparing sessions of the Council. The Commission in its role as contact person for the EP and as a player within the CFSP has been replaced by the High Representative who establishes a not yet clearly defined connection to the Commission due to its role as its Vice President. The basic division of action is manifested in Art. 22 (2) TEU which states that “The High Representative (...), for the area of common foreign and security policy, and the Commission, for other areas of external action, may submit joint proposals to the Council” (see also Art. 17 (1) TEU). The role of the Commission has thus been weakened in CFSP in favour of the High Representative although it remains to be seen what role the latter will fulfil as a Vice President of the Commission.

As before, the Court of Justice of the European Union (ECJ) has no jurisdiction in CFSP and CSDP matters (Art. 24 (1) TEU and 275 TFEU). However, there are some exceptions. This refers to the monitoring of compliance with Art. 40 TEU, which assures that implementation of CFSP shall not affect the procedures and powers of the institution as laid down in the TEU and the TFEU, mainly in the articles containing the division of competences (Art. 3-6 TFEU). Of major importance is the potential role of the full time President of the European Council as a major decision-making body – not only in the legal but especially in the living architecture. The ‘full-time’ President of the European Council is elected by qualified majority for 2½ years (renewable once).

The President of the European Council:

- (a) shall chair it and drive forward its work;
- (b) shall ensure the preparation and continuity of the work of the European Council in cooperation with the President of the Commission, and on the basis of the work of the General Affairs Council;
- (c) shall endeavour to facilitate cohesion and consensus within the European Council;
- (d) shall present a report to the European Parliament after each of the meetings of the European Council.

The President of the European Council shall, at his level and in that capacity, ensure the external representation of the Union on issues concerning its common foreign and security policy, without prejudice to the powers of the High Representative of the

Union for Foreign Affairs and Security Policy. The President of the European Council shall not hold a national office. (Art. 15 (6) TEU).

The High Representative of the Union for Foreign Affairs and Security Policy (Art. 18 TEU) is together with the full-time presidency of the European Council – the central new institutional arrangement in the area of CFSP within the new treaty. The office is the latest of a range of suggestions and efforts to enhance the efficiency of the cooperation between the member states and to “ensure the consistency of the Union’s external action” (Art. 18 (4) TEU) in giving it a ‘single voice’ and ‘face’. To fulfil these tasks the person will be provided with a ‘double hat’ or even three functions, respectively. A new institutional arrangement is the “European External Action Service” (EEAS) which shall assist the High Representative in “fulfilling his mandate” (Art. 27 (3) TEU) and thus function as a kind of “ministry” to the re-named “Foreign Minister”. The EEAS works in cooperation with the national diplomatic services and “shall comprise officials from relevant departments of the General Secretariat of the Council and of the Commission as well as staff seconded from national diplomatic services of the Member States” (Art. 27 (3) TEU) and thus combine supranational and intergovernmental elements (Maurer and Reichel 2004). Its detailed organisation and functioning is still to be defined by a decision of the Council. An additional declaration regulates that the Secretary-General of the Council, the High Representative, the Commission and the member states shall begin preparatory work on the EEAS after the signature of the Reform Treaty. Its legal status is also not defined yet: neither an agency such as the European Defence Agency nor a committee but rather a “hybrid new agency, indeed *sui generis*”. Apart from the institutional question other aspects such as financing and professional support have to be answered, as well as the relations of the Service to the PSC, COREPER or the Special Representatives (Duke, 2004). Apart from these amendments in the institutional architecture, a new agency has been set up in the field of CSDP. The European Defence Agency was established by a Joint Action of the Council of Ministers in 2004 and has now been included in the articles of CSDP in the Lisbon Treaty. Following the treaty, it shall improve the military action capability of the Union (Art. 42 (3) TEU). Irrespective of the ratification process of the Constitutional Treaty the Agency was already established in 2004 by a Joint Action of the Council, acting on a request of the European Council of Thessaloniki in June 2003 who demanded the creation of “an intergovernmental agency in the field of defence capabilities development, research, acquisition and armaments”.

## **DECISION – MAKING PROCESS IN CFSP**

The re-designed institutional (im-)balance is further influenced by the rules governing the involvement of the different institutions in the daily decision-making procedures.

Neither the Constitutional Treaty nor the Lisbon Treaty reached a breakthrough in the question of decision-making procedures in CFSP: unanimity remains the standard for decision-making in this policy field. The Council shall act by qualified majority:

— when adopting a decision defining a Union action or position on the basis of a decision of the European Council relating to the Union’s strategic interests and objectives, as referred to in Article 22(1),

— when adopting a decision defining a Union action or position, on a proposal which the High Representative of the Union for Foreign Affairs and Security Policy has presented following a specific request from the European Council, made on its own initiative or that of the High Representative,

— when adopting any decision implementing a decision defining a Union action or position,

— when appointing a special representative in accordance with Article 33. If a member of the Council declares that, for vital and stated reasons of national policy, it intends to oppose the adoption of a decision to be taken by qualified majority, a vote shall not be taken. The High Representative will, in close consultation with the Member State involved, search for a solution acceptable to it. If he does not succeed, the Council may, acting by a qualified majority, request that the matter be referred to the European Council for a decision by unanimity (Wessels and Bopp, 2008).

The second point is especially new and it could lead to rather perverse practice: if the High Representative wants to start an initiative for more qualified majority voting in the Council, s/he has to refer first to the European Council and cannot bring the issue to the Council of Ministers directly. Furthermore subject to qualified majority voting and a new provision in the Treaty is a decision of the Council on the procedures for the setting-up of a ‘start-up fund’ which shall allow for rapid access to the Union budget in cases of “urgent financing of initiatives” (Art. 41 (3) TEU). Furthermore, the Council decides with QM the establishment of “permanent structured cooperation” (Art. 46 (2) TEU). A simple majority is needed for procedural questions (Art. 31 (5) TEU), as it is formulated in the Nice Treaty. (Wessell, 2012)

The Lisbon Treaty also maintains the possibility of constructive abstention: member states can abstain from a vote and qualify this with a formal declaration. This member state is then not obliged to application of the relevant decision which has to be respected by the other member states. Should the relevant decision have financial implications the member state is also exempted from financial contributions. In case the number of member states abstaining rises to at least one third of the member states which represent at least one third of the population, the entire decision is not adopted (Art. 31 (1)). As a last option for protection of national interests, member states may – in cases where qualified majority is applied – use an ‘emergency brake’ if the issue touches “vital and stated reasons of national policy” (Art. 31 (2) TEU), which follows the idea of the “Luxembourg Compromise”. While this latter agreement still required

“very important interests” to be concerned, in the Nice Treaty it was changed to “important” (Art. 23 (2) TEU (Nice)) and in the Lisbon Treaty to “vital”). In these cases, the vote will be suspended and – another Treaty innovation – the High Representative has the task to act as a kind of “mediator” in order to find a solution. He shall “in close consultation with the Member State involved, search for a solution acceptable to it” (Art. 31 (2) TEU). If s/he fails the Council can by a qualified majority decision bring the issue to the European Council as arbitrator or “final instance” (de Schoutheete, 2006).

The European Council has the role as final decision-making body. The described ambiguities between consensus, qualified majority and national ‘emergency brakes’ document more than other provisions that the member states – when faced with the dilemma between efficiency of their body and the right to veto – have decided to guard their sovereignty. For the High Representative this clearly limits his/her scope of action. A new aspect is that this list of exceptions from the unanimity rule can be extended by an unanimous decision of the European Council - passarelle clause (Blockmans, 2017). It is interesting to note that this provision is not subject to control by national parliaments – in contrast to the provisions of the “general” passarelle clause of Art. 48 (7) TEU. In any case, this option for extension of QMV “shall not apply to decisions having military or defence implications” (Art. 31 (4) TEU).

## CONCLUSION

“Nothing is possible without men, nothing is lasting without institutions”, said one of the founding fathers of the European Union, Jean Monnet. This means that the institutions, services and bodies that are an immanent part of the EU Common Foreign and Security Policy (CFSP) are important factors in the Union's development process in the area of foreign policy, security and defense issues. Analyzing all aspects of the CFSP (political, security, administrative and financial), we can conclude that although the primacy is on the political aspects (political will by the representatives of the member states for making decisions and taking actions and activities), still, administrative or institutional support is a *conditio sine qua non* for everyday and operational activities of CFSP. Reforms in the institutional structure of the CFSP are continuing since the time of the establishment of the European Communities, but they are incremental and very carefully applied in practice.

We have a more intensive and more thorough modification of the institutional and administrative structure in the field of foreign and security policy of the EU with the Treaty of Maastricht and the Treaty of Amsterdam, rounded up and abolished by the Reformed Constitutional Treaty (Lisbon Treaty). However, this does not mean that the current institutional and administrative design and appearance of the CFSP is definitive, i.e. it would undergo fundamental changes in case of qualitative progress

in the status of the EU (becoming a European federation, a common European state, etc.). In such future constellation, also, the academic challenge to research this issue would be much greater.

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## **COMMUNICATION WITH EUROPEAN EDUCATIONAL SPACE - THE WAY TO CREATE UNITED PEACEFUL SPACE**

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### **ABSTRACT**

Nowadays, Georgia celebrates both restoration of State Independence and the 100th Anniversary of Tbilisi State University. This emphasizes the fact that, we can not discuss interaction with society and education, without examining connection with economic and social development of the structure of public education system. The mentioned connection is a bilateral interaction process of education and public development process. The issue we have studied considers communication of Education system of Georgia with European education space. In our opinion, this communication represents a precondition with the aim of creating a common, peaceful space. We think that our cooperation with the inter-state educational space is the most important issue for the future of our modern society.

Due to the actuality of the issue, presented research considers, the most difficult task faced by the Georgian state, which aims to create an effective educational system and develop educational sector in collaboration with Europe. Based on research of empirical material, we have also studied analysis of government policy, current reforms and results.

The increasing interest of the UNSCO in the development of the mentioned issue and its recent approach towards Georgian reality, as well as international cooperation in the educational and scientific sphere, will contribute to sharing scientific knowledge and peace between the countries. Georgia fully shares the mentioned opinion of

UNESCO. We want to mention that Georgia was approved for membership by UNESCO's executive board in 1992 and our cooperation moved to a higher level. Most recently, the book- "Writing Peace"- published by the organization, confirms all the above mentioned facts.<sup>22</sup> With the support of the organization, the chronological scale of ancient writings includes the Georgian alphabet.

The list of UNESCO's remarkable dates of 2018-2019, includes the 100th anniversary of the Tbilisi State University, which once again confirms the international importance of the anniversary and emphasizes the role of the University in the formation of a democratic society, which is also important for the creation of an international peaceful space.

**Keywords:** education, Georgia, politics, communication.

## INTRODUCTION

The 2018 year is an important anniversary year for Georgian reality. Georgia celebrates both the restoration of State Independence and the 100th Anniversary of Tbilisi State University. The fact that we celebrate this important date at the highest level, underlines that we cannot discuss interaction with society and education, without examining the connection with economic and social development of the structure of the public education system. The mentioned connection is a bilateral interaction process between education and public development. From ancient times, the ancestors of our country had correctly understood the significance of this connection. They appreciate the role of the Union of Countries in this important case. Our studies consider the communication of the Education system of Georgia with the European educational space. In our opinion, this communication represents a precondition which is aimed to create a common, peaceful space. We think that the cooperation with the educational spatial space of the states is a key factor in the future of modern societies. The fact is that the study of this issue is important for time, as the success of domestic and foreign affairs of the country, is based on education and in the modern stage of democracy, our country attempts to obtain a proper deserved place in the international system. The goal of our research is to demonstrate both the inclusion of the Georgian educational space in the European Education space and the results achieved through cooperation. Our research is based on studies of methodological analysis of empirical research and secondary sources, as well as other official data and material analysis. The Scientific novelty of our research is a study of the difficult task faced by the Georgian state which is aimed at creating an effective educational system and developing the educational sector in collaboration with Europe. Due to the actuality of the issue, we have also studied the analysis of government policy, current reforms and results based on research of empirical material.

## **THE ROLE OF EDUCATION IN SOCIAL LIFE OF THE GEORGIAN PEOPLE - A HISTORICAL REVIEW**

In modern times, we are aware that it is impossible to establish a development-oriented system without sharing and coordinating international experience.

The mentioned approach was acceptable for Georgian society and politicians, as most of them had received education abroad - in Europe and Russia. They evaluated correctly the role of communication for further development of the country.

In the III-VI centuries, near the Phasis (Poti), there was a superior rhetorical school, entitled "Lazia Academy". According to the old sources, even Byzantine philosophers arrived to receive education in "Lazia Academy". [1].

In XI-XII centuries, in Georgia there was tradition to send talented young people to Greek schools for smart education. On the basis of acquired knowledge, they often formed seminaries and education institutions. Graduates also transfer foreign traditions to their homeland.

There were lots of Georgian cultural-educational centers. Georgian Churches and monasteries created abroad, aimed to achieve more education for all". They were: Iverian monastery on the Toni Mountain, Simon miracle-worker's haven on Black mountain, Cross Monastery in Palestine and Petritsoni Monastery in Macedonia ". All of them were quite important and major educational centers<sup>70</sup> [2].

If we review cultural and educational life of Georgia, we should note, that despite the current political situation, since 60s of the 19th century, for Georgian politics the main direction was education- Georgian school. The mentioned fact was proved by the press of that time, as it was the best source to get information about education [3]. If we make parallels with the present day, we can see that they are interesting and important in terms of local and international experience. We want to underline the fact, that even in the last century, Georgia was oriented on professional education.

As Georgia was a country of farming people, who care about the future of the country, they knew that they needed to develop effective agriculture sphere, linked to professional education, agricultural schools. They believed, that development of agriculture sphere was hampered by the fact, that individual sectors rejected existing traditional experience. They never thought about development of a new one. The farmers kept working under the rules developed one or two hundred years ago. And they did not step forward. Agricultural schools should teach to young people both experience of old paternal agricultural and new rules -accepted and well-tested

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<sup>70</sup>For example, in 1083 , the Petritsoni Monastery was built by Grigol Bakuri-Anisdze in the village of Petritsi (now in Bulgaria, Bachkovo, near Plovdiv) in Macedonia.

methods in the world, helping them to develop winemaking, breeding, beekeeping and various fields.

However, according to the political situation, Georgian politics and representatives of Russian bureaucratic apparatus had different views towards the mentioned issue. But the reality was the following: if Georgian people wanted to establish their own universities, they needed to change Russian bureaucratic apparatus and a number of political reforms. So only the loyal, progressive minded people of the country were able to take care of obtaining a high level of knowledge and education. Many well-known personalities wrote about the need for knowledge. They underlined the fact that Georgia needed back young people who obtained their knowledge skills in abroad.

Georgian linguist and historian, famous publicist Alexander Tsagareli noted, that within the frames of their possibilities, Georgian people tried to obtain a higher education abroad. In particular, every year, 200 Georgians received diplomas in Russian and European institutions and universities, but only few of them returned to their homeland. They preferred to stay in big cities of Russia. By Tsagareli's opinion, young people had to have some kind of obligation. He said: "in order to restore education in Georgia, the young people must come back after graduation and they must work in Georgia. According to Tsagareli's opinion this young people should be forced to pay back gradually to the native country the amount, which was spent on their education abroad. This money will be spent for reviving primary schools" [4]. Here we should note, that patriots took care of students intending to obtain education abroad. They selected and financed them. The famous Georgian teacher and scientist Iakob Gogebashvili reprimanded Georgian magicians, that Scholarships were often given to unworthy students. He suggested them to create committee of 6 or 7 persons, which would distribute fairly pension funds.

Early in the twentieth century, an active member of the National Democratic Party, Spiridon Kedia, wrote a number of letters addressed to Georgian press. In this way he tried to explain to Georgian Society, that financial support of Georgian students was the most important issue, as it was the only way to establish Georgian students' society in France, which would help them to restore relations with their homeland.

The important fact is that from the end of the nineteenth century, Georgian "Writing-spreading society" including progressive part of the Georgian society, has financed Georgian students' learning processes abroad. Brother Zubalashvili often transferred money to "Writing-spreading society" for scholarships. They thought that no one could distribute this amount better, than the mentioned society. Various students addressed to "Writing-spreading society" and asked for financing. These facts were often mentioned in the press of this period. We need to underline that "many students, which were financed by the above mentioned community, became famous public figures. They were: Shalva Avalishvili, Archil Jajanashvili, Jacob Tsintsadze,

Vladimer Orjonikidze, Akaki Pagava, Vasil Mgeladze, Vasil Rtskhiladze, Geronti Qiqodze and Lazare Shurgaia. “[5].

We should underline great Maecenas, David Sarajishvili’s activities. He was actively involved in every local or foreign funding of all Georgian educational spheres of late nineteenth and early twentieth century [6]. There was done nothing without his participation.

In 1888, by Davit Sarajishvili’s initiative was established a special committee headed by Niko Tskhvedadze. The committee aimed to choose Georgian talented young people and helped them to obtain education in different countries of Russia or Europe. Academician Akaki Shanidze said: "Progressive thinker David Sarajishvili helped greatly scientific and educational institutions of Georgia, Georgian Theater and Georgian writings.

Many of the young people received higher education in Russia and Western Europe only with the help of David Sarajishvili's scholarships "[6, 35].

Later, the head of the independent Georgia, Noe Zhordania, said: “David Saradjishvili's personality is a good example representing the best side of Georgians and Europeans. "[6,43].

Based on presented studies of empirical materials, we can conclude in context reliable sources, that even in the hard times of the country, the representatives of both Georgian society and political opinion, paid a great attention to the importance of education in country progress and their political course shows us, that they tried to be involved in the international educational sphere, namely in the European educational space.

## **THE CHALLENGES OF EDUCATION SYSTEM IN PROGRAM DOCUMENTS OF MODERN GEORGIAN POLITICAL PARTIES**

Study of problematic issues of Party system and party institutionalization of Post-Soviet period is quite relevant in Georgia. According to the the above mentioned, the most priority direction consists of regulation and improvement of the education system in the country.

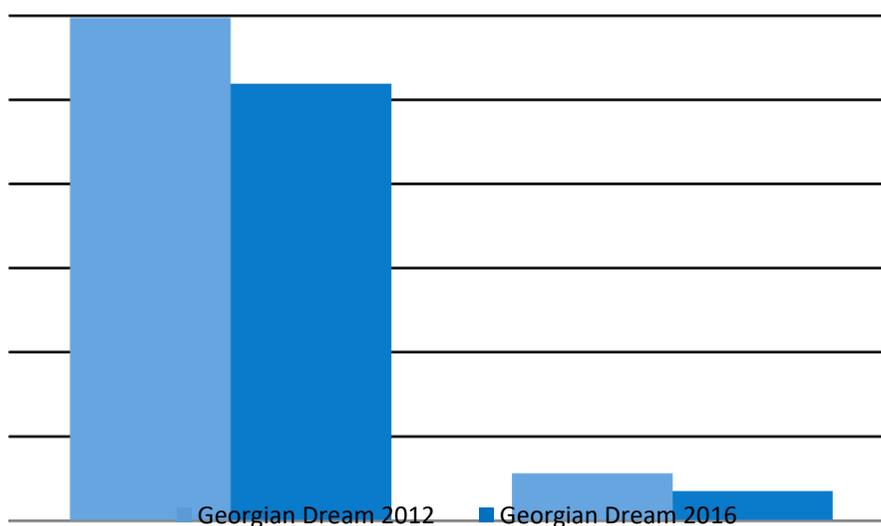
We decided to discuss the Challenges of Education System according to pre-election documents of political parties. In recent years, political parties actively review on processes for sustainable development of Education system. Their program documents are oriented towards the European educational space. Accordingly, we decided to study attitude of political parties towards education system and observe specific documents as well as their promises and steps for effective problem solving.

Our research period includes the last two convocation parliamentary elections and we have chosen and studied several active political subjects. The election cycle of the 2012-2016 years is important, because in this period the parties' program documents have begun to develop in the public life [7].

According to the electoral programs, "Georgian Dream" paid a great attention to education system development in both election cycles. Based on our studies we see that in the first election cycle (2012-2016), the attitude of the ruling party to the education system is slightly different (2016 is slightly lower).

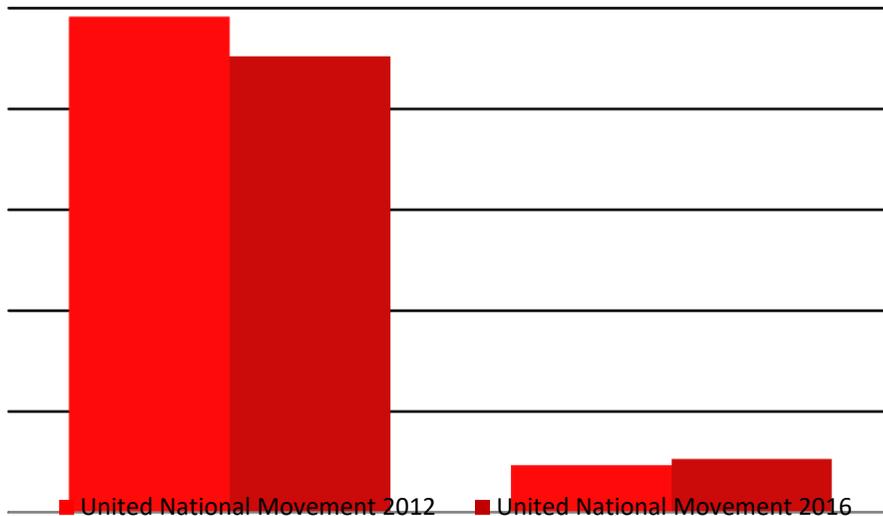
In the second election cycle, together with the promises, the party was focused on the list of completed works and probably it caused the existing slight difference (see Diagram # 1)

**Diagram # 1**



In addition, it is necessary to note that the overall picture, showing attitudes of both the ruling and United National Movement parties towards education system, is a bit different. In the second election cycle (2012-2016), the United National Movement party planned to spend more money in the education system, than it had spent during its own administration. Increased promises have created an awkward situation with regard to the management team (see Diagram # 2).

**Diagram # 2**



The fact is that in recent years, during both government activities, an increased interest in education system has given some of its results. However, the desired results are still unavailable. Due to the existing challenges, the main goals, aiming to develop entire education system, are the following:

**For preschool education** – to strengthen basic standards, improving infrastructure; to have availability and access.

**For General education** - to develop strategy for universal access to quality education, to ensure equity and inclusion in and through education system and program, to be focused on both student success and educational environment, to promote career growth by the state.

**For vocational education** - to prepare qualified staff, to use dual learning approach through public-private partnership.

**For Higher education** – to promote internationalization and to share the best international experience; to be focused on: the needs of the country's development and social life priorities; to be aimed to strengthen economy; to facilitate the use of modern technologies in higher education processes and to develop Online Learning process [8].to implement a large project entitled "Study in Georgia", which is aimed to attract foreign students to study at Georgian higher education institutions. to turn Georgia into a strong, regional scientific center; to support activities, which will be aimed to turn Georgia into a strong, regional scientific center;

On the basis of demonstrated pre-election programs of political parties, we can argue that parties pay a special attention to education development.

## **GEORGIA: THE PURPOSE OF EDUCATION POLICY - DRAW CLOSER TO EUROPEAN EDUCATIONAL SPACE**

As we have already mentioned, since ancient times, Georgia respected and attempted to cooperate with European educational sphere.

As the famous Georgian scientist Iv. Javakhishvili noted: "all foreign monasteries, which were built in Byzantine educational, theological and liturgical major centers, allowed Georgians to watch successful activities of educated humanity" [9.314].

According to all above mentioned facts, we see that education had a great importance for Georgian reality (including the post soviet period). In recent years, after the "Rose Revolution" (2003), political stable conditions allowed Georgian politicians better understand and be involved in education system development process. They understand that future development of the country depends on quality and accessibility of education. The mentioned compliance with the European educational field is supported by the Constitution of Georgia, namely, by Article 35: "The state ensures harmonization of the country's educational system in the international educational area" [10].

Europeans understand correctly importance of coordinated discussion and solution of education issues. On June 19, 1999, in Italy, Ministers of Education of 29 European countries with different political cultural and academic traditions, signed the Bologna Declaration. With this document, the states expressed their readiness to participate in the formation of a single European space of higher education. Georgia joined the process in Bergen summit in 2005.

Since 2004, Georgia's higher education system reform has been aimed at integrating higher education into the European space. It is important to establish a dialogue platform with active participation of academic, professional and civil society [11, 3]. Higher education reform activities in Georgia are important in terms of European Higher Education system. As a result of the reforms, the system established both accreditation system of higher education institutions and practice of unified national exams. The reform introduced assessment system based on credits to European ECTS system, developed both training programs and curricula, and quality assurance systems etc.

As a result, the reform has increased competition among higher education universities, which reflected on the quality of learning programs.

Most recently, the organization -"International Transparency – Georgia" - analyzed public opinion on the reforms implemented by the government and found that education reform was the only issue in the field of politics, which was evaluated

successfully. The most successful component of the reform is “unified national exam” that allow students to enroll in the university by competition, without corruption.

At the current stage the education policy of the country is based on the document entitled- "Georgia's Social and Economic Development Strategy - Georgia 2020" [12] which envisages priorities and obligations under the Association Agreement between Georgia and the European Union. The aim of document includes the improvement of the effectiveness and quality of education; raising teachers' motivation and qualification; pre-school and vocational education development; raising literacy; improvement students' results in accurate and natural sciences; Internationalization of higher education; use and development of scientific potential.

It is important that the state supports cooperation within the framework of the European Commission Program "Horizon-2020", which gives new perspectives for international cooperation and financing to Georgian scientists [13, 39].

At the current stage, the new Association Agreement for Georgia-EU is valid for 2017-2020. The new agenda is more ambitious and helps us keep getting closer to European standards and norms up to 2020. [14, 54]

The document includes the Specific priorities of the mentioned agreement. It also includes the following educational reforms and modernization package:

- Conduct joint work and exchanges in the context of Georgia's participation in the Bologna process, including support of independence and autonomy of Georgian universities in order to support Georgia's further integration in the European Higher Education Area;
- Facilitate academic cooperation, mobility of students and academic personnel through the new Erasmus + Program and other programs;
- Encourage strategic approach to vocational education and training process (VET), facilitates growth of Georgian professional education and training system aiming to get closer to success with EU professional education system and training structures, in accordance with the Copenhagen process and its instruments;
- In accordance to EU programs in the field of youth, encourage both strategic approach to youth policy and mobility of students improving the quality of international cooperation in the field of education; support intercultural communication.
- In this regard, we want to underline UNSCOs recent approach - "International cooperation in educational and scientific space" - towards Georgian reality, which will contribute to sharing scientific knowledge and peace between the countries. Georgia shares the mentioned opinion of UNSCO. We want to mention that Georgia was approved for membership by UNSCOs executive board in 1992 and our cooperation moved to higher level. Most recently, the book- “Writing Peace “- published by the organization,

confirms all above mentioned facts.<sup>22</sup> With the support of the organization the chronological scale of ancient writings includes Georgian alphabet.

- The list of UNESCO's remarkable dates of 2018-2019, includes the 100th anniversary of the Tbilisi State University, which once again confirmed the international importance of the anniversary. UNESCO emphasizes the role of the University in the formation of a democratic society, which is also important for creation of international peaceful space.

## CONCLUSION

On the basis of our studies we can make the following deterministic conclusion:

- The paper responded to the main question of our research. We discussed both government policy and program documents of major political parties on education sphere. However, we cannot clearly see whether they have any concrete mechanisms delivering to applicable solutions of the existing problems in education sphere.
- Since ancient times, representatives of Georgian socio-political opinion realized that education laid the foundation stone for our future and communication with Europe guaranteed success of our country.
- Despite the various forms of governance, all governments of post-Soviet Georgia supported development of education system. Despite the hardest socio-political situation, they signed cooperation agreements with many European countries
- The success of the European integration process of Georgia, significantly depends on the effectiveness of education system. This system provides sustainably democracy. It will arise citizens with fundamental principles of democratic values. At the same time, the system prepares relevant staff to the labor market requirements.
- At the current stage "Education Reform for the rapid development of the country" includes almost all the main directions of education and science development. It considers regulation in all fields of education and makes steps toward overcoming challenges in the framework of the new EU agenda of the EU-Georgia Association Agreement of 2017-2020.
- As a recommendation we will note that the Ministry of Education and Science of Georgia: in order to develop the main trends, should ensure accessibility; must publish proactively information on international projects and monitor activities conducted by relevant structure of the Ministry, in this regard the Ministry must ensure transparency and publicity of the system.

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## THE ROLE OF EVIDENTIARY IN LEGAL SYSTEMS

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### ABSTRACT

The terminology of probability and likelihood are more and more often used in the evaluation of legal evidences. This procedure requires special legal and probabilistic approach from the designated expert witness: the evidentiary. The evidentiary may support the criminal investigation, the judgement, the correctional challenges and even the prevention of crime. The probabilistic discretion especially in holistic point of views is exceeding the expectations towards to investigators, judges and defenders as well, therefore a concept and a new kind of expert witness has a special position in a modern legal system. The paper summarises the results of contemporary achievement in this field.

**Keywords:** Evidentiary, probabilistic legal reasoning, Bayesian methods

### INTRODUCTION

If we are to make a comparison between constructing a building and constructing a verdict, we might see that there is no need for scaffolding in the case of a simple building, and similarly there is no inevitable need for the application of probability theory in a simple criminal case. When the design of the building is bigger, taller or more complex, there is a stronger demand for a scaffold and professional experts to implement the plan. This is how scaffolding has become an individual profession that requires high responsibility. Similarly, as a criminal case gets more complex with numerous and diverse evidence, which might be too powerless individually and might only suggest chances, there is an essential need for a specialist, a specialist who can evaluate the chances of the evidence, interpret multiple probabilities, evaluate and authentically demonstrate all these tasks at the consecutive stages of jurisdiction.

Tremmel uses the term probability in the titles of the three subchapters in his monograph „Evidence in the Criminal Procedure” (Tremmel, 2006: 122-3; 137; 141-6), which implies the importance that lies in the term. Fenyvesi projects the future

development arc of the forensic application of probabilistic evidence (Fenyvesi, 2014: 215).

The general attitude of lawyers' society is rather mistrustful and distant towards the application of probability theory methods. However, it is apparent both in civil and criminal law. The Hungarian Act XCVI of 1995 (Insurance Law) on insurance companies and insurance activities requires the application of an insurance mathematician (an actuary). Criminal procedure law routinely applies Bayesian probability theory in fingerprint and DNA identification.

This current study presents those forensic challenges based on real cases that justify the need for the work of an evidentiary.

### **THE FORENSIC EXPERT OF PROBABILITIES: THE EVIDENTIARY**

Since risk assessment mathematics became an individual profession in the insurance industry, there has been a realistic demand for having a specialist who deals with the complex calculations of probability chances of criminal evidence, who might be called an evidentiary expert. (The inspiration of the name was the above-mentioned Act XCVI of 1995). There is a formal detail that should be highlighted; the legislator mentions the chief actuary before the senior lawyer on the list. One of the actuary's tasks is the calculation of mortality probability. We think that the judge already has the possibility to call for the actuary's expert opinion in doubtful death cases. The professional requirements of a chief actuary are defined in the subsection 57§ (1) of the current Insurance Law.

„aa) who has insurance mathematician (actuary) qualification or

ab) who has specialised qualification – especially in the fields of science, information technology, economics, technology – in higher education (single cycle university or MSc degree) has already gained 5 years of professional experience in the position of a chief actuary, or 10 years in the position of an actuary...”

In accordance with these criteria, it has to be admitted that the work of an evidentiary requires such a complex thinking and scientific pre-knowledge that it cannot be responsibly practised without specialisation. As the actuary is present at the whole operation of the insurance company, the evidentiary could provide continuous support during the whole criminal procedure, from the start of the investigation up until the verdict.

The evidentiary could carefully monitor the chances of any miscarriage of justice during the analysis of the network of evidence. His or her task would be to monitor all the doubts during the criminal procedural processes and report their possible threats to the actual decision-maker of the case, if necessary.

Concerning the exclusion of an evidentiary, the rules should be made similarly to the ones that are applied to judges, defined in subsection 21§ (1)-(5) in the current Criminal Procedure Law. The strict regulation serves the aspiration to minimize the number of systematic errors. This enables the adequate interpretation, evaluation of the work of the evidentiary, and the revealing of any potential errors.

An evidentiary is applied by criminology in the reconstruction of a city and in the law enforcement aspects of smart city planning through the complex evaluation of criminal risks.

All in all, this approach could help the investigation with the assessment of the evidence, it could make the arresting of the perpetrator more focused, and it could provide adequate support to the verdict. To take a step back to the indictment, it could help the work of the prosecutor in order to make the motion of prosecution – which is the closure of the investigation – the actual conclusion of the previous workflows. Finally, it outlines the tasks of two different types of evidentiary in criminal procedure: the investigation evidentiary and the judicial evidentiary.

## **THE PROBLEMS OF APPLYING PROBABILISTIC EVIDENCE**

Developments justified Tremmel’s visionary comments from 2005: “in the range of micro-features statistical probability correlations become relevant instead of the causation that is valid to the macro-level.” (Tremmel, et al., 2005: 294)

The expert opinion is only acceptable, if the evidence belongs to the specific field of the expert’s speciality (Sides, 2014: <http://www.aic.gov.au/medialibrary/conferences/medicine/sides.pdf>). The parallel hearing of the experts in the case that requires special expertise might be challenging for the court. As Herke explains: if the court can stand by one of the expert opinions, there is no place for the appointment of a third expert. (Herke, 2016: 59-71). In this case, however, the question might arise if there was any kind of error in the rejected expert opinion if it was not accepted by the judge – who might be considered a layman of this area. We believe that this might be the point where the above-mentioned judicial evidentiary may get a decisive role.

The new regulation must contain all the conclusions learned from the miscarriages of justice caused by the experts. We consider it to be extremely important because the application of new methods – especially Bayesian methods – by inexperienced people can lead to such negative precedents that might result in the preference towards less effective and more traditional methods in the fear of any potential miscarriage of justice. Ultimately, it leads to such extremities that might be followed by the prohibition of this method. It is important to draw attention to some of the fundamental theoretical mistakes that one can make when applying likelihood (LR).

Professor Meadow, a professor of paediatrics who was an appointed expert at the Sally Clark case, issued his expert opinion without the needed expertise in the fields of statistics and probability theory. Another striking aspect of the case was that he could not properly see the medical correlations either. (Orbán, 2018: 169-80).

Our fear is not unfounded, since the judicial practice in the United Kingdom expressis verbis excluded probability theory methods – besides DNA and fingerprint comparison – from the means of evidence in the above-mentioned case and several other ones.

In the United Kingdom in 2010, the board lead by Lord Justice Thomas rejected the appeal that was based on the expert opinion of Mr Ryder who applied Bayesian analysis in the R v T case (<http://www.bailii.org/ew/cases/EWCA/Crim/2010/2439.pdf>). According to the decision of the court the applied method does not fulfil the requirements of transparency, so it “endangers legal certainty”. The verdict outraged forensic experts worldwide, especially in the United Kingdom, in the United States, in the Netherlands and in New-Zealand. Dawid and 23 other people signed a one-page protesting petition published in the professional periodical Science & Justice (Aitken et al. 2011: 12). Fenton calls the interpretation scandalous and (Fenton – Neil: [https://www.eecs.qmul.ac.uk/~norman/papers/likelihood\\_ratio.pdf](https://www.eecs.qmul.ac.uk/~norman/papers/likelihood_ratio.pdf)), Robertson et al., (Robertson, et al., 2011: 430-55) calls it disastrous: The verdict conveyed two fundamental errors: Firstly the continuous interchanging of conditions, which demonstrates that the court did not understand the difference between the estimation of probabilities and the strength of the evidence in the motion. The other confusion lies in the indefinite nature of the variables and their indefinite relation to one another in the mathematical formula.” Thompson directly states that the verdict “will inevitably come to be seen for what it is — a judicial blunder.” (Thompson, 2012: 347-59)

To sum it up: it is advisable to involve the conditionalities of probabilistic evidence when reconsidering the regulation of forensic experts – based on what we learnt from earlier mistakes.

## **PONDERING THE CHANCES FROM THE POINT OF VIEW OF THE PROSECUTION AND THE DEFENCE**

Regarding processes “the prosecutor raises charges by filing the indictment with the court” (Criminal Procedure Law, 217§ (1)) except for some peculiar cases. The probative proceeding takes place at the trial. Király already dealt with the theoretical aspects of probabilistic indictments in 1972. He distinguished statistical and logical probability. Statistical probability is explained with crimes where the incidence is significantly higher than as it would be expected. (Király, 1972: 240) Based on the

explanation, statistical probability may correspond to the concepts of frequentist probability, Kolmogorov's probability and objective probability. There is hypothesis-based probability model in the definition of the logical probability of the suspicion, but it is identified with Carnap's approach, which has become a separated concept by now. (Király, 1972: 242). He illustrates that the expansion of knowledge might either strengthen or weaken the hypothesis. He correctly sees that "if the suspicion is only taken to be statistical probability, it remains stable even after the exploration of new data. Logical probability is flexible; it adapts to our actual knowledge and adjusts to the specific and unique features we learned from the events" (Király, 1972: 243).

It is beneficial to the defence's efficiency if they are familiar with the basic concepts of probability theory. This idea does not mean that the defence should undertake the role of an expert, but it can help them sustain the equality of arms. The defence can only interpret and understand the probabilistic evidence of the prosecution adequately if they are assisted by a properly prepared judicial mathematician, an evidentiary. Presumably, the outcome of the Sally Clark case could have been different if the defence had picked up the gauntlet and they had contrasted the probabilistic evidence of the prosecution with an appropriate and relevant probabilistic rebuttal. (Orbán, 2018: 169-80). The validation and critical control of the prosecution's statement do not serve the delay of the case, but they serve the accused's right to a fair trial. The hypothesis of the prosecution and the hypothesis of the defence clash during the trial. In order to illustrate the divergence between the two hypotheses, it is important to note that the purposes of their establishment are different. The prosecution's hypothesis is the truth of the event described in the indictment. According to another hypothetical approach, the defence enumerates those facts that might disprove the subject or the person – or *ad absurdum* both – of the prosecution's arguments. The case of the 16-year-old pregnant Crowell may stand as an enlightening example. She claimed to be the victim of sexual abuse, but a later DNA examination excluded the possibility that the person who she named to be the offender could have committed the crime. Later on, the alleged victim even refuted the abuse itself. (Webb Crowell – Chapien, 1986).

The rebut is adequate if the lack of crime or the offender being another person are options that cannot be ruled out with common sense.

The dependency of the judge is well illustrated by the fact that until there is a justified rebut, he or she has to accept the authenticity of an expert opinion. The formally perfect expert opinions, the seemingly doubtless statements in previous cases inevitably pull the judge to the vertiginous borderline of justice and injustice. There is no general method with which it could be avoided, but the earlier mentioned evidentiary expert can carry out a collision control concerning probabilistic expert opinions, and that could have a positive impact on the correctness, substantiation and hence the durability of the verdicts.

## THE COURSE OF EVENTS

The process of events forms a course in the case of sequential events. Outlining this course can have numerous advantages. On the one hand, it can contribute to maintaining chronological and spatial consistency of events, as it can support the investigative work. On the other hand, it can help predictive crime prevention with understanding the thinking of perpetrators. The physical evidence of the on-site inspection and the testimonies together are the figurative milestone where they seek to explore the past and the future in retrospect.

Prediction is a presumption concerning future, and thus it is absolutely suitable for being a basis for an operational activity. When the data processing takes place the sorting aspects of the course can be chronological, locational, based on a change in behaviour or a change in the events. Furthermore, the sorting aspects can be extended to any category that may likely create a homogenic course of events. The creation of the course can adequately ground a predictive intervention. Since the purpose is an estimation of future acts, the result does not refer to a thing that is definitely to come true, but to an event that has only a certain probability to come. It is based on the high accuracy data capture concerning crimes and the searchability of that captured data.

A course estimation based on a data line can provide only one sort of information, which gives the time period in the case of a chronological analysis, or the surrounding place in the case of a spatial estimation. The estimated time and place of a bank robbery is not sufficient to predict the volume of resistance that those have to face who will participate in the operation. It can only be estimated by the behavioural prediction. If the lines of individual courses are put into juxtaposition in the same representation space, the meeting points can increase the accuracy of the estimation, and hence the efficiency of the action.

Forensics is just like a game of chess, the estimation of the perpetrator's next step – his or her thinking – is essentially important. Its role in strategic and tactical planning is unquestionable. Reviewing several sequential events, it is ascertainable that about three events are sufficient to provide enough baseline information for a meaningful prediction.

Arresting the perpetrator is not the primary focus here, since it is possible that some significant partial data would be gained, which might provide adequate information for the action. The steps of the course estimation based on the Bayesian network can be handled according to the following listing:

- data collection
- information processing – data sorting and correlation search
- creation of the Bayesian network – definition of cause and effect
- simulation – optimisation

- prediction

As the listing shows, this is a multidisciplinary task, which must be built on the mutual work of the forensic expert, the psychologist, the mathematician who has the forensic knowledge on estimating probabilistic chances (the evidentiary), and a software information technologist.

The steps can be extended, since besides the perpetrator's next crime and its place, preventive actions, the optimal pace and mode of the arrest can also be estimated during the prediction. The involvement of an expert who has experience in the coordination of operative measures might be essential. As the process requires the involvement of many cooperative specialists, it needs to be kept in mind that a single careless statement might draw the attention of the perpetrator, who might change his or her tactics, which might ruin the whole preparation work.

## **THE UNCERTAINTY OF RECONSTRUCTING EVENTS**

The reconstruction of past events is always a challenge. As numerous researchers have already pointed out, the testimonies are the most vulnerable points of reconstruction. The problems, like the manipulation of testimonies (Elek, 2008) or recognition difficulties can get stacked and cumulated.

Fields investigated a case that can be seen as an aggregation of cognitive uncertainties with the use of Bayesian analysis. (Fields, 2013: 1769 – 801). Mark McPhail, the police officer of Savannah Police Department was shot in 1989. Nine witnesses identified Troy Anthony Davis as the perpetrator at the first instance. Seven of them changed their testimony at later trials, and they named Davis's partner as the perpetrator. In spite of this, Davis was sentenced to death, and he finally was executed in 2011. Thorough understanding of the details is needed to reveal the doubts concerning the witnesses.

Officer Owens, a police officer of Savannah Police Department responded to a call of "an officer down" at 1 AM on 19<sup>th</sup> August 1989 at a bus station. After reaching the scene, he found McPhail, the off-duty officer of Savannah Police Department. As he began administering CPR to the victim, Officer Owens noticed that the victim's firearm was still snapped into his holster. Sylvester "Red" Coles, Troy Anthony Davis and Daryl Collins wanted to demand a freshly bought beer from Larry Young, but he did not give them any, so Davis stroke him on the side of the face with a pistol, inflicting a severe head injury. Hearing the uproar, MacPhail, the off-duty police officer arrived at the scene, he orders them to halt three times with no result, so he started to chase the three men. The officer could be 3 meters away from Davis when Davis turned back and shot the policeman. The victim died before the help arrived. Half an hour later Red Coles asked for another shirt from her sister who lived nearby. Then Davis arrived there too, and he asked Coles to swap shirt. Davis surrendered to

the authorities on 23<sup>rd</sup> August 1989. Pursuant to an investigation, on the night of the killing, Davis had attended a party, where he was annoyed by some girls who ignored him. When Michael Cooper and his friends were leaving the party with great noise, Davis shot at their car and the bullet got through the back windshield and lodged in Cooper's jaw. This incident happened an hour before McPhail was shot.

The ballistics expert testified that the bullets recovered from the wounded and the deceased were from the same unknown gun. At the trial, the summoned cellmate of the accused confirmed this story. According to another summoned witness, Davis confessed to him that he had shot the policeman, but he stated that it had been self-defence. Red Coles – who had been his accomplice – and six other witnesses who were mentioned by name identified Davis as the perpetrator. At the trial, Davis admitted that he had been present at the scene, and he admitted committing all the violent acts except for the homicide. The most important part of the evidence was the confession of the acts. Davis kept claiming to be innocent for the following two decades, until his execution. The court found him guilty of one count of malice murder, one count of obstruction of a law enforcement officer, two counts of aggravated assault and one count of possession of firearm during the commission of a felony. In 1993 the Georgia Supreme Court affirmed the verdict of 1991. The eleventh appeal was submitted to the United States Supreme Court on 22<sup>nd</sup> October 2009, but it was not based on habeas corpus anymore, it was based on innocence. A request for a new trial was based on new evidence and it claimed that the reconsideration of the new evidence would lead to a different verdict.

His arguments were listed in the following six points:

- 1) Seven witnesses changed their testimony under oath,
- 2) three testimonies differed from the statement that was given after the trial, confessing that the homicide was committed by another person, Sylvester "Red" Coles,
- 3) it was not checked if the witnesses had even been on the scene of the crime in the cases of some testimonies,
- 4) the expert opinion of two the ballistics experts and the eyewitnesses' identification of the perpetrator,
- 5) the statements of the judges,
- 6) other non-public testimonies. (Kahn, 2009: 4-5)

The United States Supreme Court rejected Davis's appeal on 16<sup>th</sup> April in 2009. The execution took place despite widespread protests. Cognitive uncertainty is multicomponent, and several of its factors can only be achieved through meta-analysis. One of the means used to recognise cognitive uncertainty is the polygraph, but its application is highly restricted by regulations. Due to the improvement of the sensors, the collection of metadata has become available even without having the examined person noticed the process, so there is less chance to manipulate the results.

The uncertainty can be reduced by perceiving metacommunication signs. The analysis of the identifying person's behaviour is just as important as the person's decision at the identification procedure. Fields's likelihood calculation before the first trial gave the value of 99,9985% on the basis of identification, which meant doubtless evidence for the guiltiness of Davis. Prior to this, some cognitive measuring was carried out, which were used for the identification calculations. The cumulative result confutes the poor quality of the experience values. Identification was carried out in two different groupings: The suspect was present in one of the group, while he was not there in the other. The probability of correct selection was 46,1% in the first case, and the probability of incorrect selection was 32,7%. When the suspect was not present in the people lined up, the probability of incorrect selection was 13,4%, and the response saying the suspect is non-identifiable was 52%. Taking the new evidence into account, two positive identifications – calculations were not made this time – resulted 92%. If we consider the seven witnesses who changed their testimony – and we only take negative answers into account –, the probability of guiltiness is only 31,5% (Fields, 2013: 1769-801). This value is very low for stating innocence, but quite enough to raise some doubts, which might lead to reopen the case. This did not happen in Davis's case.

One of the fundamental counterarguments of Bayesian-sceptics is – as it is also highlighted by Fields – that an ordinary judge would not be able to interpret and process Bayesian calculations, since he or she would find it unacceptably complex. (Fields, 2013: 1769-801). We claim that the suggested evidentiary would resolve the contradiction.

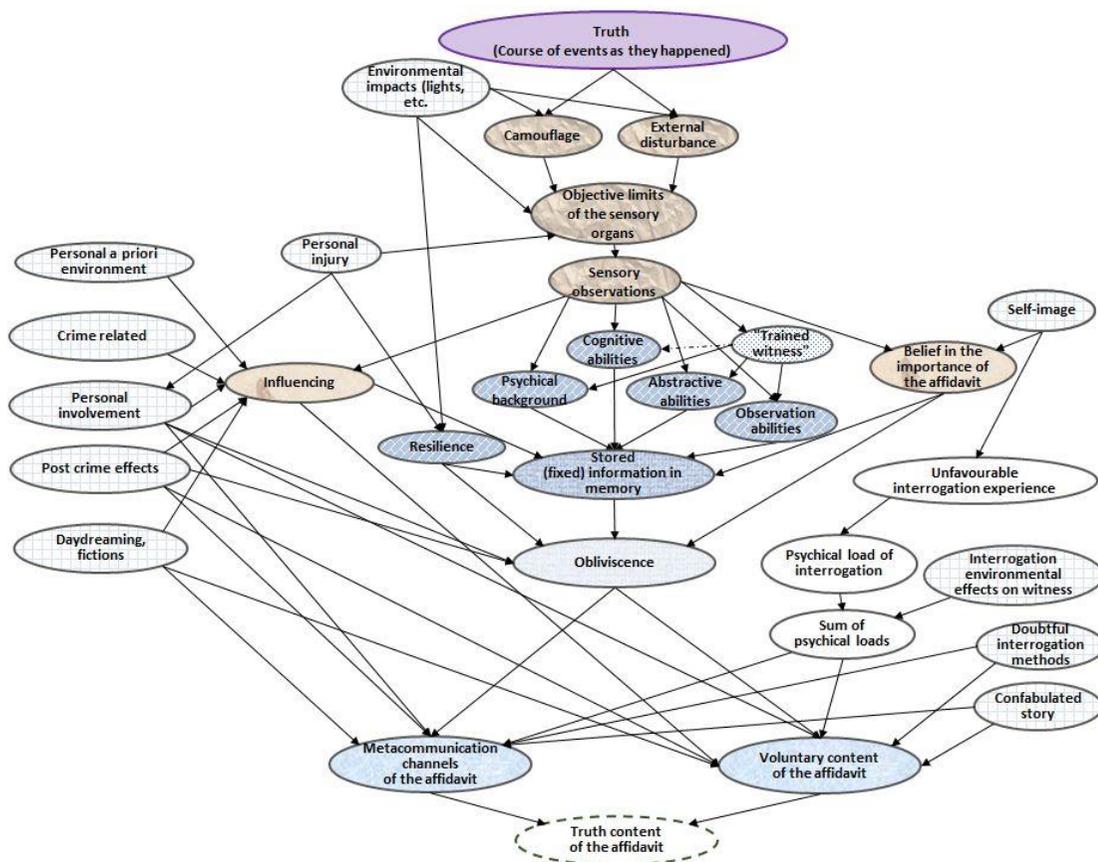
Samuel Wiseman has an extensive study on how it affects the faith in justice if a convict turns out to be innocent after the execution, and there he suggests that there is a need for reforms considering the conclusions from reopened cases based on DNA evidence. (Wiseman, 2010, 687-750).

In the light of the newest scientific discoveries, Kristy Fields presupposes that the decision can be traced back to their subconsciousness. (Fields, 2013, 1769-801). She mentions two components of cognitive distortion: egocentric and status quo distortions. According to the first one, the decision-maker underestimates the probability of him being mistaken. According to Medwed judges dismiss the possibility of their mistake, and similarly they tend to trust in their colleagues' wisdom in decision-making, so the revision of the convict's innocence starts with disadvantage (Medwed, 2005, 655-718). Green and Yaroshefsky state that examinations like this one only cause indifferent or rather hostile attitudes (Green – Yaroshefsky, 2009: 467-517).

## A DEMONSTRATIVE EXAMPLE FOR THE TASKS OF THE EVIDENTIARY EXPERT

As Fields pointed out, the confession of the accused concerning another crime, the testimonies of an informant and several unreliable witnesses were the basis for the death penalty. This and the doubt-raising testimonies of numerous other cases justify the probabilistic examination of testimonies. The complexity of this partly elaborated issue demonstrates the necessity of involving an evidentiary expert.

In what follows, a demonstrative draft of a Bayesian network will illustrate real events through questions manipulating the testimony (Figure 1.).



**Figure 1: The probability network of probability factors manipulating the testimony (Author's drawing)**

When considering several circumstances simultaneously, the data processing based on Bayesian network can be an important step on the symbolic stairway to truth that represents the real event. The witness's thinking is still a "black box", any conclusion

can only be drawn from incremental information and external psychological observations.

The process of giving a testimony can be summed up with the perceptive, the internal processing, and the modifying factors, which are all followed by the statement. Only the last one is available for the investigating authorities and the judges. It can be factually inaccurate due to the lack of accurate observation or proper articulation, in fact, it may contain false information. The testimony and all the further available information can serve as a baseline for grounding suspicion.

Different background colours indicate the classification of relationships and interactions between probability variables in the junctions of the Bayesian network. The value of a witness's testimony can be worsened or even ruined by the influential external factors and factors that affect the witness's internal state of mind, the influences of human relationships, and the potential traumas of the interrogation. However, the value of the testimony can only be stated after the evaluation.

An evidentiary with psychological knowledge (considering the human factor) and holistic approach would provide new possibilities in the fight against crime.

## CONCLUSION

The evidentiary is a probability theory and forensic expert. He or she can provide professional support during the criminal procedure in those questions where predominantly complex and complicated probabilistic evidence is available. Both the depicted Davis case and the complexity of the figure justify the thesis: there is a need for an evidentiary.

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## THE PRINCIPLE OF NON-REFOULEMENT AND ITS REFLECTION ON NATIONAL SECURITY

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### ABSTRACT

The principle of non-refoulement applies in a human rights context to prohibit the forcible sending, returning or in any way transferring a person to a country where he/she may face torture or other form of inhuman and degrading treatment. This obligation is also applicable in extradition matters where it represents a mandatory bar to extradition. Where extradition is sought by a country other than the country of persecution, the requested State must obtain effective assurances which protect the wanted person against a risk of chain refoulement from the requesting State to another country.

This paper will also cover the issues regarding the reflection of non-refoulement to national security and its exception contained in the 1951 UN Convention on the Status of Refugees. Further, it will be elaborated the legal and political key aspects due to the fact that States are trying to confront the absolute nature of non-refoulement and to seek justification in the name of counter-terrorism.

**Keywords:** *non-refoulement, extradition, human rights, national security, counter-terrorism and torture.*

### INTRODUCTION

The principle of non-refoulement is considered as a cornerstone of international refugee law although it can be recognized as a human right which all Member States of the international community guarantee as such to individuals. This article therefore begins with the scope of the principle of non-refoulement which applies to any form of surrender including extradition. Additionally, it is important to stress the fact that this principle is also applied in human right context to prohibit forcible sending or returning of a person to a state where he/she may face any kind of real risk of ill-treatment. Second, it addresses some of the most remarkable non-refoulement cases in extradition matters chosen from the Strasbourg case law. As the Court has reiterated in many occasions, non-refoulement cases are generally cases concerning fluctuating situations, so the Court must rule on such cases *ex nunc*, taking account

of all the circumstances that are known to it at the time it takes its decisions. Third, it looks at the links between non-refoulement and national security, exceptions arising from Articles 1F and 33(2) from the 1951 Convention and lastly the urge need to establish a balance between the absolute protection against refoulement and the battle with terrorism.

## **SCOPE OF THE PRINCIPLE OF NON-REFOULEMENT**

The principle of non-refoulement sets forth an obligation on the international community to guarantee all persons the protection from being returned to a place where they could be faced with a risk upon their lives, torture or persecution on several accounts. This principle has been considered as a cornerstone of international customary law and international refugee law, but also has a vital influence on the international human rights law. The term refoulement originates from the French ‘*refouler*’ which literally means to push or force back. Subsequently, it developed as a reaction to World War II refugee outflows from which Europe was recovering (NRC 2017, p.7). This doctrine has been established to address the unique legal status and needs of those who has been forced to cross international border and lacked protection of their home state.

The prohibition of sending, expelling, returning or otherwise transferring (refoulement) a refugee to “territories where his life or freedom would be threatened on account of his religion, nationality, membership of a particular social group” is recognized in Article 33 (1) of the 1951 UN Convention on the Status of Refugees and its 1967 protocol (ILPA and Redress 2006, p.2). According to the wording of Article 33 (1) it enshrines the following:

*” No Contracting State shall expel or return (refouler) a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion.*

The scope of non-refoulement is much wider in respect of its territorial application. It inquires not only to a refugee’s country of origin, but also any other country where he/she has a reason to fear persecution.

Having in mind the above mentioned, the principle of non-refoulement is also applied in a human rights context to prohibit forcible sending or returning a person to a state where he/she may face any kind of real risk of ill-treatment. This has been affirmed by numerous instruments, including Article 3 of the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Article 13(4) of the Inter-American Convention to Prevent and Punish Torture, Article 22 of the American Convention on Human Rights, Article 16 of the International Convention for Protection of All Persons from Enforced Disappearances and Article 19 of the

Charter of Fundamental Rights of the European Union (IML 2014, p.2). Furthermore, the obligation of non-refoulement is derived from a number of provisions enshrined in other international instruments such as: the European Convention on Human Rights (ECHR), the African Charter on Human Rights, the International Covenant for the Protection of Civil and Political Rights (ICCPR) and many others. Usually, non-refoulement is also a component of many extradition treaties (bilateral or multilateral). Moreover, the jurisprudence of the European Court of Human Rights (ECtHR) recognizes the application of this principle which will be analyzed further in this article.

### ***Application of Non-Refoulement in Extradition Context***

As it was mentioned previously in this paper, the wording of Article 33(1) of the 1951 Convention clearly expresses that the non-refoulement principle is applicable to any form of forcible removal. Thus, if we analyze the phrase “*expel or return in any manner whatsoever*”, it is evident that the principle of non-refoulement fully applies to extradition (Lauterpacht and Bethlehem 2003). This has been recognized and reaffirmed by States on many different occasions and supported with judgments of relevant courts.

In Europe, the jurisprudence of many states also confirmed that non-refoulement applies to extradition. In France, the *Council d'Etat* has held that general principles of law applicable with respect to refugees constitute an impediment to the surrender, in any manner whatsoever, of a refugee to the authorities of the country of origin by the country which recognized refugee status. In Slovenia, the *Constitutional Court* stated that a decision on granting asylum prevents any forcible removal or return of a person and therefore also extradition. Further, in Switzerland, the *Bundesgericht* held that the extradition of a refugee is prohibited under Article 33 of the 1951 Convention (Kapferer 2003, p.79). In Republic of Macedonia, the *Code of Criminal Procedure* in Article 518(2) prohibits extradition of a foreigner who enjoys right to asylum.

The principle of non-refoulement under the 1951 Convention establishes a mandatory bar to extradition where this would result in the surrender of a refugee or asylum seeker to a state where their life, liberty or physical integrity would be in danger. Therefore the European Convention on Extradition although does not use explicitly the term non-refoulement it clearly states that: “*extradition shall not be granted if the requested Party has substantial grounds for believing that a request for extradition for an ordinary criminal offence has been made for the purpose of prosecuting or punishing a person on account of his race, religion, nationality or political opinion, or that that person's position may be prejudiced for any of these reasons* (Article 3(2) 1957). Albeit extradition typically applies to a more prosecutorial context, the rationale behind the protection is the same as in refoulement clauses elsewhere. Likewise, the fact that this protection is extended even in context where a government

has specifically requested extradition indicates an even stronger protection in that it places the host government in the position of having to actively deny the request rather than simply passively allow an individual to remain (NRC 2017, p.10).

The non-refoulement prohibition also covers the risk of arbitrary deprivation of life, in particular through imposition of the death penalty without fundamental guarantees of fair trial. The ECtHR held in the case of *Ocalan v. Turkey* that imposition of death penalty in violation of a fair trial principles amounts to inhuman treatment. According to the Court's jurisprudence, an extradition would therefore be in violation of Article 3 ECHR if the person concerned faced such a risk. Moreover, given the irreparable harm that would arise from the arbitrary deprivation of life, Article 2 ECHR must be considered as a bar to extradition (Droege 2008, p.673). In the landmark case of *Soering v. the United Kingdom*, the ECtHR for the first time engaged the State's responsibility if it extradites a person who can be subjected to the death penalty, or if there are substantial grounds that he could face a real risk of ill-treatment as prohibited by the ECHR. Further, in the *Chahal* case, the ECtHR recognized that the principle of non-refoulement to torture or cruel, inhuman or degrading treatment or punishment was absolute and allowed for no balancing with the competing State concerns, even when these related to national security (ILPA and Redress 2006, p.2). Contrary, in the case of *Ahmad v. the United Kingdom*, the ECtHR found no violation of Article 3 ECHR not because the applicants were alleged terrorist, but due to the fact that there were no evidence that should support the claim that the conditions of the detention facilities in the United States were in breach of Article 3 (Holm 2015, p.18).

However, a distinction should be made between torture and other forms of ill-treatments which depends on the intensity of suffering inflicted on the victim. The finding of torture attaches to cases of "deliberate inhuman treatment causing very serious and cruel suffering (IML 2014, p.6). Therefore, the case law of the ECtHR specifically states that the principle of non-refoulement is implied in Article 3 ECHR and is absolute in extradition and expulsion cases irrespective of the activities of the individual concerned. This article is not subject to any exceptions or to derogations. Hence, it must be upheld even "*in time of war or other public emergency threatening the life of a nation*" (Art. 15 (2) ECHR), and it leaves no scope for limitations by law under any circumstances, whether they be safety, public order or other grounds.

When determining whether to grant extradition, the requested State may find itself in a conflict of obligations. It must be mentioned that the requested State is bound by its non-refoulement obligations under international refugee and human rights law, which preclude the extradition of a refugee or an asylum-seeker to the requesting State under the conditions examined already. In such situations, bars to the surrender of an individual under international refugee and human rights law prevail over any obligation to extradite (Stefanovska 2016, p.59). Although, in practice and in given

circumstances it is hard to achieve this balance. For example, in the case of *Ramzy v. the Netherlands*, five EU governments led by the United Kingdom argued that the right of an individual to be free from torture may be balanced against the national security interests of the State. Moreover, it is a concerning fact that many states are using diplomatic assurances in order to circumvent non-refoulement obligations.

### ***Deception That Non-Refoulement Concerns Only Articles 2 and 3***

In the past, the case law of the ECtHR has shown that in extradition and expulsion cases the Court found violations only relating to Articles 2 and 3 and never some other provisions from the ECHR. This so called ‘practice’ has created a common view that the principle of non refoulement can only be engaged when right to life and prohibition of torture are in breach. Some legal experts and professionals argued that all provisions from the ECHR may contain a prohibition of refoulement, while others have connected the principle of non-refoulement only to *jus cogens* norms.

Hence, the *Soering case* made a clear distinction regarding this subject matter, when the ECtHR held that ‘*in exceptional cases*’ beside Article 3, also Article 6 could pose a bar to expulsion. This notion has latter been confirmed in the cases of *Einhorn v. France*; *Tomic v. United Kingdom*; *Z. and T. v. United Kingdom* and *F. v. United Kingdom* in which the Court did not exclude that a number of other provisions could engage the responsibility of expelling States (den Heijer 2008, p.278). These judgments are clearly showing the willingness of the ECtHR to go out of its ‘comfort zone’ and to increase the importance of the non-refoulement principle and its application in correlation to the Convention’s provisions, but also to decrease the number of cases where the states were not willing to protect human rights and fulfill their obligations.

It is also possible that the real risk of slavery and forced labour upon expulsion engage a State’s non-refoulement obligation. However, the nature of slavery and forced labour makes it more likely that an enforcement mechanism or regional court would find this situation to be a violation of the prohibition on inhuman or degrading treatment or punishment rather than slavery or forced labour (IML 2014, p.7). To determine whether a real risk of enslavement or forced labour exists, consideration should be given to both the general existence and practice of slavery and forced labour in a State as well as the existence of a risk which is personal to the individual. Additionally, account will also be given to the existence of a law prohibiting the practice in the receiving State (ECtHR, *Ould Barar v. Sweden* App.No 42367/98). In the *Ould Barar case*, the Court referred to the examination of the issue under Article 3 and recalled that slavery has not been endorsed by the Mauritanian Government, but rather prohibited by law. The Court found that is has not been substantiated that the applicant will risk treatment contrary to Article 4 upon return to Mauritania. Further, the right of the States to control entry of aliens is not unfettered but subject

to the Court's scrutiny, which implies, among others, that the exclusion of a person from a State where his family is living might raise an issue under Article 8 ECHR (den Heijer 2008, p.287). Moreover, the ECtHR has stated that it will not rule out the possibility that the responsibility of a returning State might in exceptional circumstances be engaged under Article 9 (freedoms of thought, conscience and religion) where the person concerned ran a real risk of human rights violations.

## **LINKS BETWEEN NON-REFOULEMENT AND NATIONAL SECURITY**

During these past few years, the European Union is faced with global forced displacement where many of the asylum seekers qualify as refugees who are entitled to special protections under international law, including protection from refoulement – the expulsion to a state where they may be in danger (Lampert 2017, p.14). This unprecedented increase in asylum seekers comes amidst a process that began after terrorist attacks in United States in 2001, in which countries have imposed anti-terrorism policies that diminish and threaten the right of refugees (Farmer 2008, p.13). Since these events, national security has become an increasingly important issue for host states, many of whom have promulgated counter-terror policies that negatively impact protection offered to refugees.

The drafters of the 1951 Convention were very much aware of the national security dimension. They were concerned in particular with ensuring that the refugee protection regime would not provide a cover for persons involved in serious criminality or otherwise posing a threat to the security of his states (UNHCR 2017). Accordingly, specific provisions were included to ensure that such persons could not benefit from refugee status. They provide a system of checks and balances, taking full account of the security interests of States and hos communities, while at the same time protecting the rights of refugees.

Mutual links between non-refoulement and national security can be seen through the exceptions contained in Article 33(2) of the 1951 Convention which will be elaborated below in this paper. Therefore, the danger to national security must have a certain level of severity in order to justify a measure of deprivation of a refugee from its refugee status. Further, there has to be a reasonable ground for considering that the individual concerned constitutes a serious danger to the security of the host state ad an assessment whether the measure or application are proportionate to its objective. However, it should be clear that the prohibition of refoulement should not be used to impose a danger to national security of the states. Instituting proper safeguards to prevent possible infiltration by criminal or those belonging to terrorist or extremist organizations is clearly more than needed.

### ***Exceptions Arising from The Principle of Non-Refoulement***

The 1951 Convention provides under Articles 1F and 33(2) a dual system that may prevent some persons who have a well-founded fear of persecution from obtaining protection from refoulement. Article 1F prescribes that the provisions of the Convention shall not apply to any person with respect to whom there are serious reasons for considering that:

*(a) he has committed a crime against peace, a war crime, or a crime against humanity, as defined in the international instruments drawn up to make provision in respect of such crimes;*

*(b) he has committed a serious non-political crime outside the country of refuge prior to his admission to that country as a refugee;*

*(c) he has been guilty of acts contrary to the purposes and principles of the United Nations.*

Indeed, this article sets some boundaries to application, but the most important is the fact that there is a necessity to strike balance between the nature of the offence presumed to have been committed by the applicant and the degree of persecuted feared.

Article 33(2) of the 1951 Convention provides for a limitation of protection from refoulement. Under this provision even a person who has been granted with a status of refugee may not claim protection under Article 33(1) if: *“there are reasonable grounds for regarding him/her as a danger to the security of the country in which he/she is, or having been convicted...of a particularly serious crime, constitutes a danger to the community of that country”*. Hence, these exceptions can be divided into two categories. The first category refers to whereby a refugee constitutes a ‘danger to the security’ and may apply only if his/her presence poses a very serious danger (Kapferer 2003, p.81). It means that the refugee must be a threat to the foundations of the public order or the very existence of that State. The second category applies in situations where a refugee must pose a future risk to the community of the requested State on the basis of a final conviction for a particularly serious crime. This means that the ‘danger to the community’ must be a very serious danger and it must threaten the safety and well-being of the population in general (Lauterpacht and Bethlehem 2003). Nevertheless, what is of particular interest is the fact that Article 33(2) does not specify what kind of acts would fall into the scope of the national security exception or what standard of proof is sufficient. The only limit is that there must be ‘reasonable grounds’ (Holm 2015, p.24). This broad or lack of strict formulation leaves a numerous possibilities of exceptions, but also it opens a discussion in which situations a State can exercise its margin of appreciation without jeopardizing the national security and in the same time to allow a full respect of the non-refoulement principle.

Under the wording of Article 33(2), A State may be permitted to expel, extradite or return a refugee or asylum seeker to a country where they face persecution on grounds of overriding reasons of national security and public safety. For instance, if we observe extradition as a form of surrender taking into consideration the exceptions, it will be lawful only if it is an effective way of ensuring the security of the requested State and if this cannot be achieved by a measure with less serious consequences for the individual concerned, such as for example, prosecution in the requested State.

A worrying fact is and should be the different interpretations of the non-refoulement exceptions as mentioned before in this paper. It is a result due to the circumstance that many states do not share the same view on the interpretation of Article 1F and 33(2) of the 1951 Convention. Therefore, if there is a different interpretation, it could lead to a distinctive conclusion on the scope of the exceptions and it could create contradictory opinions regarding the prohibition of refoulement and the safeguard of national security. It also should be considered on to what extent states are willing to go in 'the name of national security' justifying its acts by protecting its frontiers while putting in stake the non-derogable principle of non-refoulement.

### ***Balancing Between the Need of Absolute Protection Against Refoulement and The "Eternal Battle" With Terrorism***

Since the terrorist attacks of 11 September 2001, many states have imposed stricter counter-terrorism measures. There is a great potential for national security concerns to be prioritized over refugee protection given current concerns of global terrorism (Holm 2015, p.29). Due to these events, shortly afterwards, the UN Security Council sued Resolution 1373 calling upon states to combat terrorism and to exclude from refugee statues pursuant to Article 1F of the 1951 Convention, those who have planned, facilitated or participated in terrorist crimes. However, the negative connotation is that this resolution did not contain definition of terrorism so it was left to the discretion of each state individually to decide what could be considered as an act of terrorism (Bruin and Wouters 23, p.7). Further, the Resolution 1456 made a reference to human rights considerations when combatting terrorism and Resolution 1566 contained a contextual definition n terrorism.

Within Europe, the most important document referring to the establishment of a balance between the non-refoulement principle and the safeguard for national security is the Working Document entitled as: "The Relationship between safeguarding internal security and complying with international protection obligations and instruments" which was adopted in 2001 (eur-lex COM/2001/0743 final). According to the text of the document, there should be no avenue for those supporting or committing terrorist acts to secure access to the territory of the Member States of the European Union. It is therefore legitimate and fully understandable that Member States are looking at reinforced security safeguards to prevent terrorists from gaining

admission to their territory through different channels. Analyzing from this perspective, maybe it could be arguable and to some point justified the position of the United Kingdom remaining insistent on their right to expel a refugee who is posing a danger to their national security, albeit within the boundary set by the ECtHR.

What is of particular interest is the fact that the above mentioned document was clearly moving to nullification of the non-derogability of Article 3 ECHR, although the position of the ECtHR was clearly stated: “*Article 3 makes no provision for exception and no derogation from it is permissible even in the event of a public emergency threatening the life of the nation*” (paragraph 2.3.1 COM/2001/0743 final). In addition, this opinion of the Court could be justified with the fact that there is no unique and universally accepted definition of terrorism and the question remains: Can a participation or membership of one person to a terrorist organization could be considered as a terrorism especially when the list of terrorist organization varies from one country to other international organization? And what happens when there are no guarantees regarding the risk of being subjected to torture or degrading and inhuman treatment or the lack of binding character of given diplomatic assurances? Hence, the possibility of prosecuting perpetrations of serious human rights violations is always a better solution rather than their exclusion. For that purpose, extradition exists as a legal procedure for transferring a fugitive or convicted criminal from one state to another to serve a sentence or being charged for committed criminal offence. It is a common view that human rights should not be violated because the process of their curing can be long and devastated and may not bring the satisfactory results after all. There will always be a need to establish a balance between the obligation to protect an individual from refoulement and the obligation to protect the interests of national security. However, some lines should not be crossed by any means necessary.

## CONCLUSION

The principle of non-refoulement applies to any type of transfer, regardless of the legal designation of the transfer measure, including expulsion, extradition, return, repatriation or any other form. This is supported in the wording of Article 33(1) of the 1951 Convention stating ‘*in any manner whatsoever*’. On the other hand, this article does not identify the types of acts that could trigger the national security exception but rather leaves that to the discretion of states, allowing the possibility of broad application. For that reason, it is quite possible that sharing borders with historically unstable states may trigger the national security exception to non-refoulement.

A question can be raised from this discussion; how further states can go in the fight against terrorism in the name of national security? After all non-refoulement is

considered as a peremptory norm or known as well as *jus cogens* norm from which derogation is not permitted on any ground including accounts on terrorism. In the same time, we must be aware that states are responsible not only to protect individuals in need, but also to hold individual criminally accountable for their acts. This is the so called balance which should be achieved between the need of absolute protection against refinement and the ‘eternal battle’ with terrorism.

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# SPREADING FALSE NEWS - A THREAT TO THE SECURITY

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## ABSTRACT

In modern times and the development of democratic values they brought with them freedom of assembly and speech as an embodiment assoc. However, most people mistakenly believe that this is an achievement that can only jeopardize social caste in power. Using this misleading social masses, formed a criminal structure that just abuse of freedom of speech through the dissemination of false news are trying to undermine local but also global security. Most serious security services as one of the greatest threats to security and order is considered spreading false news. Even at the annual meeting of the NATO emphasized that in addition to terrorism and cyber attacks, the spread of false information constitutes the greatest threat to the security of a member of the alliance.

**Key words:** news, security, threat, terrorism, cyber attacks

## INTRODUCTION

Spreading false information becomes more important with the increasing number of readers of the media that publish them. A massive increase comes at the turn of this century, mainly due to the rapid development of technology, especially the dissemination of information via the Internet. Today it is very difficult to find a person who does not have at least one mobile phone. Very often people have private and official mobile phone, tablet, computer laptop in the office and at home. After much research, the total number of these devices has long been a three-fold greater than the population of our planet. To this must be added the fact that all modern forms of transport, planes, cars, metro, all of them are equipped with screens from which we receive different media content including news. The conclusion is that the man most of the day and mostly unwittingly exposed to flood the right information. But in most cases, these are serious plans, where the false news is one of the important factors to achieve them. These plans are often devised to endanger the safety of individuals or very often entire country. This paper will present some examples of endangering the

safety of placing false information from various social spheres. Only then spreading false news is not new, but today in the modern world much easier due to the impact of the Internet and the development of technology when no longer needed large investments in printing and tons of paper misuse of conscience and thus affect the security of individuals, parts of the state and society. This paper will present some examples of endangering the safety of placing false information from various social spheres. Only then spreading false news is not new, but today in the modern world much easier due to the impact of the Internet and the development of technology when no longer needed large investments in printing and tons of paper misuse of conscience and thus affect the security of individuals, parts of the state and society. This paper will present some examples of endangering the safety of placing false information from various social spheres. Only then spreading false news is not new, but today in the modern world much easier due to the impact of the Internet and the development of technology when no longer needed large investments in printing and tons of paper misuse of conscience and thus affect the security of individuals, parts of the state and society. (<http://www.nspm.rs/komentar-dana/da-li-je-idiotski-baviti-se-politikom.html?alphabet=l>)

## HISTORY OF NEWS

Although there are no precise data about the first written news release in any country, most scientists agree that we need to look at the site where the first letter was written, Egypt and Mesopotamia.<sup>71</sup>

During the Roman Empire, there were the so-called, wall papers" that had the name Acta Seanatus which were published as the conscience of the Senate as decisions, laws etc. After that, with the development of society comes to the development of the written form of the spread of information and news. The development of newspapers and magazines as we know today. They add new types of content and information; newspapers have become the main form of informing the broad masses to the massive use of television. Even the invention of the radio, during this period there was a lot of interest in TV, and dozens of inventors and scientists are engaged in improving the technology. The rapid development has led to the fifties of the twentieth century television becomes the primary medium for the formation of public opinion. (Diggs Brown, Barbara, 2011:48) For the concept of news there are more than 9 billion results on Google. This speaks hard loud about the importance of conscience. But what is news? There are many different definitions, every journalist has his own. One of common is: News is information about a recently changed situation or recent event.

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<sup>71</sup> see more : „Historic Du Livre“ Frederic Barbier, 2006, published by Armand Colin, Paris, France

On the influence of the news and their capabilities there have been written many studies and books. The general conclusion can be found in the work from 2007 (Shultz, Ida, 2007) in which author opinion is that if we want for some information to be news, that information must have the following values:

1. Timelines
2. Relevance
3. Conflict
4. Identification
5. Sensation
6. Exclusivity

The Journalistic Gut Feeling, Journalism Practice (Shultz, Ida, 2007: 190-207) which states that the information was the news he must have the following values: Timelines Relevance Conflict Identification Sensation exclusivity.

It is of interest and the study published by Tony Harcup and Deirdre O'Neill at website [www.tandfonline.com](http://www.tandfonline.com) in part Journalism Studies. ([www.tandfonline.com](http://www.tandfonline.com)) They wrote: we have found that news stories must generally satisfy one or more of the following requirements" if they are to be selected:

- 1) The power elite: Stories concerning powerful individuals, organizations or institutions.
  - 2) Celebrity: Stories concerning people who are already famous.
  - 3) Entertainment: Stories concerning sex, show business, human interest, animals, an unfolding drama, or offering opportunities for humorous treatment, entertaining photographs or witty headlines.
  - 4) Surprise: Stories that have an element of surprise and/or contrast.
  - 5) Bad news: Stories with particularly negative overtones, such as conflict or tragedy.
  - 6) Good news: Stories with particularly positive overtones, such as rescues and cures.
  - 7) Magnitude: Stories that are perceived as sufficiently significant either in the numbers of people involved or in potential impact.
  - 8) Relevance: Stories about issues, groups and nations perceived to be relevant to the audience.
  - 9) Follow-up: Stories about subjects already in the news.
  - 10) Newspaper agenda: Stories that set or fit the news organization's own agenda.
- But maybe best one definition of what news is, comes directly from every journalist: I know when I see it! "

## **DEFINITION OF SECURITY**

When we speak about concept and definition of security, very often happens among citizens who are ordinary people, who do not have adequate education in this area that, between them there is very narrow understanding of the term. They're usually

associated with physical endangerment and endangering under way mainly consider the use of guns, planes, cannons and tanks. In recent years primarily due to the many interviews given by former Director of Europol Robin Wainwright<sup>72</sup> (<https://www2.deloitte.com/be/en/pages/risk/articles/head-of-europol-senior-cyber-partner.html#>) and because of several scandals raised in the USA in which Russia is accused of being behind the cyber attacks and fraudulent pages on social networks through which the placement of false information affected the presidential election in the public talking about cyber security. However, and this big media attention with thousands of front pages did not lead to the fact that citizens understand security as a little broader concept. The result is a bit more attention in relation to online banking, and information on social networks. It is because of this kind of inferiority of citizens, it is important to note that security means the absence of danger, from all possible threats, the security thus includes a complete security. However, as in many areas of life and science in the realm of the scientific community that deals with security issues there is no agreement on a universal definition of security. Many authors dealt with, or are still dealing with the definition of the concept of security. Almost every professor who teaches a safety tried to give their own definition. Because of this we have to be consistent with paragraph Vojin Dimitrijevic, who wrote that security is „one of the most used and least-defined words in the vocabulary of international politics." (Dimitrijevic V, 1973:19) About the problem of the large number of definitions and at the same time not mutual agreement of their authors wrote and scientist from Croatia Sinisa Tatalovic which states : „, some authors argue that the concept of security is one of the most commonly used terms but also one of the least explained and defined terms. (Tatalovic S, 2006:43) By studying the scientific papers published in recent years we notice that a small number of those who pay attention to the quality of life of citizens as a security category. Also, there is little definition of security that contain a link to this category.

For this reason it is important the definition of security given by Professor Slobodan Miletić, where security is defined as „edited legal and social relations was provided in a state that enables effective sheltered state and the citizens who live in it of all the (internal and external) against legal acts endangering the constitutional order, sovereignty, independence and territorial integrity of the country, the work of state bodies, carrying out economic activities and the rights and freedoms of citizens." (Miletić S, 1997:27)

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<sup>72</sup> <https://www2.deloitte.com/be/en/pages/risk/articles/head-of-europol-senior-cyber-partner.html#>

## FAKE NEWS AND GLOBAL SECURITY

In the era of mass media when citizens are exposed to the mass strikes of conscience from all sides when they are broadcast every hour on most TV channels, and even there are several extremely influential TV stations broadcasting news 24 hours a day, it is very difficult to distinguish immediately after the first broadcast whether the news is true or not. All of that contributed by dozens of applications for mobile phones and tablets that every citizen has in pocket in which we have constantly draw attention with bombastic headlines and effective images.

Individuals or organizations that stand out from placing false information related to security in most cases want to immediately cause the desired reaction. Their goal is to create disturbances, panic, fear or condemnation. For this reason, the false news first spread social networks. After that, it takes some TV stations. The next day is sure to find in the printed edition of the newspaper. In this way such news come to citizens of all ages and educational groups.

In this context, we can observe a statement given by Marju Anthem: The false information is then often reverberated as misinformation in social media, but occasionally finds its way to the mainstream media as well." (Marju H, 20017:26)

### *Propaganda*

When we talk about fake news and their impact on security, we must speak about propaganda. (Jowett G. and O'Donnell V, 2001) Propaganda is old as communication between people, but propaganda became important to global security from first world war. Although there is when there is communication between people, boom propaganda binds specifically to global security breach or the first world war. Then, the first large-scale use of false and distorted news to influence the enemy and own armed forces.

That Today's media are holders of propaganda, and that they use it as a tool by the warring parties in Europe, has been evidenced by the statement of the Spokesperson OSCE Dunja Mijatovic who believes that the propaganda is on the rise. (<https://www.osce.org/fom/2040119>)

Propaganda is a rare phenomenon, and since its inception, which is linked to the regulation Pope Gregory XV by establishing a Papal institution to spread the Catholic faith, has not changed its basic principles of the construction.

Thus, propaganda activities still kind of manipulated communication pre-designed and not spontaneous or accidental, to the precise purpose and the intention of affecting the interests of the sender or the creators of messages. (Tadic D, 2005:21)

For the ration of false information as a means of propaganda in situations of impaired regional or global security is important and the opinion of the French scientist Jacques Ellul who was speaking about the propaganda as:,a set of methods used by an

organized group to psychological manipulation alleged mass or individual involved in an organization to take an active or passive participation in their action." (Ellul J, 1973:35)

Propaganda as a procedure in achieving its objectives and is characterized by the existence of a threat that can be open or hidden. Often, in order to achieve greater effect false information in their entries directly or apparently concealed threat to the most sensitive value of consumer information. Shortly after the announcement, the person engaged to be present as an expert in security at TV news recognized veiled threat based on his/her experience. After that, the primacy of broadcasting receives a comment or opinion of experts that the existence of threats. Soon, following pre-agreed response of so-called ordinary citizens of different ages, genders and races to create a general impression of the sentence and gave rise to a reaction.

An essential element of propaganda we have to consider using the symbols. Goebbels who used the Nazi swastika in all situations, ISIS leader al-Baghdadi who often used the flag of his terrorist organization and Osama Bin Laden who in every shot is holding an automatic rifle as a symbol of the struggle.

All users of propaganda placed false information used black and white propaganda. This applies to all terrorist organizations and other groups that their actions violate security. Basically, black propaganda are fabricated news about non-existent events with the sources that either do not exist or do not stand behind such an announcement. Such false news generally contain shocking details and serve for the severe disturbance of the public. The result should be a big movement, resistance to the enemy. In second world war Hitler used black propaganda when the Allies already brake in to Germany in order to mobilize the last civilians. The news which was then placed in Germany contained the details of the torture and rape carried out by Russian soldiers.

White propaganda implies the use of actual events but their creators create news which correspond to them White propaganda is quite successfully used by the terrorist organization Islamic state to its initial victories and conquest of territory exaggerated which is on the ground received more supporters and recorded the surrender of entire cities because their leaders thought ISIS was very dominant organization by consuming false news on the Internet in what ISIS lot invested. (Kingsley P,1991)

## **FAKE NEWS AND LOCAL SECURITY**

Fake news except global security can be a significant factor in the preparatory violating local security, the security of a region or one country. In the case of the security of individual countries they are often part of the preparations for the demolition of the state system as a prelude to a coup, revolution or foreign intervention. ( Simeunović D, 1991) If their goal is demolition of authority, false news

qualify them for a long time and the population gradually builds resentment and aversion to members of the government and the entire ruling system. The aim is to create a critical mass which will be taken to the streets and be a cover for violent change of government. That process will lead from the shadows professionals who are part of the team from which false news are released. With this kind of false news, the consequences of their broadcasts are not immediately visible. They are disguised current outburst and one moment reaction of citizens as consumers. The most common versions of the false news that precede such a breach of security may be the following:

- 1) Showing enormously great wealth of the current political elite, which use a mixture of real and mounted photos from vacations, parties and others. Especially great impact on the citizens have a conscience about the uncontrolled spending of money by members of the family of a holder of state functions, exaggerated tuition at prestigious international universities, luxurious clothes and traveling.
- 2) Spreading panic placing false news through social networks about the alleged poisoning of water, air, food, or to reflect the inability of state authorities.
- 3) Placing false news about the impossibility of controlling the security of the vulnerable groups in society such as children and the elderly. This provides a sense of fear among the citizens, which caused a great revolt because they are potentially affected all families. (<http://www.nacionalist.rs/2018/08/09/lazne-vesti-kruze-drzavom-unosenje-panike-u-vidu-podataka-o-broju-nestale-dece-u-srbiji/>)
- 4) The publication of false news in foreign media about endangered human rights of minority communities with pre-prepared statements of the alleged victims with the aim of provoking condemnation by the international community as a cover for interference in the internal affairs of a sovereign state.
- 5) The publication of news which contain shocking information about the existence and the immediate threat or use chemical weapons or weapons of mass destruction.
- 6) Viewing reports of excessive use of force in breaking up demonstrations or destroying insurgent and terrorist groups.

## **CONCLUSION**

One of the bad things that came out of Pandora's box of the Internet are certainly false news. Their impact on the human population is so great that it is unrealistic to talk about their termination. Thinking about the awareness of the media who post them and expect to realize the harmful effects of such media of this type your product equated with imagination. Even the governments of some countries that have publicly advocated for stricter control of the media not only withdrew, but were themselves caught that they let the public false news. This phenomenon is easy to become an integral part of our lives. For us to decide whether and to what size affect our thinking

and our actions. We as citizens have to recognize them, warn others and ignore such news and media who use them. The psychological war as a special kind of war is a feature of all contemporary conflicts. It is used by all parties to armed exceptional conflict. Defense of aggression of any kind, the protection of the territory and of human life should be the only exception, when the power of democratic states used false news exclusively to the aggressor caused the damage. In everyday life, people have to work on their education in order to succeed to distinguish true from false information. Education is the key to success in the fight against false news. People who are better educated, who have a wide circle of friends from many walks of life and different interests have developed intellect, and may differ from the impossible possible, the real from the unreal and so recognize the false news. protection of the territory and of human life should be the only exception, when the power of democratic states used false news exclusively to the aggressor caused the damage. In everyday life, people have to work on their education in order to succeed to distinguish true from false information. Education is the key to success in the fight against false news. People who are better educated, who have a wide circle of friends from many walks of life and different interests have developed intellect, and may differ from the impossible possible, the real from the unreal and so recognize the false news. protection of the territory and of human life should be the only exception, when the power of democratic states used false news exclusively to the aggressor caused the damage. In everyday life, people have to work on their education in order to succeed to distinguish true from false information. Education is the key to success in the fight against false news. People who are better educated, who have a wide circle of friends from many walks of life and different interests have developed intellect, and may differ from the impossible possible, the real from the unreal and so recognize the false news.

The ideal situation would be if the false news itself extinguished as happens with the flu epidemic which soon after its peak disappears. But we must be aware that it is too much at stake here, with a small investment to get great results. We can expect even better made false news, from better production, the more attractive headlines and convincing fake eyewitnesses. We must never forget, or underestimate the power of the media and their influence on human population and security.

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## DIGITAL DIPLOMACY IN THE CHANGING WORLD

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### ABSTRACT

The world is changing. Communicating with the world and learning information is done with the speed of light and this is all due to the fast rise of technology in all the parts of the world. These changes influence all of us privately and publicly. It influences states and the way they conduct foreign policy. Diplomacy changed into digital diplomacy. Diplomats, states, NGO's are online and are open to the community which was unthinkable in the past. As much as there are positive connotations to all of this new technologies and the internet there are also negative ones that are linked to terrorism, war, uprisings, hackers and so on. Important information can be hacked by terrorists and used to harm a state, a nation or the world. Therefore, digital diplomacy should be conducted in a very specific way and the diplomats should be trained to conduct diplomacy to be open but safe.

**Key words:** *digital diplomacy, internet, foreign policy*

### INTRODUCTION INTO THE DIGITAL DIPLOMACY

In today's changing world Governments are developing new kind of diplomacy in order to conduct international affairs. Diplomacy needs to keep up with the changes in the world, and to meet up the new challenges.<sup>76</sup> Scholars and diplomats have adopted the term “digital diplomacy” but the definition is still not concise. Definitions help visualize how diplomacy should be practiced, changed and which skills must be acquired.<sup>77</sup>

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<sup>76</sup> Pahlavi C. Pierre. “Cyber - Diplomacy: A New Strategy of Influence”. 2003 Retrieved from: [https://www.researchgate.net/publication/228739617\\_Cyber-Diplomacy\\_A\\_New\\_Strategy\\_of\\_Influence](https://www.researchgate.net/publication/228739617_Cyber-Diplomacy_A_New_Strategy_of_Influence)

<sup>77</sup> Manor Ilan. “The Digitization of Diplomacy: Toward Clarification of a Fractured Terminology”. Working Paper 1. Department of International Development, The University of Oxford. 2017

The term digital diplomacy has been defined as the use of social media by a state to achieve its foreign policy goals and image. C. Bjola and Marcus Holmes defined digital diplomacy as a tool for management, while Potter formulated the term as the conduct of diplomacy with the use of technologies.<sup>78</sup> The lack of precise definition has enforced scholars to research different kinds of diplomacy in the networking environment. Scholars use the terms “cyber-diplomacy,” “net-diplomacy,” “e-diplomacy,” and “Twiplomacy”, but all of these terms point out the same thing, each prefix points to a specific field, for example “cyber” is used to discuss security issues, “e” for business, and “twi” for Twitter. Today, in the digitalized world, diplomats and political policy makers need to recognize the use of technology because they need to improve the development of international relations.<sup>79</sup>

Furthermore, the MFA’s (Ministries of Foreign Affairs) begun to use digital tools due to certain events and actions, one was the Arab Spring of 2010. MFA’s were surprised by the event because they were not monitoring the networks, like Facebook. Although, Facebook did not cause this event, it did serve as a tool. Another action is the use of internet by terrorist groups to recruit young people. In order to fight and prevent such groups from gaining online support the MFA should also follow and monitor the networks.<sup>80</sup> Other examples of the use of “digital diplomacy” and acceptance of the digitalizations is Sweden’s virtual embassy created in 2007. Norwegian Ambassadors use Skype to converse with students. The Indian ministry of foreign affairs is developing computer games for children. UN Ambassadors use Whats App to coordinate their votes on resolutions, while the Kenyan foreign ministry is using Twitter to deliver emergency consular aid.<sup>81</sup> Digital diplomacy, is the use of information and communication technology for attaining foreign policy goals. Many experts defined it as an electronic component of public diplomacy.<sup>82</sup> E-Diplomacy or digital diplomacy is a developing internet resource that helps advance diplomatic goals of countries. Currently the digital diplomacy is limited because it

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Retrieved from: <https://digdipblog.files.wordpress.com/2017/08/the-digitalization-of-diplomacy-working-paper-number-1.pdf>

<sup>78</sup> Ibid

<sup>79</sup> Verrekia Bridget. “Digital Diplomacy and its effects on International relations”. 2017 SIT Graduate Institute. Retrieved from:

[https://digitalcollections.sit.edu/cgi/viewcontent.cgi?referer=https://www.google.com/&httpsredir=1&article=3619&context=isp\\_collection](https://digitalcollections.sit.edu/cgi/viewcontent.cgi?referer=https://www.google.com/&httpsredir=1&article=3619&context=isp_collection) pg. 14-15

<sup>80</sup> Manor Ilan. “What is Digital Diplomacy, and how is it Practiced around the World? A brief introduction”. 2016 Annual Review of the Diplomatist Magazine. Retrieved from:

<https://digdipblog.files.wordpress.com/2014/02/dig-dip-intro-diplomatist.pdf>

<sup>81</sup> Manor Ilan. “The Digitization of Diplomacy: Toward Clarification of a Fractured Terminology”. Working Paper 1. Department of International Development, The University of Oxford. 2017

Retrieved from: <https://digdipblog.files.wordpress.com/2017/08/the-digitalization-of-diplomacy-working-paper-number-1.pdf>

<sup>82</sup> Almuftah Hamad, Weerakkochy Vishanth, Sivarajah Uthayasankar. “E-Diplomacy: a systematic Literature Review”. Retrieved from: <https://bura.brunel.ac.uk/bitstream/2438/12827/3/FullText.pdf>

does not cover electronic internal collaboration, mobile or other technologies.<sup>83</sup> Only the Americans have the leading role in the digital diplomacy. The State Department operates 600 external and internal media platforms to reach more than eight million people. They consider it to be a central foreign policy strategy. Parallel to public diplomacy, they use technology in foreign policy areas like information and knowledge management, catastrophe management, the promotion of Internet freedom, and policy planning.<sup>84</sup>

## **THE INTERNET AND ITS INFLUENCE IN THE WORLD AND ON DIGITAL DIPLOMACY**

Today the most isolated parts in the world can interact with other civilizations due to the internet. The Internet is less expansive in transmitting information, and as a result, nongovernmental organizations, academics, and individuals are using the Internet to create their own platforms and influence. Due to the speed of information and its diversity, the international relations are changing to adopt to the surrounding of networking.<sup>85</sup>

The Internet has shortened the diplomatic decision making process, news from distant countries can become public in an instant, and all the information spread, creates a burden on diplomacy.<sup>86</sup> But the change that the internet poses is normal, it was present in the 16<sup>th</sup> century when ships enabled the expansion of Europe, the 19<sup>th</sup> century was changed with creation of the telegraph, and the airplane, radio and TV have changed the 20<sup>th</sup> century.<sup>87</sup> The internet created a enormous advancements. In the beginning of digitalization, the internet was used only by governments, and it was controlled by the state. Then, as the internet became public, it became wide spread.<sup>88</sup>

The Internet is a means of communication that authorizes the publication, exchange and storage of information. Global communications and information are brought together by the Internet. The Internet should not be confused with the content

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<sup>83</sup> Ibid

<sup>84</sup> Turkan Anja. "In the Digital Training Camp Taking traditional diplomacy into the Digital Age". ifa-Edition Culture and Foreign Policy 2012 Retrieved from:  
[https://www.ifa.de/fileadmin/pdf/edition/digital\\_diplomacy\\_en.pdf](https://www.ifa.de/fileadmin/pdf/edition/digital_diplomacy_en.pdf) pg. 11

<sup>85</sup> Bollier David. "The Rise of Netpolitik How the Internet is changing International Politics and Diplomacy". The Aspen Institute, 2003. Retrieved from:  
[http://www.bollier.org/sites/default/files/aspen\\_reports/NETPOLITIK.PDF](http://www.bollier.org/sites/default/files/aspen_reports/NETPOLITIK.PDF) pg. 2

<sup>86</sup> Ibid pg. 5

<sup>87</sup> Westcott Nicholas. "Digital Diplomacy: The impact of the internet on International Relations". Oxford Internet Institute Research Report 16 July, 2008 Retrieved from:  
<https://www.oii.ox.ac.uk/archive/downloads/publications/RR16.pdf> pg. 2

<sup>88</sup> Verrekia Bridget. "Digital Diplomacy and its effects on International relations". 2017 SIT Graduate Institute. Retrieved from:  
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that is exchanged or accessed on it. The technology is the means and the people are the ends.<sup>89</sup> What is done with the information that is received is up to the people, it can be used for good or for bad.

Global movements like solving poverty, global warming, human rights abuses or conflicts are evolving and the Internet helps them to be effective, and their voices heard. The technology allows more actors to interact, increases the field of action, and the rules of play.<sup>90</sup>

The data collected and shared impacts the diplomacy in several ways. First, data impacts the environment in which diplomats operate. The data is influenced by geopolitics and economics. Second, data brings new topics to the negotiation or policy-making tables. Third, it provides diplomats with new tools.<sup>91</sup>

Digital diplomacy presents new methods of conducting diplomacy. The Internet changes diplomacy in the way it is conducted in geo-politics, economics, sovereignty, interdependence, Internet governance, cybersecurity, privacy, and more.<sup>92</sup> The diplomatic change needs to be analyzed through the diplomatic processes and diplomatic structures and institutions. In the diplomatic arena all things 'online' blend with the 'offline'. Digital diplomacy is trending. The consular diplomacy is a challenge, citizens demand fast delivery of services. Social networks created new dynamics and platforms of opportunities, in the negotiation processes.<sup>93</sup> But all these is very new and hard to adjust and learn. Diplomacy and diplomats need time, and knowledge to learn how to use all of this tools to create a greater good.

## **DIGITAL DIPLOMACY IN THE CHANGING WORLD**

There is a big difference between traditional diplomacy and digital diplomacy. Traditional diplomacy was based on representation, and the Ambassador served as a representative. The ambassador was extraordinary because he had the power to negotiate and sign treaties on behalf of the state or the monarchy. Yet in the age of information and communication technologies the diplomatic summitry (such as G20 meetings), leaders come together to directly negotiate. The social networking sites such as Twitter, Facebook and Instagram enable diplomats and embassies to cooperate and communicate online. Therefore digital diplomacy overcomes the

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<sup>89</sup> Ibid pg. 3

<sup>90</sup> Ibid pg. 8

<sup>91</sup> "In focus. Digital Diplomacy/E-diplomacy/Cyber diplomacy". Retrieved from:

<https://www.diplomacy.edu/e-diplomacy>

<sup>92</sup> Ibid

<sup>93</sup> Hocking Brian, Melissen Jan. "Diplomacy in the Digital Age". Clingendael Netherlands Institute of International Relations. July 2015. Retrieved from:

[https://www.clingendael.org/sites/default/files/pdfs/Digital Diplomacy in the Digital%20Age Clingendael July2015.pdf](https://www.clingendael.org/sites/default/files/pdfs/Digital%20Diplomacy%20in%20the%20Digital%20Age%20Clingendael%20July2015.pdf) pg. 6

limitations of traditional diplomacy.<sup>94</sup> The media is everywhere and it access culture, politics and economic activities with an ability to mediate. Online infrastructures redesign international relations, politics, cultural exchange and new ideas in ways which are very relevant for diplomacy.<sup>95</sup> The digital technologies should be a source of creativity for diplomats. They can use the email, Twitter or Facebook in order to manage, collect and reuse data.<sup>96</sup>

A lot has changed in this century, and many aspects of diplomacy have been challenged and continue to be challenging. Digital tools, have added an important dimension to diplomacy, making communication fast but also not very precise. This has forced MFA's to allow diplomats to make mistakes publicly and to correct them, a tactic never seen before. It has changed the diplomatic language, the formality and secrecy, diplomats are engaged in the public sphere, speak publicly with messages informal and short. These transformations have turned social media into necessary tool for diplomatic interactions, some diplomatic organizations have embraced the changes but others view it as a challenge and danger. Therefore, the Internet and social media, led the debate within MFA on adaption of digital technologies in order to achieve effective and efficient results in the conduct of foreign policy.<sup>97</sup>

Public diplomacy used a linear and asymmetrical broadcast. It responded to the development of the network and the social media through different approaches like dialogue and symmetry in order to build mutual relationships.<sup>98</sup> For German foreign policy, the use of social media it is a way of thinking. There should be developed new forms and strategies for foreign policy because nowhere else the use of social media should be addressed with more caution and sensitivity.<sup>99</sup> Although many times the social media can act positively in vulnerable situations and give in advance notice of national conflicts.<sup>100</sup>

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<sup>94</sup> Manor Ilan. "What is Digital Diplomacy, and how is it Practiced around the World? A brief introduction". 2016 Annual Review of the Diplomatist Magazine. Retrieved from: <https://digdipblog.files.wordpress.com/2014/02/dig-dip-intro-diplomatist.pdf>

<sup>95</sup> Melissen Jan and de Keulenaar V. Emillie. "The Case for Critical Digital Diplomacy: Working Paper. German institute for International and Security Affairs. 2017 Retrieved from: [https://www.swp-berlin.org/fileadmin/contents/products/arbeitspapiere/WP\\_Diplomacy21\\_No7\\_Jan\\_Melissen.pdf](https://www.swp-berlin.org/fileadmin/contents/products/arbeitspapiere/WP_Diplomacy21_No7_Jan_Melissen.pdf) pg. 3

<sup>96</sup> Ibid pg. 3

<sup>97</sup> Bjola Corneliu. "Adapting Diplomacy to the Digital Age: Managing the Organisational Culture of Ministries of Foreign Affairs". Working Paper. German Institute for International and Security Affairs 2017. Retrieved from: [https://www.swp-berlin.org/fileadmin/contents/products/arbeitspapiere/WP\\_Diplomacy21\\_No9\\_Corneliu\\_Bjola\\_01.pdf](https://www.swp-berlin.org/fileadmin/contents/products/arbeitspapiere/WP_Diplomacy21_No9_Corneliu_Bjola_01.pdf) pg. 3-4

<sup>98</sup> Deos S. Anthony. "Digital Diplomacy & Social Capital: Analysing Relational Components of Trust in US & Israeli Online Social Networks". University of Otago. Retrieved from: <https://ourarchive.otago.ac.nz/bitstream/handle/10523/5800/DeosAnthonyS2015PhD.pdf?sequence=1> pg. 3

<sup>99</sup> Turkan Anja. "In the Digital Training Camp Taking traditional diplomacy into the Digital Age". ifa-Edition Culture and Foreign Policy 2012 Retrieved from: [https://www.ifa.de/fileadmin/pdf/edition/digital\\_diplomacy\\_en.pdf](https://www.ifa.de/fileadmin/pdf/edition/digital_diplomacy_en.pdf) pg. 6

<sup>100</sup> Ibid pg. 7

Furthermore, digital diplomacy can help in the strained relations between states due to security, for example between the United States and Syria. Since the relations were brittle, the Department of State wanted to connect with the Syrian people. The ambassador, Robert Ford, wanted to maintain a dialogue with Syrians and used social media to bring the violence and repression to the attention of the world. To continue with, Facebook and Twitter are used by authorities or diplomats to publish personal reports, stir up debates, answer questions. Also the technology allows civilians to participate in the processes of conducting foreign policies. Digital diplomacy helps to link governmental representatives with the people and supports governments to reach foreign policy goals.<sup>101</sup>

The tools of the digital age create new issues and routines, and remodel the old ones. The US Embassy in Jakarta has over 600,000 likes on its Facebook account. China encourages its embassies to use Twitter. In diplomacy, the balance between old and new forms of communication is different. In 2015 Pope Francis mentioned the genocide in Armenia, Turkish foreign minister Cavusoglu voiced his protest through Twitter. But this was only the beginning, and followed by traditional diplomatic initiatives through private channels. In future diplomacy will be a mix of 'old' and 'new' models of communication. Therefore, diplomacy is characterized by combination of the two. That is why traditional diplomacy is interacting to produce more diverse and complex scenarios. Eric Schmidt, Chairman of Google, and J. Cohen, argue that the adaption of technologies will mean that governments will have to develop two kinds of signs of communication and two foreign policies, the online and the offline. There are significant changes in the 'offline' world of diplomacy that intersect with the online world. Rather than separating two foreign policies, the two should be integrated, this will require a redefinition of roles and new diplomatic skills.<sup>102</sup>

The 'one size fits all' digital strategies should not and can not be used. There should be a difference between negotiations (diplomatic domains) and the character of diplomatic communication. Different models of diplomacy blend with different policies. This can be illustrated by comparing the use of social media in human rights campaigns with its use on security issues. But it should be clear about what diplomacy is used for.<sup>103</sup> Diplomacy is the art and practice of conducting negotiations between groups or states. According to Senator Hagel, "Diplomacy is not a weakness ... but rather an essential tool in world affairs using it where possible to ratchet down the

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<sup>101</sup> Ibid pg. 8

<sup>102</sup> Hocking Brian, Melissen Jan. "Diplomacy in the Digital Age". Clingendael Netherlands Institute of International Relations. July 2015. Retrieved from: [https://www.clingendael.org/sites/default/files/pdfs/Digital Diplomacy in the Digital%20Age Clingendael July2015.pdf](https://www.clingendael.org/sites/default/files/pdfs/Digital%20Diplomacy%20in%20the%20Digital%20Age%20Clingendael%20July2015.pdf) pg. 11-12

<sup>103</sup> Ibid pg. 30

pressure of conflict and increase the leverage of strength.”<sup>104</sup> Therefore, diplomacy should be digitalized and use all the digital tools to be fast, informed and knowledgeable but be protected and safe at the same time.

Foreign policy decisions used to be conducted by secret negotiations, but the Internet and social media allowed new players to enter the diplomatic stage and present a new age of transparency not only for governments, corporations but also for the media industry. This shift poses challenges to governments and states because they have a different role in society. They are designed to provide social goods, and the risk is that if they don't transition, they will become less efficient and less effective. Second, states fear that the things that they perceive as negative, retailers can perceive it as positive, online. The problem for governments is that the things that stop the negative actors will also stop the positive actors and break the Internet. Frank-Walter Steinmeier, Germany's Minister of Foreign Affairs, believes that the methods of conducting foreign policy may seem old-fashioned, but Diplomacy takes time and involves tough negotiations in order to conclude compromises. Compared to the dramatic pictures in the Internet and on the news, it appears that the international community is incapable of reacting quickly. But foreign policy must not respond with quick and simple solutions, they must seek diplomatic initiatives patiently and resolutely, Dunja Mijatovic, the OSCE Representative on Freedom of the Media, says that “Virtual diplomacy is a huge challenge for diplomats. We are all more exposed to the outside world. We are becoming more transparent, more reachable, but also more accountable. ... But this cannot in any way replace traditional diplomacy.”<sup>105</sup>

The government's strategic objective should be to create an institution that will take advantage of the media.<sup>106</sup> Technology-driven public diplomacy suffers from the lack of imagination about what technology can do, and so far, technology has been used only as a tool, but it could be used as an idea.<sup>107</sup>

## **NEGATIVE CONSEQUENCES OF DIGITALIZATION AND THE CYBER SECURITY**

In a globalized international environment, ideas have become weapons and the Internet the mean for delivery. As the West struggles to defeat the Taliban and Al-Qaeda, the soft power tools of public diplomacy and the information strategy can be

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<sup>104</sup> Nakamura H. Kennon and Epstein B. Susan. “Diplomacy for the 21<sup>st</sup> Century: Transformational Diplomacy”. 2007 CRS Report for Congress. Retrieved from: <https://fas.org/sgp/crs/row/RL34141.pdf>

<sup>105</sup> “E- Diplomacy: How technology is increasing accountability in foreign policy”. Retrieved from: <https://www.dw.com/en/e-diplomacy-how-technology-is-increasing-accountability-in-foreign-policy/a-18536742>

<sup>106</sup> Morozov Evgeny. “The future of “Public Diplomacy 2.0””. Foreign Policy 2009. Retrieved from: <https://foreignpolicy.com/2009/06/09/the-future-of-public-diplomacy-2-0/>

<sup>107</sup> Ibid

used as crucial tools for fighting radicalism.<sup>108</sup> In other words, it is a general knowledge that the terrorist organizations and groups use the internet to influence and spread fear, but the governments and diplomats can use the same means in order to defeat them.

Since 9/11 Al-Qaeda has waged “information war,” developed a lot of websites and blogs with radical ideas, and unleashed online pictures, videos, all designed to preserve Al-Qaeda. Al-Qaeda is a globalized phenomenon, it is two in one, a reaction to globalization, and its product. The websites devoted to jihadism increased from 12 in 1998 to more than 4,700 by 2005. It is estimated that the Internet is responsible for around 80% of jihad youth recruitment. Terrorists accepted the digitalization more easily and they are more sophisticated, previously they would communicate via email, but now they encrypt messages. The Internet has become a powerful propaganda tool. The terrorists have become technologically cunning. They use new weapons like the minicam and videotapes, the laptop and desktop computers, email, Internet and WWW access. While the main character of terrorism might remain the same, there is much that it is new and distinct about the terrorist groups such as Al-Qaeda, Hamas and Hezbollah. In the ‘70s and ‘80s terrorist groups and organizations such as the IRA, ETA, and so on relied on traditional mass media to communicate, but today the Internet provided these groups with the ability to spread a message globally at little or no cost, and at the speed of light. The Internet has allowed social activist and democratic protest movements to flourish, but it also gave a chance to terrorists, hackers and criminals.<sup>109</sup>

There are no secrets on the Internet. All the information transferred from one place to another can be caught for example messengers can be captured, telephones tapped, goods hijacked, and spies or whistle blowers will always find ways to leap information. With the internet all of these is much easier. The Internet brings a new dimension to the security of information. Firstly, private information, when made public, may have a serious re precautions for the world affairs. For example, the exposure of the British Government’s policy and legal opinion on the war in Iraq, damaged the reputation of the Prime Minister. Secondly, diplomatic rivals, state and non-state actors (such as terrorist organizations), may try to hack into government systems and take information. To break inside a secure system requires a lot of professional resources. Third, the Internet is becoming vulnerable. Virus or worm attacks can be easily generated. For example, in January 2003, the “Slammer” worm brought down the Internet in Korea and several other Asian countries. Furthermore, the targeted attack in Estonia in 2007, severely damaged the business in the country

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<sup>108</sup> Hallams Ellen. “Digital Diplomacy: The Internet, the battle for ideas & US foreign policy”. CEU Political Science Journal Vol. 5 No.4 Retrieved from:

[http://epa.niif.hu/02300/02341/00021/pdf/EPA02341\\_ceu\\_2010\\_04\\_538-574.pdf](http://epa.niif.hu/02300/02341/00021/pdf/EPA02341_ceu_2010_04_538-574.pdf) pg. 540

<sup>109</sup> Ibid pg. 544-546

and cut off all communication. Assuming the attack was from another state this means that a virtual act of aggression was conducted, and this is only a taste of the risks of the Internet. Terrorist organizations and governments are aware of this weakness. In 2007, Scotland Yard reported, that Al Qaeda had been planning a cyber attack in Britain. That is why since 2001, the Pentagon has been developing a Cyberspace Command to manage the risks of such attacks. Both the US and UK devote a lot of time and money to monitor the Internet and spot threats. Governments can respond to these threats by building secure systems and protected.<sup>110</sup>

International relations are not strangers in this reality. The DNA of diplomacy needs to adapt to the digitalizing world because the world is embracing the internet freedom, cyber security and good governance of the social media. Digital diplomacy opposite of traditional diplomacy represents decentralization and horizontality. Diplomacy will become more public and more dispersed. Controlling and centralizing foreign action will be impossible due to the number of players and the generalized and instant access to information.<sup>111</sup>

## CONCLUSION

Digitalization and the Internet have changed the world. Diplomacy is not anymore what it used to be its successor is digital diplomacy. Foreign policy and diplomacy used to be conducted secretly with acquired special tools and techniques but today everything is public, the people are also taking part in conducting the foreign policy and everything is transparent. Technology so far has been used as a tool for conducting good and bad. The negative outcomes from the use of technology and internet is that it is used by terrorists, hackers, radical movements to generate wars, radical movements and terrorism. Therefore governments and diplomats should use the technology and internet as a means to safeguard and protect humanity by fighting back with the same means to archive the end in itself.

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# **THE CORRUPTION IN THE REPUBLIC OF MACEDONIA - WITH A SPECIAL FOCUS TO THE CITIZENS' OPINION**

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## **ABSTRACT**

The Faculty of Security - Skopje established a Research team which goal was to organize a field Survey concerning the opinion (assessment) of the Macedonian citizens about the corruption. The aim of the Survey was to give a scientific description of the citizens' opinion about the characteristics and consequences of the corruption, and also about the corrupt activities in the country. Despite the fact that the Survey was systematized in several chapters, the Paper shall give a special attention to the following questions: ways of corruption; degree of corruption in certain professions; personal preparedness to fight against corruption; and citizens' opinion about the repressive and preventive measures.

Since the Survey was conducted in the period 2013-2017, the Paper shall present and analyse the collected data in the given five-year period.

**Key words:** Corruption; Republic of Macedonia; Citizen; Opinion; Survey.

## **INTRODUCTION**

Corruption is one of the most high-profile issues in the contemporary world. According to the 2011 "World Speaks" Surveys, conducted by the GlobeScan for the MMC World Service, corruption was the world's most talked-about problem, ahead of extreme poverty, unemployment, the cost of living and crime, violence and security. In low GDP countries, the focus on corruption was even higher, a finding reinforced in a December 2013 statement by World Bank Group President, Jim Yong Kim, that "in the developing world, corruption is public enemy number one" (Heywood 2014, 1). Concerning its defining, in the literature one can find a variety

of definitions for corruption, some divide the term in different types of corruption and some use a really broad definition. In most of them the role of the state is included and corruption is described as some kind of perverted state-society relationship. It is normally understood as the exploitation of public resources and entrusted power by a public official for private gains (Detzer 2010, 3).

Same as globally, the corruption is a serious problem in the Macedonian society. It is a phenomenon that has severe implications over the economy, policy and security, and it can be seen as an obstacle to the country's social and economic development. In this direction goes the last published report of GRECO, i.e. its fourth evaluation round stating "at this stage of the process the performance is clearly disappointing and the country clearly needs to take more determined and focused action in respect of a number of recommendations issued four and half years ago" (GRECO 2018, 20), implying that the relevant authorities have only made an "small" step forward in suppressing the corruption. In the same line is the Transparency International Corruption Perception Index that for 2017 has ranked Republic of Macedonia at 107 place out of 180 countries, with a score of 35. It should be noted, that Macedonia falls under the Region of Europe and Central Asia, for which Transparency International observes that "the worst performing regions are Sub-Saharan Africa (average score 32) and Eastern Europe and Central Asia (average score 34)" (Transparency 2017). In order to explore the corruption in the Republic of Macedonia, a Survey was carried out by a team of scientists of the Faculty of Security - Skopje, who, through the implementation of questionnaires, analysed the citizens' opinion on this serious social problem. Since the Survey was conducted in the period 2013-2017, its collected data represent an overview of the interviewees about several aspects of the corruption, among which are: ways of corruption; degree of corruption in certain professions; personal preparedness to fight against corruption; and citizens' opinion about the repressive and preventive measures. In essence, the Survey's aim was to perform a scientific description of the opinion of the citizens concerning the characteristics and consequences of the corruption and corrupt activities in the country (Mojanoski, Malish Sazdovska, Nikolovski and Krstevska).

## **QUESTIONS RAISED IN FRONT OF THE INTERVIEWEES ABOUT THE CORRUPTION**

One of the aspects of the corruption, which was encompassed by the Survey, was the *way of giving or receiving bribes* in the Republic of Macedonia. Therefore, several responses were provided, like: money in cash, money on account, sponsorship and services of other nature. As mention earlier, the research period covered a five-year period (2013-2017), so the Chart No. 1 represents the answers given by the interviewees about this issue.

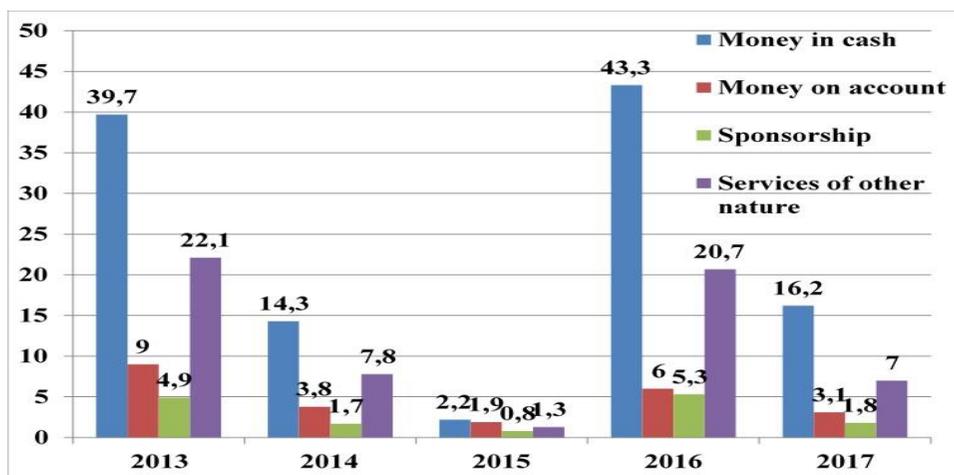


Chart No. 1 Ways of corruption

From the data presented in Chart No. 1, it can be concluded that the percentage of corruption is different according to its way of conducting, as well as for its diversity in different time periods. It is interesting to note that a common characteristic for all five years of research, is the sequence of representation of various ways of committing corruption. Namely, it is usually committed by giving money in cash, followed by services of other nature, transferring money on account, and the least represented is sponsorship. The Survey's collected data can be used for preventing the occurrence of corruption, in particular for the competent authorities that implement operational-tactical measures for the suppression of this crime. Since there is data referring to the corruption's *modus operandi*, an appropriate operational-tactical measures and investigative actions should be applied in order to detect, prove and clarify such crime. In essence, if giving money in cash is a subject of interest, then in the direct contact with the person receiving the bribe, a so-called "trap" is a suitable criminalistic-technical measure to be applied. On the other hand, if money is transferred on account, then measures should be applied that encompass software solutions for tracking the money flow. Next, if sponsorship and services of other nature are in question, then other appropriate measures should be implemented. Therefore, it can be concluded that the methodology for suppression of the corruption and the performance of the relevant authorities shall directly depend on how the crime was committed. In addition, the realization of operational-tactical measures and investigative actions shall depend on the skills and knowledge of the perpetrator that he/she shall apply during the act's conduction.

Within the Survey, different *professions of the persons who have received a bribe* were encompassed, such as civil servant, public official (municipality), police officer,

customs officer, official working in inspection service, university professor, high school professor, politician, doctor, judge, prosecutor, school director, facilitator, etc.

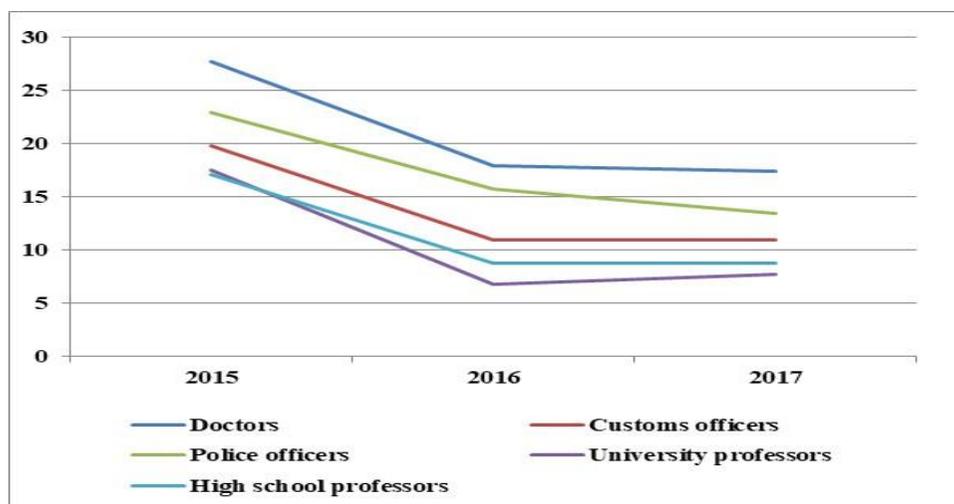


Chart No. 2 Degree of corruption in certain professions 2015-2017

The analysis of the above data on corruptness of certain professions has shown that the most represented professions are the doctors, police officers and customs officers. However, the university professors and high school professors should not be neglected (due to some changes made into the Survey's questionnaire, the data for 2013-2014 cannot be encompassed). From the Chart No. 2, a general conclusion can be drawn up that there is a trend of reducing the corruption in general in all types of professions. Certain small differences can be noted among the professors, i.e. the corruption firstly was more common within the university professors, but afterwards it is decreasing and it becomes more notable among the high school professors. It should be observed that the trend of reducing the corruption is an important phenomenon that should be independently researched and analyzed in order to determine the factors that contribute its reduction in the country.

The interviewees were also asked to evaluate themselves, and the answers about *their preparedness (determination) to fight against corruption* are given in the table below.

**Table No. 1 Assessment of the personal preparedness (determination) to fight against corruption**

Answer		Valid Percent				
		2013	2014	2015	2016	2017
1	I am completely prepared	22,3	18,9	21,2	18,0	15,6
2	I am prepared	36,2	38,9	35,8	34,5	34,6
3	I am neither prepared nor unprepared	23,4	24,6	23,2	22,4	25,1
4	I am not prepared	7,8	7,3	5,2	12,4	12,5
5	I am completely unprepared	2,8	3,5	3,7	3,7	3,5
6	I do not want to answer	7,4	6,8	10,9	8,9	8,7

The assessments of the interviewees can be roughly classified in “positive opinion” (completely prepared; prepared), “negative opinion” (not prepared; completely unprepared) and “neutral opinion” (neither prepared nor unprepared). This classification implies that through the five-year period, the positive opinion prevails, i.e. 58,5% in 2013, 57,8% in 2014, 57,0% in 2015, 52,5% in 2016 and 50,2% in 2017 of the interviewees chose the options “I am completely prepared” or “I am prepared”. However, it is obvious that the percentage for these two options is constantly decreasing starting from 58,5% to 50,2%. On the contrary, the negative opinion over the years has a slight increase from 10,6% in 2013 to 16,0% in 2017 (10,8% in 2014 and 16,1% in 2016, except for 2015 when it was 8,9%). Concerning the “neutral” interviewees or the ones that declared themselves as “neither prepared nor unprepared”, they participate in the total number with an average of 23,7% for all five years. Finally, there were interviewees that did not want to assess their preparedness (determination) to fight against corruption, which average number was 8,5% for 2013-2017, with a highest pick in 2015 (10,9%), and a lowest pick in 2014 (6,8%). The next chart (Chart No. 3) gives a graphic overview of the interviewees’ preparedness (determination) to fight against corruption.

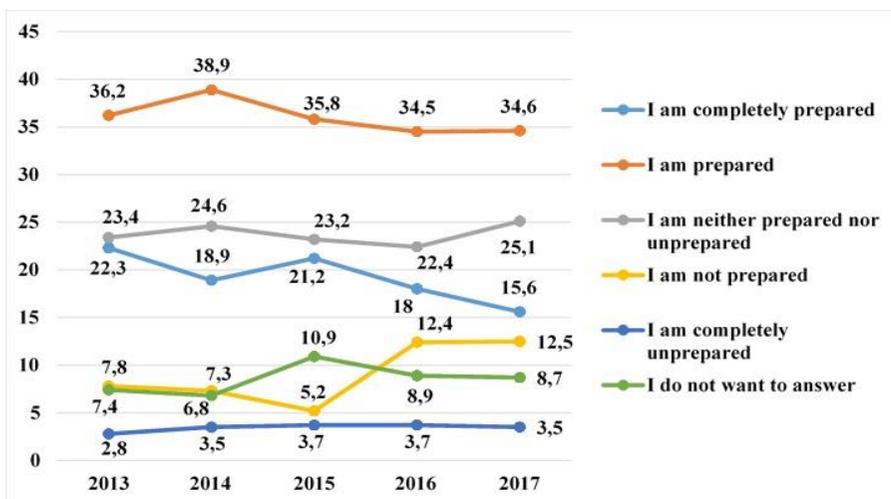


Chart No. 3 Interviewees' preparedness (determination) to fight against corruption

One of questions that was raised before the interviewees was *the contribution of the repressive measures in the development of the system to fight against corruption*. For this purpose, three options were provided to the interviewees and their task was to reply positively or negatively.

**Table No. 2 Contribution of the repressive measures in the development of the system to fight against corruption**

Answer	Repressive measures - Valid Percent									
	2013		2014		2015		2016		2017	
	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No
Can contribute to the improvement and development of the specialized anti-corruption legislation (Option 1)	88,4	11,6	85,2	14,8	78,4	21,6	72,3	27,7	77,7	22,3
Can lead to qualification and development of the specialized	86,8	13,2	83,6	16,4	78,2	21,8	75,2	24,8	76,4	23,6

units and bodies (police, prosecution, judiciary) in the fight against corruption (Option 2)										
Can lead to providing legislative and administrative supervision on regular and systematic basis over the work of the specialized anti-corruption units and bodies and to measure their effectiveness (Option 3)	87,8	12,2	85,0	15,0	78,0	22,0	72,8	27,2	74,1	25,9

The 1<sup>st</sup> Option was whether the repressive measures can contribute to the improvement and development of the specialized anti-corruption legislation. As notable from the table above, 80,4% of the interviewees in the period of 2013 till 2017 chose to answer positively to this question, and the rest of them to answer negatively (19,6%). It is interesting to note that in 2016 there was the biggest drop of the positive opinion. Same as the 1<sup>st</sup> Option, 80,0% of the interviewees stated the repressive measures can lead to qualification and development of the specialized units and bodies (police, prosecution, judiciary) in the fight against corruption. Over the years there is a tendency for decrease of the interviewees that are choosing “Yes” for an answer, with an exception to 2017 when there is an insignificant raise. As for the 1<sup>st</sup> (80,4%) and 2<sup>nd</sup> Option (80,0%), 79,5% of the interviewees had a positive attitude towards the 3<sup>rd</sup> Option - repressive measures can lead to providing legislative and administrative supervision on regular and systematic basis over the work of the specialized anti-corruption units and bodies and to measure their effectiveness. From the given data, it can be perceived that almost the same percentage of interviewees gave their positive opinion about the three options (80,4%, 80,0% and 79,5%), so their ranking which option has been given the most “Yes” by the interviewees is

insignificant. In addition, for all three options in 2013 and 2014, 86,1% of the interviewees have replied positively, but for the years that follow their number is going down (below 80,0%). Despite this fact, it is obvious that the interviewees had a positive attitude towards the provided repressive measures, which is graphically shown in the chart below (Chart No. 4).

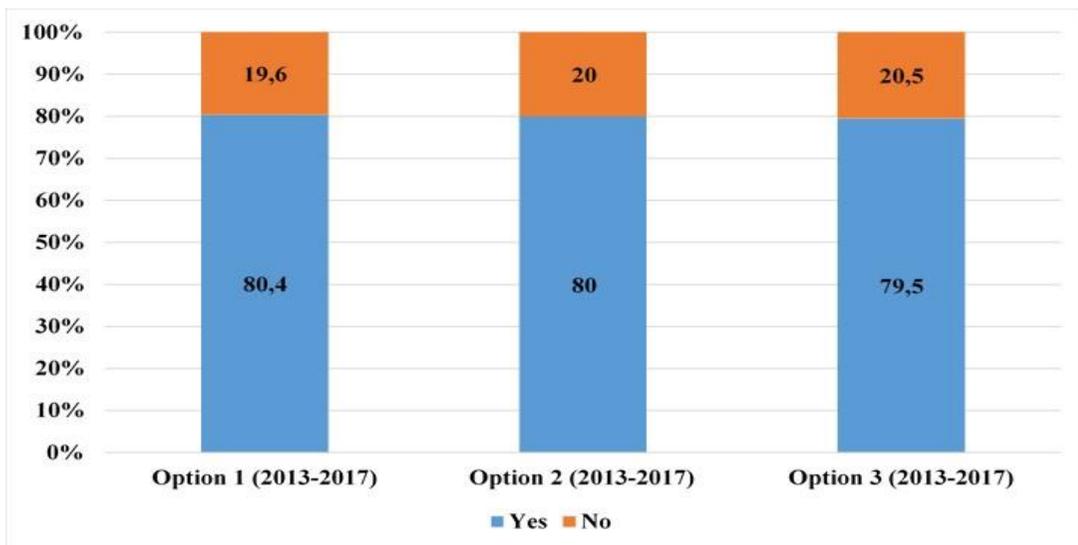


Chart No. 4 Contribution of the repressive measures in the development of the system to fight against corruption

The next question put towards the interviewees was concerning *the preventive measures and their contribution in the development of the system to fight against corruption*. Six options were provided to the interviewees, and their task was to give their positive (by choosing “Yes”) or negative opinion (by choosing “No”), so their answers for five-year period are given in the Table No. 3.

Table No. 3 Contribution of the preventive measures in the development of the system to fight against corruption

Answer	Preventive measures									
	2013		2014		2015		2016		2017	
	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No
Improving and developing a general legislation in order to	89,2	10,8	86,7	13,3	77,4	22,5	73,8	26,2	76,5	23,5

eliminate or minimize the corrupt possibilities and differences (Option 1)										
Adoption and consistent implementation of the personnel policy (selection, recruitment, promotion) in respect of the functionaries and civil servants, which increases the integrity of the organs and institutions (Option 2)	85,3	14,7	82,8	17,2	75,0	24,6	71,7	28,3	73,7	26,3
Developing a system of specialized anti-corruption education (Option 3)	81,6	18,4	79,1	20,9	72,6	27,4	71,1	28,9	73,8	26,2
Developing an information system and availability of information concerning the corrupt acts, and measures	83,9	16,1	79,9	20,1	76,2	23,7	73,3	26,7	76,8	23,2

and activities in the fight against corruption (Option 4)										
Implementing a protection from corruption concerning each organ and institution (Option 5)	88,7	11,3	83,6	16,4	77,1	22,8	73,1	26,8	77,8	22,2
Adopting and implementing a code of ethics about the functionaries and civil servants (Option 6)	84,0	16,0	82,3	17,7	69,7	30,1	65,1	34,9	70,2	29,8

Compared to the repressive measures, the contribution of the preventive measures in the development of the system to fight against corruption for the period 2013-2017 can be ranked. Based on the interviewees' point of view, the 1<sup>st</sup> Option is also firstly ranked ("Improving and developing a general legislation in order to eliminate or minimize the corrupt possibilities and differences"; 80,7% for "Yes" and 19,3% for "No"), followed by the 5<sup>th</sup> Option ("Implementing a protection from corruption concerning each organ and institution"; 80,1% for "Yes" and 19,9% for "No"). The 4<sup>th</sup> Option that encompasses "Developing an information system and availability of information concerning the corrupt acts, and measures and activities in the fight against corruption" holds the 3<sup>rd</sup> place with 78,0% for "Yes" and 22,0% for "No" and the 2<sup>nd</sup> Option or "Adoption and consistent implementation of the personnel policy (selection, recruitment, promotion) in respect of the functionaries and civil servants, which increases the integrity of the organs and institutions" with 77,7% for "Yes" and 22,2% for "No" holds the 4<sup>th</sup> place. Second to the last is the Option 3 titled "Developing a system of specialized anti-corruption education" (75,6% for "Yes" and 24,4% for "No"), and at the end of the scale is the option that was also at the end of the provided options, i.e. the Option 6 with 74,3% for "Yes" and 25,7% for "No"

(“Adopting and implementing a code of ethics about the functionaries and civil servants”). Common characteristic for all six options is that in 2013, and sometimes in 2014, the interviewees valued them much higher than the next two years, with a note that the largest decline is in 2016. But, in 2017 an incensement of the positive attitude of the interviewees can be seen. Same as the repressive measures, the interviewees had a positive attitude towards the provided preventive measures as visible from the Chart No. 5.

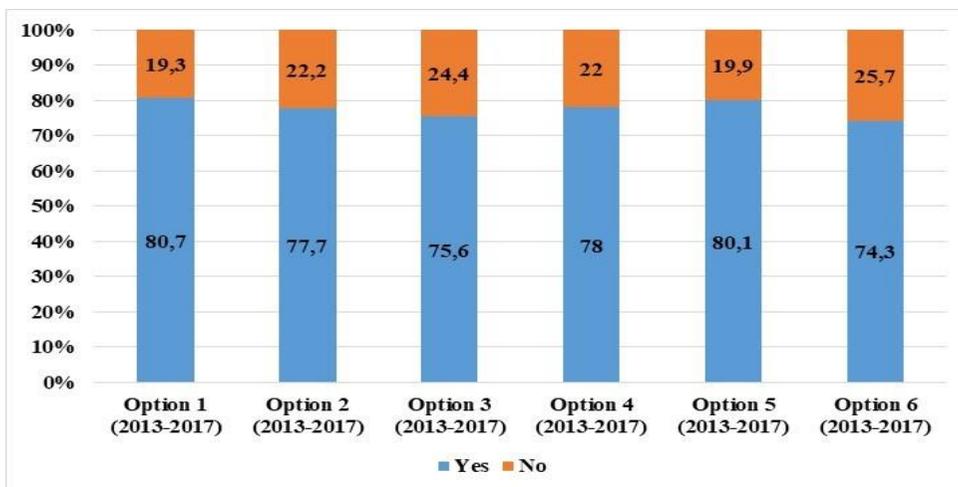


Chart No. 5 Contribution of the preventive measures in the development of the system to fight against corruption

## CONCLUSION

In order to prevent the corruption in the Republic of Macedonia, to have an effective fight against it, as well as to reduce it at the lowest possible level, not only certain measures and activities should be undertaken, but also a wide scope of activities in all spheres of social life, involving a number of stakeholders and competent authorities. In certain organizations and institutions, a special telephone line is introduced for reporting corruption, causes and possible consequences of corruption are identified, professional standards and internal control are implemented, special strategic documents for the prevention of corruption are adopted, and the possibility of abuse of powers is reduced. For example, the Customs Office has introduced a SOS line 197 to report smuggling and corruption among customs officers (Zhivkovikj Davitkova 2018, 82). In addition, in the Macedonian Ministry of Internal Affairs there is a special Anti-Corruption Program, which basic principle is that the corruption in the police in any form is absolutely unacceptable, and zero tolerance of the corruptive behaviour is envisaged.

As for the conducted Survey, and the answers and opinions provided by the Macedonian citizens as an interviewee for the above mention questions, a several aspects can be underlined. Namely, the percentage of corruption differs according to its way of conducting, and is diversifiable for different time periods; most corrupted professions are doctors, police officers and customs officers; the Macedonian citizens are willing to fight the corruption, i.e. they declared themselves as completely prepared / prepared to fight against corruption; also the interviewees have a positive attitude towards the provided repressive and preventive measures in the development of the system to fight against corruption.

Nevertheless, despite all measures and activities undertaken so far, high level of corruption can be noted. In addition, an aggravating circumstance is that the corruption often follows the cases of organized crime, making it more difficult to be detected and proved. This situation, entails, on the other hand, another method of detecting such type of crime, i.e. it enables special investigative measures to be undertaken, besides the “traditional” operational-tactical measures and investigative actions taken by the competent authorities. Finally, a note should be given to the so-called “2015 Priebe’s Report”, that as an urgent reform priorities concerning the corruption has addressed the following: Establish a credible track record on high-level corruption, in particular ensuring that all law enforcement and supervisory bodies have sufficient autonomy to act independently in line with the law (the credibility of the current track record suffers from the absence of a number of high-profile cases from recent years); Overall fight against corruption needs to be reinforced; Improve scrutiny of conflict of interest and assets of elected and appointed officials by establishing a central register of such officials; Work with GRECO experts to establish a new, comprehensive whistleblowing protection mechanism in line with latest Council of Europe recommendations and best European practices (European Commission 2015, 3). The question that raises is whether the Republic of Macedonia has fulfilled the 2015 reform priorities. The answer can be found in the 2018 Progress Report stating “As a general remark is given that the corruption remains prevalent in many areas and continues to be a serious problem. The capacity of institutions to effectively tackle corruption has shown structural and operational deficiencies. Political interference remains a risk.” (European Commission 2018, 7-8). No additional comment is needed.

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## **RIGHT TO HEALTH CARE OF THE PEOPLE SUFFERING FROM RARE DISEASES – CASE STUDY OF SERBIA LEGISLATION**

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### **ABSTRACT**

People with rare diseases are facing with numerous challenges in exercising right to health care. Access to health care system is often limited taking into account that there is still lacking the classification and codification of the rarest diseases. The revision version of the International Classification of Diseases of the World Health Organization (ICD-11) is scheduled to be realized in 2018 and is expected to include the category of rare diseases as well. Serbia amended Health Care Law establishing the centers for rare diseases and adopted the new Prevention and diagnosis of genetic diseases, genetic conditioned anomaly and rare diseases Law (2015). This paper aims to provide analysis of the medico-legal status of patients with rare diseases in Serbia considering the European Union legislation and recent trends in international policy and law in this field.

**Key words:** right to health care, rare diseases, codification and classification system, access to health care, Serbia legislation.

## INTRODUCTION

Research studies in the field of rare diseases are still ongoing in their basic scientific areas such as medicine and biology. This could be a significant challenge for legal researchers to address the legal implications in this matter. People with rare diseases are presented as vulnerable and marginalized social group whose socio-economic rights could be violated, regarding that they affect a very small percentage of the population and that there is still no single universally accepted definition of rare diseases. Consequently, the classification and codification of most rare diseases are lacking, which makes people with rare diseases invisible in health care system. Issues regarding patient-physician relationship in terms of health care and specially genetic privacy and informed consent have been subject of most recent articles in this area (Mascalzoni, et al., 2014; Budysh et al., 2012; Grady et al., 2012, Gainotti et al., 2016; Giannuzzi et al., 2017;). The access of the patients to treatment and drugs for rare diseases (so-called orphan drugs) is limited; therefore the participation in clinical trials is often required. It implies that informed consent is important legal issue to be considered in a process of providing health care. Furthermore, concept of the public health care insurance covering rare diseases diagnostic and treatment procedures is significant for rare diseases patients, especially in developing countries such as Serbia, taking into account the high cost of orphan drugs. In this respect, there is a number of research papers deal with orphan drug regulation in terms of drug development, reimbursement policies and fair drug access (Davies, 2012; Gammie et al., 2015; Mincarone, 2017). This paper aims to analyze medico-legal status of patients with rare diseases in Serbia, primary their access to diagnoses and treatment, taking into account health care and health insurance regulation as well as the regulation that specially address rare diseases issues adopted in 2015. Serbia has received a status of candidate country in a process of accession to the European Union, so the European Union regulation in the field of rare diseases will be considered.

### **DEFINITION, CODIFICATION AND CLASSIFICATION OF RARE DISEASES – CURRENT CHALLENGES**

In so far, there is no universally accepted definition for rare diseases. It differs between legislation and policy although the prevailing view is that statistical criteria regarding the prevalence, less often incidence of the disease, is crucial in defining rare diseases (Richter 2015, 913-914). The problem arises from a small number of person affected (in each country and worldwide), heterogeneity in origin, diversity of symptoms manifestation, and variation in prevalence and frequency of diseases

among states. All this leads to problems in codification<sup>112</sup> and classification of rare diseases. A lack of appropriate definition, codification and classification of rare diseases in medical terms create uncertainty for people affected in achieving social roles and exercising their fundamental human rights. So, some states where patients' organization are strong enacted legislation that is primarily dealing with orphan drugs containing the definition of rare diseases as well (Aymé, Bellet and Rath 2015, 2). The United States of America was the first country that defined rare diseases in the Orphan Drug Act (1983) - "a disease is considered rare when it affects less than one per 1,250 individuals in terms of prevalence" (Kodra 2012, 1026-1028). In European Union, rare diseases are those that affect no more than one in 2000 individuals (Schieppati, et al 2008, 2039) or no more than five in 10,000 people in the European Union (Regulation (EC) No 141/2000 of orphan medicinal products). On the other side, China has the largest population affected but the difficulties in defining rare diseases still remain, and there is no universally accepted definition across the country. In policy documents the definition of the World Health Organization (WHO) - rare diseases are defined as diseases with an incidence of 0.65-1% - is the most commonly used although the definitions of the United States of America and European Union have been used as reference as well (Cui and Han 2017, 148). From patients' human rights perspective the most important issue is to include definition of rare diseases in national policy and legal documents regardless of the fact whether it will be adopted from the WHO, EU or USA documents. The definition needs to be unique and valid across the country.

Defining rare diseases in policy terms is a step forward to dealing with codification and classification issues where all together influence on social and legal status of individuals with rare diseases. Modern diseases classifications (presuppose the codification of the disease) are based on different classification principles, namely, on an etiological principle (infection diseases, external causes), on a pathophysiological (endocrine disorders) or on an anatomical principle (cardiovascular diseases, respiratory diseases) (Mackenbach 2004, 225). The classification principle in a field of rare diseases should be based on a multiple classification criterion, considering the heterogeneity and diversity of rare diseases. The most applicable is the Orphanet classification system of rare diseases. The Orphanet classification system was established under the supervision and with financial support of the European Commission where information about rare diseases was collected and classified in a manner where each clinical entity has been assigned a unique Orphan number (Aymé, Bellet and Rath 2015, 2). This classification was mainly based on scientific grounds where clinical and etiological principle dominated followed by

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<sup>112</sup> Codification means that diseases have an individual, unique code, so that they could be easily recognized within a health information system.

poly-hierarchy approach in the context of rare diseases that affecting several body systems (*Ibidem*). The Orphanet classification model will serve as a base for revising the WHO International Classification of diseases (version 10) whose 11 version needs to include all relevant rare diseases and is scheduled to be realized in 2018.

New WHO codification and classification model will be used in health care information systems providing the identification of rare diseases patients and ensuring entitlement of the right to diagnosis and adequate treatment. It would significantly improve the status of rare diseases patients in health care system, make the patients visible and recognized as a special health category with particular needs that are to be considered from health care policy as well as wider social policy aspect. Patients with rare diseases represent a vulnerable category of health care users whose “vulnerability” could be addressed as a “positive marking” in order to exercise their right to health care (Stojković Zlatanović 2015, 387). Recognition of the vulnerable health status for rare diseases patients in the health information system (special coding according the WHO classification system in rare diseases registries) is necessary in order to ensure their visibility. Moreover, it could be a part of the state positive discrimination policy setting out special measures for health care protection of vulnerable patients. In modern law the concept of specialization of needs of different social and health groups is stressed accompanied by specialized measures that need to be incorporated in domestic legislation (Stojković Zlatanović 2016, 97). The measures of positive discrimination policy supposed to be temporary lasting by the time needed to ensure equity but the specificity of the status of rare diseases patients (“rarity” of the diseases) requires permanent policy and legal answer to address the problem of their invisibility.

## **EUROPEAN UNION REGULATION IN THE FIELD OF RARE DISEASES**

The European Union (EU) engagement in the field of rare diseases was of crucial significance for development of policy and legal framework in the Member States in this matter. The first document that addressed this issue, containing current definition of the diseases, was the Regulation EC 141/2000 of Orphan Medicinal Products. This document was created to set out standards in the field of rare diseases and improve patients care especially access to effective treatment (Rodwell, Aymé 2015, 2329). The main problem of the patients is delayed diagnosis often misdiagnoses, creating delayed therapies sometimes the absence of specific therapies in national health care system that have a great influence to life quality and life span of individuals. Also, the problem of poor medical expertise among health professionals, limited public awareness about rare diseases and a small number of marked approved orphan drugs is noticed (Aagaard, Kristensen 2014, 39). On this grounds, the EU continue to

develop a policy guidelines and adopted in 2009 the Recommendation on an Action in the Field of Rare diseases aiming to address specific needs of rare diseases patients (Dharss et al. 2017, 2). The Recommendation is a soft law document, legally non-binding, that support adoption of rare diseases strategies/plans on national level as a part of public health care policy and law. Along this, arising of public awareness and visibility of rare diseases, research development, the empowerment of patients organizations, and creation of centers of expertise for rare diseases are key elements of the Recommendation and central for national strategies/plans (Rodwell, Aymé 2015, 2331). The EU, also, addressed, explicitly, rare diseases in the Directive 2011/24/EU on patients rights in cross-border health care in Article 13. The Directive was issued on March, 2011 and was to be implemented in Member States national law by October, 2013 (Aagaard, Kristensen 2014, 40). The Article 13 deals with issues regarding EU support mechanisms that would help health professionals in a process of diagnose and treatment of rare diseases, particularly how to use Orphanet database and European reference network<sup>113</sup> (Directive 2011/24/EU on patients rights in cross-border health care). The second part of the Article 13 deals with the subject of cross-border health care in terms of rare diseases, i.e. member states need to set measures in order to make patients, health professionals and health care bodies aware about possibilities offered by the Regulation 883/2004/EC regarding national funding of diagnoses and treatment which are not available in the Member State affiliation (*Ibidem*). The Article 20 of the Regulation 883/2004/EC is important for the medico-legal status of patients with rare diseases, taking into account the availability of specific treatment in national health care system. It means that, if appropriate treatment could not be received in Member State of residence, the insured person could seek care in another Member State with adequate health care resources. But there is a condition regarding authorization by the competent institutions of Member State of residence which will be accorded if the treatment in question is among the benefits provided by the legislation in that Member State and that treatment cannot be given in appropriate time period which is medically justifiable, taking into account patients current state of health and probably course of the disease.

In most member states, patients organization have crucial role in establishment and adoption of national strategies/plans influencing national legal framework in this field. However, the analyses showed substantial differences in rare diseases infrastructure among States where most countries (France, Germany, the UK, Bulgaria) have developed or announced intentions to develop national rare diseases strategies/plans (Dharss et al. 2017, 12). All of them, except France, did not finish the implementation process (*Ibidem*). The economic power of the state plays the

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<sup>113</sup> European reference network is virtual network involving health care providers across Europe created in order to facilitate cooperation between national centers of expertise.

important role in development of rare diseases programs with an influence on the national health care spending.

## **SERBIAN LAW AND POLICY – IMPROVING MEDICO-LEGAL STATUS OF PATIENTS WITH RARE DISEASES**

The Article 92a of the Serbia Health Care Law addresses the issue of rare diseases in terms of creation of centers of expertise (centers for rare diseases) as a part of current health care institutions that need to be established on tertiary level of health care. Under the jurisdiction of the centers of expertise are - diagnostic procedures for patients with rare diseases, prenatal and neonatal screening, genetic counseling, care of patients with rare diseases, keeping records of patients with rare diseases for the territory of the Republic of Serbia (rare diseases registries), cooperation with foreign reference centers for the diagnosis and treatment of rare diseases, as well as with a network of European and world organizations for rare diseases, and continuous education in the field of rare diseases (Health Care Law, 2017, 92a). Draft Health Care Law (2017) was not changed in the part that deals with rare diseases. Health care Insurance Law does not contain specific standards regarding the costs of diagnostics and treatment of rare diseases that will be covered by public insurance. However, Serbia adopted Regulation on conditions of cross-border health care. According to this document, treatment outside domestic health care system could be approved to insured patient where all cost of the treatment in question will be reimbursed if disease could not be successfully treated in Serbia. This provision has been applied to all diseases including those that are recognized as “rare”. The list of rare diseases could be found on the web site of the Ministry of Health but it is not clear how (what criteria has been used) and who (what institution) did the list. However, for the treatment of rare diseases it is necessary to provide proof of low incidence of the disease according to statistical data that need to be gathered from health care institution who suggested cross-border treatment. Also, there is one more condition – the treatment conducted abroad must be completely successful i.e. should lead to full hilling healing of the patient. This provision is questionable given that most rare diseases are serious, chronic condition, life-threatening with frequent phases of remission often leading to long-term disabilities, so it could not be expected to claim with great possibility a completely hilling a complete healing of the patient. It limited the patients’ suffering from rare diseases in exercising their right to health care and seriously endangered the principle of equity in health. Furthermore, in the Regulation, rare diseases have been explicitly mentioned in terms of diagnosis procedures. It means that diagnosis could be determined abroad only for “rare” not for other so-called “common” diseases. Under the diagnosis of rare diseases, it is understood the sending of samples of biological material for analysis abroad and the

condition is the same as for treatment – diagnosis could not be provided in the Republic of Serbia. It is important to notice that this document beside the criteria of law incidence, define rare diseases as genetic in origin excluding protection for the patients whose genetic status could not be bond for particular rare disease. Having said that, privacy in terms of diagnostic procedure is important issue to consider, particularly when sensitive genetic information had to be collected (Stojković Zlatanović, Sovilj 2017, 188). Serbia adopted the Prevention and diagnosis of genetic diseases, genetically conditioned anomaly and rare diseases Law in 2015. The intention of the legislator was to give narrow explanation of the diagnostic issue in the field of rare diseases aimed at dealing with the problem of delay in diagnosis and misdiagnosis in this matter. But if we analyze the article 29-30 dealing with rare diseases diagnosis, it could be inferred that provisions are almost the same as those in the Regulation on conditions of cross-border health care. In Article 31 the period for determination of the diagnosis in domestic health care system is limited to six months. If, after that period, health condition of the patient deteriorates, special Multidisciplinary Health care Commission<sup>114</sup> will give the recommendation for conducting additional diagnostic procedures abroad. The final decision will be made by the Republic Health Care Insurance Fund.

At the time of adoption, the Prevention and diagnosis of genetic diseases, genetically conditioned anomaly and rare diseases Law was announced as law that will particularly address the issue of rare diseases resolving the main problems of patients in their access to health care. This Law only repeated the provisions from the Regulation on cross-border health care addressing only rare diseases that are genetic in origin. Meanwhile Serbia joined the active reforms in health care sector, and amended basic health care legislation (Health Care Law, Health Insurance Law); it also adopted modern Biomedical Assisted Fertilization Law in 2017 (Sovilj, Stojković Zlatanović 2017, 286). New additional standards addressing the issue of health care for patients with rare diseases are not contained in these documents. The characteristics of data about rare diseases patients that need to be collected by health care institutions are not addressed in the Draft of Health Care Law. It is not clarified the issue of whether registers will be maintained by the rare diseases patients or by rare diseases. Patient registries need to be organized databases that contain information including demographic, medical, and family history that is being collected, stored, and available for retrieval via standardized and secure methods (Lochmüller et al. 2017, 1298).

## CONCLUSION

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<sup>114</sup> According the data presented in a Bulletin of one of the patients' organization for rare diseases the Multidisciplinary Health Care Commission has not met more than 3 years.

Serbia regulated centers for rare diseases and set out conditions for diagnosis and treatment outside of national health care system by legally binding documents although there is still no comprehensive policy framework represented in the form of strategy document as recommended by the EU action policy in a field of public health. The adoption of the National strategy for rare diseases was announced in 2014 but until now the document was not presented to the public. So, a number of questions regarding medico-legal status of patients with rare diseases still remain open. Nationally accepted definition of rare diseases, the question of standardized registries, privacy issues concerning data sharing and protection of the databases in centers of rare diseases are noticed as challenges that need to be addressed in the policy documents. Additionally, current provisions presented in the Prevention and diagnosis of genetic diseases, genetically conditioned anomaly and rare diseases Law and Regulation on cross-border health care about treatment and diagnosis of rare diseases outside the national health care system could limit patients with rare diseases in exercising their right to health care. In Serbia, the provisions regarding treatment and diagnosis outside the national health care system are set out on the same basis as those in the EU, both requiring the authorization by the competent national authority. The problem arises from the provision requesting the “completely healing“ of the patient who received health care abroad. The empowerment of patients’ organizations that was set out by the EU regulation is another issue that needs to be considered in a Serbian policy approach in this field. Patients’ organization are leading force when it comes to understanding the needs and specificity of medico-legal status of individuals living with rare diseases, especially in terms of so-called “ultra-rare” diseases. Their role in establishment of public policy and law could not be neglected and public authorities must cooperate in a process of setting out and implementing the adopted standards. Moreover, the experts from medicine science, biology as well as social sciences (sociology, psychology and law) must participate in adoption of the national strategy for rare disease.

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## CONTEMPORARY THREATS AND RISKS IN CORPORATIONS

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### **ABSTRACT**

The process of globalization, internationalization and integration in recent decades has created a completely different social space for the business operations of corporations both nationally and internationally. Inclusion in international security integration determines the security goal of each national state. It is building assumptions and conditions for free, fair and stable economic and political development and development of a stable and economically prosperous society that will be capable of long-term development and maintenance of their own effective security mechanisms and resources, and to successfully meet the security challenges, risks and threats.

Corporations and other business entities work in an existing environment full of security challenges and a wide range of threats.

In order to prevent the negative consequences and the effects of the threats, and to minimize the risks on the one hand and to increase stability, competitiveness and profitability on the other hand all companies pay great attention to corporate security. In the introductory part of the paper, the author will analyze the threats generally in modern companies and criminal activities that most often and most dangerously affect companies (property crime, cybercrime, criminal offenses against intellectual property and crimes against the general safety of people and property). Furthermore, the author determines the awareness and the role of management as one of the key elements in the realization of corporate security. In the final part of the paper, the author sets out the program for education and development of the security culture of the employees and the security management in the contemporary corporation.

Subject of paper are the forms of threats in modern corporations and the role of management in achieving effective business operations of the modern corporation.

Purpose of research is the importance of contemporary risks and threats in the field of corporate security.

**Keywords:** threats in modern corporations, risks, criminal activities, management

## INTRODUCTION

According to the guidelines of the European Union, corporate security in corporations is defined as integral security (Ivandić, Karlović & Ostojić, 2011) which includes security and security issues, which, in turn, includes information gathering, security assessments and risk assessments, information security, crisis management, fire protection, explosions and accidents, protection of safety and health at work, and more. The analysis of the situation in the Balkan countries shows that a significant part of the current functioning of the corporate security within the business entities is still connected to matters that in the broadest sense relate to the physical and technical security of persons, property and operations of economic companies, the internal factors that they organize and direct them, as well as the engaged external or internal entities that implement it in practice.

By analyzing the definitions of the term corporate security in scientific literature, the author determines the contents of corporate security: (Gerginova 2015, 26-27) detection of fraud, criminal activities, violations as a threat to the protection of persons and property in the corporation; it is about integrated security as performing a variety of different functions which need to be synchronized, a function of the controlling corporation that manages the coordination of all activities within the business, and which relates to security, continuity and security; the correlation of corporate security with corporate security responsibility; corporate security is a strategic function such as the elimination of all risks and threats that may affect business activities and the achievement of business success; minimizing the risk factors; business operation in times of crisis, i.e. overcoming the crisis and restoring normal operations, corporate security is working on creating plans and implementing measures aimed at: protecting the user of services, protecting employees in the business organization, protecting the property owned by business organizations, protecting the information and the reputation of the business organization against material damage, criminal activities etc.

Providing the security of the modern corporation is linked to the achievement of the goals and values of the corporation: preventive action directed towards the elimination of all risks, reduction of the endangering actions to the lowest possible extent; business operation in times of crisis, as well as overcoming the crisis, increasing productivity and fostering competitiveness, reducing security risk to the smallest possible extent, and preparing measures that are taken if incidents, hazards and harm occur, corporate security must be involved in the processes of introducing new technologies in order to be able to predict the security risks, but also to propose measures by which the risks would be reduced to a minimum.

In the scientific-professional literature, as a result of numerous polemics and debates, it has been accepted that within the business systems there are three common reference objects of protection: persons, property and business of the company or other economic entity.

The category of persons includes: all employees (managers - managers and direct executors) in the company, as well as other persons who are on any basis staying within the company: company clients (visitors, buyers of goods, users of services), business partners (suppliers, contractors) and others (Daničić, 2005, 7).

The property of a company in the narrow sense means the right to own movable and immovable things, monetary assets and securities and other property rights. In a wider sense, the company's assets include everything that the company has achieved with past labor and with its current appearance on the market: its name, trademark, corporate image, business data and information, fixed assets, spare parts, raw materials, a process of production, products, inventions and innovations and profits. Business operation of the company is the daily active relationship and work process, aimed at achieving a better and stable position of the company on the market and increasing its property (Daničić, & Stajić, 2008 : 47).

## **THREATS AND FORMS OF ENDANGERING IN CONTEMPORARY COMPANIES**

The corporation as a business entity has different properties whose nominal and usable value varies depending on the market conditions, infrastructure, capital, financial assets and other values that can be exposed to threats or may be left to physical decline and various forms of alienation.

In scientific literature, both domestic and foreign, there are numerous criteria for the division of threats that endanger the security of the company or the economic system as a whole. The following three divisions of threats are accepted in theory and practice: natural disasters (floods, storms, fires, earthquakes, etc.); technical and technological catastrophes (explosions, chemical accidents, major accident installations, etc.); social ie those created by man with his actions.

According to the criterion - source and carrier of threats, threats can be divided into three categories: *Internal forms of threats*, where carriers or direct perpetrators of certain actions or procedures (the ultimate effect of which may have negative consequences for the business of the company) are the employees themselves inside the company. They may, by acting or not, with planned and conscious actions or unaware of negligence, cause greater or lesser harm to the company, which may adversely affect its overall business, corporate image and reputation in the business world, that is, is reflected by the reduction of the company's assets and profits. In modern conditions, employees through various forms of alienation and usurpation of

the property, through unauthorized distribution of business information, products and services, endanger the persons, property and business of the company (Keserović, 2010, 337).

*External forms of threats* refer to all forms, actions and procedures that do not necessarily have to be incriminated or sanctioned by law and come from outside. So the bearers are external actors (outside the company), and most often it can be other companies, individuals from the business world, various interesting or lobbying groups, and often the countries themselves or its institutions. There are numerous examples where companies or individuals from the business world or politics in the face of fierce competition and market competition, through various channels and in different ways, undertake certain measures and procedures against other companies in order to achieve survival, ensure competitiveness and increase profits. This group of threats is dominated by emerging forms in the form of unfair competition, disabling access to the market, raw materials or labor (Komarčević, Pejanović & Živanović, 2012, 35).

*Combined emergent forms of threats* are also common, when there is a common appearance and action of external actors with actors inside the companies.

Finally, in the third division, in view of the criterion - from which area they come, all threats and risks are classified into six categories: economic threats, information threats, social threats, legal threats, criminal threats and political threats. It is undisputed that business entities in the course of their business cycle face a multitude of diverse threats whose catalog can be impressive with a variety of forms of manifestation. During their business operations and at different times, individual companies may be exposed to the action, the impact, or the manifestation of threats of pure economic nature (for example, various restrictions, sanctions, restrictions that arise as a result of certain changes in the market, the action of economic policy measures or the decision of a government or line ministries).

In forms and threats of internal origin, we can say that material damage, damage, dysfunctions that occur accidentally, due to negligence or because of negligence and ignorance of the employees or the responsible or the persons in charge, dominate. It is the most common form of threats to business systems and causes enormous damages that rarely take the responsibility of the individual or employees. There are also varied forms or modalities of threats that are primarily the result of conscious or deliberately motivated action of individuals or groups. The range of such actions is large, starting with the usually alienation of materials, equipment, objects owned by companies, through various forms of economic crime to severe forms of security threats such as diversion, sabotage, etc.

Often internal forms of threats also arise due to violation of business and security procedures, due to unethical or disloyal behavior of employees towards the company, etc., Within the economic crime according to the number of occurrences and damage

caused, the biggest danger to the corporation is corruption, unconscientious work, abuse of official position or authority, embezzlement, acceptance and giving of bribes, as well as many other crimes as well as numerous economic offenses.

External forms of threats are also manifested through different modalities. The most common are the actions related to property crime, such as the illegal alienation of raw materials and products. However, various forms of political crime have also recently been present.

In order to achieve profit or market survival, certain companies sometimes take unlawful business practices from the point of view of business ethics to the detriment of other corporate or commercial systems in some countries. In this group of threats are various kinds of unfair competition, threats to business interests and property, prevention of access to foreign export markets, boycotting of other companies, etc. Some extraordinary developments that arise during natural disasters, technical and technological accidents, accidents or incidents and crises inside the company are also widespread and are a common form of threats to property, persons and business in the corporation. Material damages as well as damages of non-material nature can have unforeseeable consequences both by the company itself and by the economic system in which the company operates.

In practice, businesses face a wide range of threats that are characterized by concealment, spread or diffusion in terms of business processes or segments of companies in which there are limiting opportunities for their timely detection. There is a wide range of hazards, threats and risks that currently or potentially threaten the core values of the corporation. Some threats are constantly present, as is the case with some emergent forms of criminality, while other threats have changed their form of manifestation, and thus received more sophisticated content and form, and at the same time new forms of threats, which are unknown in criminological-criminal or in security practice. The modern phenomena of threats are the result of man's conscious action and follow the accelerated economic, technical and technological development and, accordingly, quickly adapt to the newly created working conditions of the economic entities.

Every company, regardless of its internal or proprietary structure, is exposed to negative influences that directly or indirectly endanger its business, property and the safety of its employees. All companies are exposed to threats, regardless of the form of ownership, regardless of the work they perform, the size and the estimated value (Komarčević, Pejanović & Živanović, 2012, 34).

However, the extent of the threats is not the same in all companies, but directly depends on the things that it is doing, from the location where it is and from what kind of property it has. The practice has shown that all those companies that have a higher amount of cash, excise goods, products with higher market value and so on

have a pronounced and increased degree of exposure, vulnerability to certain types of threats and criminality compared to service providers.

Social threats are manifested in the form of dissatisfaction with the workers with their social status and in more favorable situations and with the appearance of a strike, with an interruption of work, with social unrest, or with a massive occurrence of alienation, destruction or illegal possession of property, capital or other values of the company by individuals or criminal groups.

The following reasons causing dissatisfaction among workers are certain legal threats in the form of non-existence of certain legal provisions, inability to conclude or implement legal arrangements in the form of a contract, investment programs and the like. And finally, certain threats can come from political structures in whose background can be found the interests of foreigners (Komarčević, Pejanović & Živanović, 2012, 36).

## **FORMS OF ENDANGERING THE BUSINESS OPERATIONS OF CORPORATIONS**

The very process of business of the company is exposed to the negative impacts of various emergent forms of threats. For this protection segment it is characteristic that it can be endangered in every kind and at every stage of the work process. This means that the threats can occur in the fields of production, trade, foreign trade, foreign exchange operations, in the area of social security financing, banking and treasury business.

Instead of the term "economic crime", the term "corporate crime" is used more often. The main feature of corporate crime is that it represents a dynamic category that constantly adapts to changed circumstances (Komarčević, Pejanović & Živanović, 2012, 38).

Criminology experts believe that corporate crime is multinational, heterogeneous and very flexible and involves a wide-ranging diapason of incriminating acts that include traditional crimes, economic offenses but also some new works that are set out in the criminal justice system.

In addition to standard crimes such as fraud and forgery of public documents, there has also been an extensive increase in the forms of economic or corporate crime, such as: the forms of criminality in the field of fiscal obligations (such as the various modes of non-payment of tax obligations), criminal acts in the area of turnover tax, payment of salaries, etc. and a special danger is the more common phenomena and different modes of money laundering.

Authors Komarčević, Pejanović & Živanović mention six categories of corporate crime in the area of modern business: administrative area (bookkeeping), ecological area (environmental pollution), financial area (tax violations, illegal payment ); labor

and legal area (failure to report workers or failure to report their actual salary, work in black, etc.), production area (product safety, declaration), unfair trade (acting against competition with false advertising) (Komarčević, Pejanović & Živanović, 2012, 38).

The listing of all those categories as well as the specific crimes that tend to rise have not been exhausted and the list of incidents of incriminating acts is also not the final list. Also, many other contemporary forms of threats to companies are not stated and explained because they are not typical for domestic business entities and companies. They are characteristic exclusively for multinational corporations, for big companies and giant companies that have a direct influence on the creation of the foreign policy of their home country and thus shaping the international and, above all, the economic system.

## **NEED FOR SAFETY MANAGEMENT**

Management represents a process of coordination of the factors of business operation, that is, the process of planning, organizing, managing and controlling the activities of the employees in order to achieve the attainment of organizational goals (Daničić, 2009, 16). Security management denotes resource management aimed at achieving the company's identified security objectives. The new phase in the development of management also follows the development of companies that need more systems and structures, which is why the organization of companies changes. Namely, human needs are growing, and natural resources for their satisfaction are limited. Security management should provide the work of the corporation under normal conditions, in times of crisis, emergency situations and accidents, as well as ensuring the continuity of operations after the crisis and emergency situations. In order to secure the work of the corporation, it is necessary to act proactively and reactively. Proactively operates in normal operating conditions, in which companies operate in the course of their existence.

Reactive action is applicable in crisis and emergency situations in which appropriate procedural activities are undertaken. All reactive procedures are planned and performed in the normal mode of operation, which is an integral part of the proactive action.

Management in order to achieve security in a modern company should follow the two basic groups of causes of crisis that are affecting corporations:

- External causes that occur in the company (general market changes, changes in industry, global economic crisis, political changes, legislative changes, natural disasters).
- Internal causes, which are within the same corporation (inadequate and unusual management, incompetence, immoral leadership, underestimation of

public opinion and subordinates, inefficient communication system, weak organizational culture, dissatisfaction and lack of motivation of employees, absence of control of employees, improper organization of work) (Gerginova, 2017, 74).

*Program for educating and developing the security culture of employees* - In scientific literature many authors point out that systemic education of employees in order to raise their level of awareness and security culture is an indispensable factor in reducing the damage that threatens the corporation from various types of threats. Regarding this, it is emphasized that education must be conducted both in the employment phase and in continuity during the company's operations. In practical terms, it is important that the employee education programs be directed towards the implementation of the prescribed processes and procedures of the corporation in practice. In addition, employees must be encouraged to change processes and procedures, especially in cases where existing ones are inapplicable in practice and when new ones are necessary, primarily because of emerging situations caused by technological changes and the advancement of work processes.

The employees are obliged to respond adequately and act in relation to identified irregularities and omissions, and it is urgently necessary to inform the higher levels of management in the company about the established and undertaken measures and activities. The senior managers in the company are obliged to constantly monitor and perceive irregularities and omissions in the realization of the business processes, to verify the performance of the work processes and to identify the same or similar threats to the other facilities or premises of the corporation.

Upon completing the procedure for checking the performance of a particular working process, it is necessary to draw a conclusion and a decision whether the registered security event is caused by a secondary omission or the usual behavioral pattern, whether its cause is a subjective attitude of the individuals or is an objective fact, which has arisen as a series of unforeseen circumstances and situations, ie to verify that the applicable working rules and other security procedures are in accordance with reality, and if they do not comply with them to conclude and that they are inapplicable (Gerginova, 2017, 70).

To ensure proper functioning of the corporation and protection from criminal conduct, it is necessary to continuously take a number of measures and activities by the corporation and by cooperating with the police, the Public Revenue Office and other relevant state institutions. The Ministry of the Interior is one of the state entities in the security system, which should cooperate and assist in the functioning of the system for securing persons, property and business in the company. That relationship with the Ministry of the Interior and the security system, that is, its role and place in the functioning of the security system, is an important link without which the system itself is unable to function adequately and respond to the challenges associated with

time and space. In parallel with the development of the system, which was conditioned by the new emergent forms of threats, the development of certain organizational units at the Ministry of Interior, which represented the country's necessary response to the new forms of crime, also followed. Experience shows that an active role of the Ministry of Interior is necessary, which, in addition to standard and routine work, already exists in practice, directs its work and advocates the continuation of studies and assessment of risk assessment in the future. This makes it a reason to be able to timely support the discovery of the source of threats, the identification of the dangers that come (proactive action) and / or the routes and methods of recovery from certain risks (reactive action) in order to reduce the negative consequences. This task must be carried out by the Ministry of Interior in cooperation with other participants in the realization of security, that is, the system of protection and other institutions and organizations.

In order to effectively accomplish corporate security, it is also important to investigate the legal regulations, which determine the conditions under which a legal entity can perform this work and the authorizations of the employees in the companies and who perform the security activities. Finally, the successfully realized activities regarding securing persons, property and functioning of the companies and achieving proper cooperation with the police in the security system can be achieved by professional staff, which also implies certain types of education at all levels of performing these activities. We can conclude that for the efficient realization of security in the modern corporation it is necessary to realize the following contents:

-acquiring knowledge that corresponds with modern security situations and provides continuity in the business of the corporation; continuous analysis of the causes and forms of endangering persons, assets and operations of the corporation that should be expected in the future; assessment of the degree of endangerment of persons performing activities in the corporation related to the protection of its vital values. In today's open market competition, each business entity has the opportunity for business success. At the same time, that entity is vulnerable regardless of whether the dangers to which it is exposed is due to fierce market competition or arise from general uncertainty. Corporate managers in the past have never had such a need and understanding of the threats that their company faces. Unlike the previous period, today no corporation is completely immune to the factors of surprise, that is, "sudden blows". Corporations, if they want to work successfully in modern conditions, must anticipate future events and threats, and top management is obliged to define primary business responses to all challenges. In addition, the operation of today's corporations cannot be observed in isolation, but it is related and depends on a number of circumstances and events:

-Precise the competencies and powers of the people working in the company works on protecting its vital values (Reputation of the company on the market, its corporate

image (reputation), morals and motivation of employees, Strategic development plans, Competition analysis), and determining the state of expertise and motivation of persons working in the company;

- Organization and realization of physical and technical security in all buildings that belong to the company;

-Harmonization of the normative acts in all segments of security, with the national regulations and the standards of the European Union.

## **CONCLUSION**

Working in an unstable environment, today companies are exposed to many threats and risks that are characterized by versatility, diversity in the forms of manifestation, concealment whereby the forms of manifestation become flexible and sophisticated i.e. quickly and easily adapt to the changed economic environment and to the broad social space. Modern forms and risks of threats manifest in a different way a harmful, destructive negative influence or effect of personal safety of employees, property, capital and in general regard to the business of the company - the corporation. Within the framework of the paper, the author analyzes the threats and risks that directly or indirectly endanger the core values of the corporation.

The emphasis is placed on the most dangerous occurrences and threats of endangerment, which are the crimes as well as those that have a detrimental effect on the achievement of the business goals and in general the normal functioning of the business processes in the company. There's a need for a symbiosis of efforts in resolving security issues in the corporate sector, at the state level and at the level of business entities. The general situation regarding the business operations of the economic entities from the aspect of security is characterized by the following: the corporation, above all, its strategic management must support the growing business needs in terms of preserving competitiveness, profitability and stability. However, at the same time, the corporation's management is obliged to prevent or eliminate numerous sophisticated dangers, asymmetric threats and possible risks, which means organizing numerous protection mechanisms with pre-designed security procedures for protection.

The goal of corporate security is at least double: protecting the interests of the corporation and promoting personal positions in the domestic and internationally competitive business environment, as well as enabling the society and the state to meet the basic needs.

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# **TACTICS AND TECHNIQUES WHILE PERFORMING OF ABUSE OF PAYMENT CARDS IN THE REPUBLIC OF MACEDONIA**

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## **ABSTRACT**

Computer crime with elements of abuse of payment cards in the Republic of Macedonia is on the rise and the perpetrators use appropriate tactics for providing data from payment cards and their abuse in order to obtain illegal property benefit by withdrawing money from an ATM or by electronic payment. To obtain payment card data use appropriate techniques and means for providing data and means for making false payment cards. The perpetrators of this crime are joined by electronic communication, in groups of national and international character, whose purpose is to provide data on payment cards and selecting victims according to the amount of funds in the bank accounts and the realization of a criminal attack. For the provision of computer data for accounts of legal entities and natural persons, the perpetrators use certain devices, but also techniques for breaking through the systems for protection of bank data and their abuse. In the paper the theoretical analysis of the legal features of the object of a criminal attack is made, an analysis of the criminalistic practice of the Sector for Cybercrime and Digital Forensics within the Ministry of Interior of the Republic of Macedonia for the period 2013 - 2017 and on the basis of the analysis of the criminal - legal events have been drawn indicators of the tactics and techniques of perpetrators in order to build an operational strategy for the timely detection, clarification and provision of electronic evidence acceptable to the public

court organs. But the aim of the labor is also raising the awareness of the scientific and expert public about the danger of this type of criminality, but also the awareness among the citizens for a certain degree of their prevention when using and keeping their payment cards.

**Keywords:** computer crime, payment cards, abuse, electronic evidence, operational strategy.

## INTRODUCTION

Computer criminality is a crime of the present and a crime that will be glorious in the future. In parallel with the development of information technology, the possibilities for abuse of the same for criminal purposes are developed and improved. A certain group of criminals who have computer skills, knowledge and skills use them for criminal activities in order to gain high criminal yield. For that purpose, they use computers, computer systems and networks, as well as special devices for securing bank financial data from accounts of individuals and legal entities and their appropriation. Criminal activity is a complex process consisting of providing data, making fake payment cards and using them. But criminal activity where only the data from payment cards is important, and they are used in the electronic commerce "e-commerce". Skilled criminals use the Internet skills that become a "teacher of skills"<sup>115</sup>, but also the ability to quickly and efficiently communicate and connect criminals who electronically connect in the most developed and widespread solid criminal networks and respect the "rules of the game" that accomplish high criminal proceeds to the detriment of persons who do not know them.

Some of the criminal's act on their own, but they are more active in organized criminal groups, which are "recommended" by already known members of the group. In criminal groups or wider organizations, each member has its own criminal role and tasks that need to be realized. They use special tactics and techniques of criminal activity, as well as techniques of concealing criminal proceeds by using special schemes and methods of "concealing" of criminal proceeds and generating them in another type of movable or immovable property.

The most common form of criminal activity using information technologies and Internet communication is the misuse of financial data and payment cards that are more widely used in economic relations. Payment cards, as modern non-cash payment instruments, are used to identify the issuer and the cardholder, to the

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<sup>115</sup>Urosevic V. and Uljanov S., Influence of cardinal forums on the expansion and globalization of online payment card abuse, NBP Journal for Criminal Justice and Law, Criminal Police Academy, Belgrade, 2010, p. 13.

financial derivatives (ATMs), in order to provide for the entry of data for the given transaction. Today there are two types of payment cards - debit and credit, or all covered under the term payment cards. Payment cards shall mean any type of payment facility issued by banking or other financial institutions that contain electronically generated numbers that enable the execution of any type of financial transaction.<sup>116</sup> Payment cards are used for extracting cash from transaction accounts of citizens and legal entities or for electronic payment of POS terminals in commercial enterprises.

The number of transactions with domestic payment cards realized in the trade in Macedonia is 18 transactions per capital, which is two and a half times lower compared to the countries of Central, Eastern and Southeastern Europe (45 transactions per capita) and several times lower in relation to the old EU member states (102 per capita transactions), according to the analysis of the National Bank of the Republic of Macedonia for 2016.<sup>117</sup>

Electronic payment by electronic money is an exchange of material assets through a telecommunication infrastructure, such as Intranet banking systems or the Internet as a network. Electronic money allows the purchase of goods and services using a computer within the commercial computer networks (eg. Internet) or working banking networks (eg SWIFT). Practically, electronic money in daily transactions replaces cash and checks. On the other hand, it allows business entities to work directly through computer networks. This type of payment has also been subjected to many types of abuse, both inside and outside the system, by perpetrators of criminal acts who receive the information through misuse of official authorizations, using technical means or in they communicate the course of communication and later use them to divert their accounts, accounts of co-developers, helpers, etc.

Criminal activity with elements of abuse of payment cards is reduced to two basic forms of execution, such as: Making and using a fake payment card and making, supplying or alienating counterfeiters, in both cases funds are being procured and special techniques are used of committing crimes.

The misuse of real-time payment cards and the production of fraudulent payment cards is a crime that has a trend of developing and inflicting huge financial damage and gaining "financial gain in an illicit way" for criminals who have decided to deal with this type of crime. World statistics say that the fraud of processing payment cards reached a total of 32.320 billion dollars, with a loss of \$ 21.84 billion in the US alone. These data compute all types of transactions (on line and in person), including

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<sup>116</sup> Art. 122 cr. 15 of the Law on Amending the Criminal Code of the Republic of Macedonia, Fig. Journal of the Republic of Macedonia no. 114/09.

<sup>117</sup> [http://www.fakulteti.mk/news/17-07-18/zloupotreba\\_na\\_platezhna\\_kartichka\\_mozhe\\_da\\_vi\\_se\\_sluchi\\_i\\_koga\\_povlekuvate\\_pari\\_od\\_bankomata.aspx](http://www.fakulteti.mk/news/17-07-18/zloupotreba_na_platezhna_kartichka_mozhe_da_vi_se_sluchi_i_koga_povlekuvate_pari_od_bankomata.aspx)

transactions on POS Terminals, ATM ATMs, E-commerce and online stores are specifically a criminal offense, according to global analysis, transactions with stolen data from payment cards will reach \$ 25.6 billion by 2020. By comparison, in 2015, a damage amounted to \$ 10.7 billion, money fraudulently acquired by criminals.<sup>118</sup>

The Macedonian legislator, following the recommendations of international legal acts, especially the Convention on Cyber Crime, has incriminated several computer crimes that may have features and abuse of payment cards (computer fraud, abuse of personal data, etc.). As separate criminal offenses underlying the criminal cases are: Making and using a fake payment card "Art. 274 - b and the Making, Purchasing or Disposing of Counterfeit Assets under Art. 271 of the Criminal Law of the Republic of Macedonia."<sup>119</sup>

The analysis of the Macedonian criminal practice is aimed at obtaining information on whether and how much this crime is present in the Republic of Macedonia, which are the most common ways and techniques used by criminals, whether and how they are joined and act within national or international groups and whether and how Macedonian law enforcement agencies cooperate in detecting, clarifying and proving this kind of cybercrime.

## **CRIMINAL - LEGAL ASPECTS OF MISUSE OF PAYMENT CARDS**

Abuse of payment cards is a criminal behavior that manifests itself in many ways and using more tactics of criminal activity, but also the use of more technical means that have the power of recording and processing of computer data. According to the Criminal Code of the Republic of Macedonia, they are classified into three criminal acts and include criminal behavior with elements of unauthorized entry into a computer system, use of means for counterfeiting, creation and use of false payment cards.

In the Republic of Macedonia in the past, sometime from 2007, the abuse of payment cards was first performed with the installation of "skymmer" devices of ATM - ATMs, then illegal transactions with forged payment cards at POS Terminals were carried out in sales points, and with the development of information technology and the growing use of the Internet, there are currently the most abuses on the Internet in electronic payment.

Criminals to payment card data come online over in many ways, and are most famous as:

- Sending unwanted messages (spam),
- Fishing (phishing),

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<sup>118</sup><https://www.romexsoft.com/blog/credit-card-fraud-detection-in-banking/>

<sup>119</sup>Nikoloska S., Methodology of Computer Crime Investigation, Van Gogh, Skopje, 2013.

- Pharming and
- Theft of data on payment cards from the electronic stores database.

The criminals who act criminally through online purchase and payment with someone else's data from payment cards need electronic data, such as: card number, validity date and CVV2 number (Card Verification Value 2 - three digit number located on the background of the card) . These data can be provided by unauthorized entry into the banking computer system, but in another simplified way by using the "negligence" and "trust" of the owners when using the cards in the trade. It is enough to make a copy with the data from the card and use them in the electronic commerce and electronic payment of overheads accounts.

More complex is the use of devices for recording and using computer data for making false payment cards. The Macedonian legislator systematizes two criminal acts in the group of criminal offenses against public finances, payment operations and the economy, and they cover specific criminal situations for the procurement, production and use of special devices for falsifying payment cards and the production and use of false payment cards .

***"Making, acquiring or alienating counterfeit funds" according to Art. 271***

In the criminal act "Making, acquiring or alienating means of forgery" criminal acts are envisaged as unauthorized manufacture, delivery, posting, giving or giving to another person computer programs and other security protections or components that serve components for the unauthorized acquisition of bank data. As a special way of committing the offense, unauthorized installation of bank devices "swindlers" is foreseen for the purpose of recording real data for the purpose of making fake payment cards with the use of which they will derive financial means in an illegal way. This is a specific form of theft, where the theft is carried out through a computer system of the bank whose devices (ATMs) use fake payment cards and withdraw funds.

According to the criminalistic practice in the world, but also in our country as the most useful instrument for recording data from real payment cards are "skippers".<sup>120</sup>

1.1. Making and using a fake payment card Article 274-b

The creation and use of a fraudulent payment card is a complex crime where the perpetrators work on preparations primarily for providing funds for the purchase of technical means and instruments for downloading the necessary data from real payment cards of citizens and legal entities. Criminal acts that precede the creation and use of fraudulent payment cards are the collection of data from real payment cards and data for their owners, and of course important data is also the "thickness of

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<sup>120</sup> Criminal Code of the Republic of Macedonia, Fig. Journal of the Republic of Macedonia no. 114/09.

the bank balance". If the perpetrators are "malicious" and download data from payment cards that are in the wrong balance or have very low amounts, "they will be at a loss". In other words, they will invest more in order to make the card, and they can not get anything. For these reasons, data are collected for individuals and legal entities with "thick bank accounts". These data and the rest are important for making a selection from "recorded" with special instruments, computer data, and then by inserting them, false payment cards will be created.

Criminal offense includes criminal behavior for the production, delivery and use of a fraudulent payment card. This means that as a perpetrator of this criminal act is a person who produces fake payment cards using special means of forgery, a person who purchases them from persons who make them or a perpetrator who uses the false payment card. Namely, "as a perpetrator is a person who makes a false payment card with the intention of using it as a real one, or acquires a fake card with such an intention, or gives it to another for use or who uses the false card as a real, the person who acquires bank data from real payment cards and data for the holders of such payment cards with the intention of using them for making and using a fake payment card or this kind of collected data is given to another with such intention. The work is built, so a higher penalty is envisaged in cases when the perpetrator will acquire greater property gain, or if the crime is committed by a member of a group, gang or other criminal association. Penal responsibility is also foreseen for cases where the crime is committed by an employee or responsible in the legal entity, but on behalf and for the account of the legal entity, parallel responsibility is foreseen.

The specificity of the crime "Making and using a fraudulent payment card" is that in its basis it is a special type of theft, in the part of withdrawing money from an ATM. But in the part of downloading bank data there are signs of abuse of personal data. Numerous ways of execution, in a number of cases, criminals steal payment cards, photocopy them by taking advantage of an appropriate occasion, then displaying data in electronic commerce. The data are genuine, but illegally provided and used.<sup>121</sup>

The purchase of fraudulent payment cards is through the use of "special channels" or "networks" to find people who make them, since they are usually "brains of criminal groups" that act from a "center" where only false payment cards are made. They provide guidance and provide devices for providing the necessary data, while others, criminals of the criminal structure, install, monitor, download and submit to them in order to make the cards. And, they need appropriate cards made from material close to the actual ones so they can be used. The most exposed or widespread is the network of perpetrators who use false ATM cards and extract "cash". These are more "dealers" who find and involve people "mullions" for the use of cards and cash withdrawals, at

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<sup>121</sup>Janković, S., (2011). Falsification of payment cards as an emerging form of computer crime, Security, 53 pages. 181.

several ATMs, but with the care to use multiple cards, due to the limitation of withdrawal within 24 hours a certain amount of money. These people use special situations, they are careful not to be "suspicious", they change the place of execution, use appropriate "masking" clothing to hide their identity from "placed cameras" on the facilities where the ATMs or nearby facilities are located, etc.

## **TACTICS OF MISUSE OF PAYMENT CARDS**

Computer crime with the abuse of payment cards can be executed as an individual criminal offense from the simplest way of committing by using a stolen payment card that is stolen, rotten, etc. Crime is in its use without the knowledge and consent of the rightful owner. In essence, the work has elements of a particular form of theft and deception.

**Example:** Case Analysis: In 2013, the Ministry of Internal Affairs realized the operational processing "Vinkovo", which detected an international criminal group that for a long period of time makes abuse of payment cards, as victims of the death of citizens of the Republic of Macedonia whose accounts, the perpetrators recovered the amount of 4.5 million denars or equivalent of about 80 thousand euros. The perpetrators acted in an organized manner by purchasing devices for recording bank data - swimmers, installing them at ATMs and recording a large number of real card data. Then they made fake payment cards and used them as real money to withdraw cash from ATMs. According to the evidence provided in the criminal investigation, the suspects mounted "skincare devices" at domestic banks, located in several towns in the country, in Skopje: Prilep, Negotino, Bitola and Ohrid on 19 occasions. data from 829 payment cards they used for making counterfeit payment cards with which they committed a total of 475 successful illegal transactions with which they acquired an amount of approximately 2 million denars and 574 unsuccessful illegal transactions in the amount of over 2 600 000 denars. The suspects used fake payment cards mainly at ATMs in several cities of the country, but they also used ATMs in the Republic of Serbia and the Republic of Bulgaria, but they also used them for electronic payments in other countries: Peru, Malaysia. The suspects also sold their card payment data via the Internet, and then illegal transactions were carried out by unknown persons. In the criminal investigation, legal measures and actions were taken to provide evidence and they were searched in the homes of the suspects and found and seized: four plunderers, one device for preparing forged payment cards, 55 forged payment cards and other equipment for making and preparation of scyivers, one laptop computer used for the preparation of counterfeit payment cards and two desktop computers. During the search of one of the suspects, a Bulgarian citizen was found who actively participated in the criminal group by placing scooters at several ATMs, but also by selling data on payment cards over the Internet. Some of the

perpetrators were known to the police because they had previously been suspected of such crimes, which means that the repetition of perpetrators is present. The suspects are charged with criminal offenses "Making, acquiring or disposing of means of forgery" according to Art. 251 and "Making and using a fraudulent payment card" according to Art. 274-b of the Criminal Code of the Republic of Macedonia.

### ***Internet Commerce***

As far as Internet commerce or "Ecommerce" is concerned, we can conclude that the era of online commerce has been developing lately, which enables the exchange of products anytime, anywhere at the speed of light.

The term e-commerce refers to transactions that are conducted over the Internet, exclusively through web-based trading applications (e-mail transactions are excluded), and which cover goods and services in both material and non-material form.<sup>122</sup>

Internet commerce is a way to bring closer the supply of goods and services to customers and make them available without leaving the home at all. For this purpose there are WEB sites that represent virtual stores where goods and services can be purchased by paying via virtual POS terminals using payment cards. This convenience in itself provides a large field of abuse by criminals, such as collecting and intercepting data from payment cards using fake web pages (fishing), as well as misusing them for the purchase of various goods and services on-line.

A mitigating circumstance in Internet commerce is the reduced risk of detecting criminals, primarily because they do not need to appear in sales outlets, do not need to install "skym devices" (ATM devices) at ATMs, they do not need to prepare counterfeit payment cards and withdraw cash from ATMs. To perform illegal transactions on the Internet, criminals are provided with data from payment cards, and the CVV 2 code on the back of the payment card (in some cases it is not necessary, it depends on the website), and of course Internet access.

Most often during the execution of these illegal transactions, technical goods, expensive watches and computer products are purchased, which are later easier to sell, of course, for a lower value than the real one, and thus the criminals acquire illegal property benefits, thanks to the data from counterfeit payment cards that they illegally acquired and own.

Also, internet data traffic from forged payment cards is used for booking travel arrangements, buying air tickets, then charging various types of bills, replenishing mobile e-voucher, etc.

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<sup>122</sup> USAID, Analysis of the situation with the electronic commerce in the Republic of Macedonia, Skopje, November, 2010 p.12

## **CRIMINAL OFFICE TECHNIQUES FOR MISUSE OF PAYMENT CARDS**

The scooters are devices used for the unauthorized collection of data from payment cards, and that data is on the credit card magnetic tape and the personal identification number of the card from the card.

There are two types of scyivers:<sup>123</sup>

- Fixed, which are installed at the ATM ATMs.
- Mobile that only reads the record from the magnetic tape.

The scooters are computer devices that are comprised of the following components: magnetic tape reader and video camera for video recording of the video surveillance of the part of the appliance on which the payment card is used, and it is in the part where the PIN code is entered (the authorization key) for use of the payment card. They contain a medium for storing data derived from other parts of it.

The first component - The data card of the magnetic tape of the payment card is in the form of the input segment of the ATM "mouth" and passes unnoticed through the payment card. The reading of the data can be: audio reading (when the ATM card input is heard a reading sound which, in fact, is an audio communication between the ATM and the payment card, and at that moment the code that is registered on the payment card); and when the contents of the payment card are directly written on the sketch and stored on a medium, which is an integral part of the skipper (data from the magnetic tape of the payment card).

The second part is a video camera, directed to the keyboard where the authorization code is entered, whereby this code is detected visually and the media is entered on the medium. Then these data are entered into the computer and, with a special MSR program and device, the data from the magnetic tape obtains a suitable format for inserting another magnetic tape as a magnetic record. The next step is a comparison with the video entry for the number (code) that is entered as an authorization.

Mobile skimmers are devices that criminals install at point of sale terminals or ATMs from which they copy the user's account data to the inserted payment card from the magnetic tape on the back on the card. If the user uses a payment card, along with the mentioned data, the personal identification number (PIN) is copied. The copied data is later used to make counterfeit ATM withdrawal cards.

Criminals use the tactics of placing the skaters by placing them on a different side, depending on the type of ATM, and in order to record the PIN code. The stolen data is used for illegal transactions via the Internet or forged counterfeit payment cards that illegally withdraw cash from the ATMs.

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<sup>123</sup> Cybercrime Handbook - <http://www.osce.org/mk> 121 Rose & Hudigins, Bank Management & Financial Services, Mc Graw Hill Irwin, 2005.

Another way of stealing card payment data is when buying from the Internet, if a transaction is made through a fake internet site. "Fishing" page, which is identical to the original. Citizens do not notice the difference and enter the data, which goes into the hands of criminals.

### ***Spam***

Spam is an unwanted email. This is a problem that has been a source of concern for Internet users for years. Whether it's end users, big companies or Internet providers, spam, besides causing problems for users, it also affects financial losses. Despite the big attempts to prevent spam with different information tools, legal regulations, unwanted e-mail remains an unresolved problem in information systems. It can be freely said that a large number of users are accustomed to spam and accept it as something inevitable.

The character and content of the spam comes from the interest of the spammer, but most often it is a message of advertising character through which certain products or services are offered, or contains a malicious code that will infect your computer, and then the sender manages the infected computer.

### ***Pharming***

Pharming is a form of remote attack that targets the vulnerable web site and redirects it to a maliciously shaped web page. This attack can be performed by modifying the information file on the attacked computer or by using the security dnsdns (domain name system). The dns task is linking names to real Internet addresses, and the compromised dns is said to be "poisoned".

Pharming is a fraudulent practice in which a malicious code that is installed on a personal computer or server, which mislead users to fake websites without their knowledge or consent. Hackers are trying to hide the true identity by using false addresses or falsely posing. Pharming is called "phishing without a motherfucker."<sup>124</sup> The phishing attack uses tricked users, while the pharming attack is based on manipulating various components for computers on the Internet.

Pharming attacks abuse the mechanisms of connecting more services, which users use on a daily basis as real services. To understand the pharming attack requires knowledge of those mechanisms. So, the Dns composition is one of the basic mechanisms that enable versatile use of the Internet. It can be said that this composition acts similarly as a phonebook, connecting names of network devices (eg,

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<sup>124</sup> Kenneth C. Laudon, Jane P. Laudon, Management Information Systems: Managing a Digital Company, Skopje: Ars Lamina, 2010 p.300.

hostname), e.g. www.primer.mk, with an ip (Internet Protocol) address, e.g. 208.77.188.166.<sup>125</sup>

### **Fishing "Phishing"**

Although there are several different definitions of phishing attacks. Phishing attack involves the activity of unauthorized persons by using false e-mail messages, creating fake websites of financial organizations in order to instruct the user to disclose their confidential information. These include data such as bank accounts, credit card numbers, usernames, pin codes, but also other approaches.

These attacks can be divided into three groups, that is, false attacks, by which the victim, through false messages, is asked to provide personal data, malicious attacks, where the attacker uses malicious software in order to reach the desired information, as well as DNS based attacks in which the domain is changed, with the user referring to a fake internet site.<sup>126</sup>

The biggest problem with phishing attacks is that it is not based exclusively on technical elements, but it uses more sophisticated and more advanced techniques of social engineering, which takes advantage of inexperience and ignorance of Internet users. By creating specially designed and rigged e-mail messages, it attempts to make the user voluntarily and unconsciously give his or her confidential information to the unauthorized user.

## **SECTOR FOR CYBERCRIME AND DIGITAL FORENSICIANS IN THE MINISTRY OF INTERNAL AFFAIRS OF THE REPUBLIC OF MACEDONIA**

The Ministry of Internal Affairs of the Republic of Macedonia, within its competences and legal authorizations, conducts continuous application of measures and activities in the direction of detection and prosecution of perpetrators of criminal acts and filing criminal charges before the judicial authorities. The Ministry undertakes the measures and activities on the basis of the Criminal Code of the Republic of Macedonia and the Law on Criminal Procedure.

Within the Sector for Cybercrime there are two Departments, a Computer Crimes Investigation Department and a Department of Digital Forensics.

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<sup>125</sup><http://us.norton.com/cybercrime-pharming> (22.05.2018).

<sup>126</sup>Aaron Emigh, Radix Labs „Online Identity Theft: Phishing Technology, Chokepoints and Countermeasures“ October 3, 2005.pdf

The Sector for Cybercrime and Digital Forensics has jurisdiction over the entire country, as well as conducting international investigations with other countries.

The competencies of the Computer Crimes Investigation Department are the work of cases related to cybercrime, computer incidents, unauthorized entry into computer systems, frauds on the Internet, electronic payment (forgery and abuse of payment cards), child pornography, abuse of personal data, abuse on social networks, abuse of personal data, etc. One of the most important measures and activities undertaken by the department is the fight against organized crime through the use of special investigative techniques and conducting proactive investigations (conducting investigations before the crime is committed).

The competences of the Department of Digital Forensics are analysis and expertise of computer equipment and computer systems, analysis of mobile phones, equipment analysis in order to provide quality electronic evidence necessary for proving the crime and leading the criminal procedure.<sup>127</sup>

## **STATISTICAL DATA ON THE ABUSE OF LABOR PAYMENT CARDS**

In Europe in 2013, the losses from counterfeit payment cards at the level of the Single European Euro Area (SEPA)<sup>128</sup> amounted to 1.44 billion euros, an increase of 8% compared to 2012.

In 2013, in SEPA, 66% of the total value of payments with forged payment cards accounted for payments via Internet or telephone, 20% of payments to POS terminals at points of sale and 14% for ATM transactions.<sup>129</sup>

In the Republic of Macedonia, crime with abuse of payment cards is in continuous increase, especially in recent years, the most common are the abuses of on line commerce “e-commerce”.

According to the State Statistical Office data, in the first quarter of 2017, 73.6% of households had access to the Internet from home. The share of households by type of population with broadband in the total number of households is 67.1% in 2017. Almost all 91.2% households with internet access had broadband (fixed or mobile) internet connection. In the first quarter of 2017, of the total population aged 15-74, the Internet used 74.5%, and 61.9% used it daily or almost every day.

The mobile phone or the smartphone were the most used internet access devices for Internet users in this period, and most of them for people aged 15-24 (91%). 82.5%

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<sup>127</sup>[http://moi.gov.mk/\(22.05.2018\)](http://moi.gov.mk/(22.05.2018))

<sup>128</sup> SEPA is a European initiative for the harmonization of payments in euros, a goal that aims to achieve the security and speed of financial transfers.

<sup>129</sup>[https://www.ecb.europa.eu/pub/pdf/other/4th\\_card\\_fraud\\_report.en.pdf\(22.05.2018\)](https://www.ecb.europa.eu/pub/pdf/other/4th_card_fraud_report.en.pdf(22.05.2018)).

of Internet users in this period used a mobile phone or smartphone to access the Internet from home or work. 24.8% of the people who used the Internet ever, ordered / bought goods or services over the internet in the last 12 months, and the majority (64.1%) of them bought clothes or sports equipment.<sup>130</sup>

## CONCLUSIONS AND PROPOSALS

Computer crime with abuse of payment cards is a reality in the Republic of Macedonia and has the features of this kind of criminality that is being performed in the more developed countries of the world. This crime appears as individual criminal behavior by using casual (lost / stolen cards) or inattentive (giving) use when buying and reporting the PIN code of employees in the trade that abuse the trust of citizens and record their cards, and then abused them in electronic commerce.

As special recommendations to the citizens are to keep the payment cards, just as they keep the money in cash, because the cards are not just "ordinary plastics", they are "carriers of data on their financial resources placed on bank accounts. Banks physically have an obligation to keep the money of citizens and legal entities and have the obligation to use technical protection of their computer systems, but they cannot protect themselves from "carelessness of citizens" and their contribution to being victims of this crime. In cases where the damages are smaller, the banks indemnify the citizens, they do not report the cases to the police, believing that this protects their credibility. And that's the wrong policy and it's in favor of the criminals. In the future, a lot of attention should be paid to financial thefts and abuses of payment cards, primarily because criminals use the benefits of cybercrime, that is, all of its advantages, and these are the possibilities for successfully hiding any evidence, that is, traces, using a proxy server that allows masking the IP address and giving data as if these crimes were committed from a completely third place that has no connection, the use of zombie computers that also hide traces and evidence.

Security itself requires all those involved to be proactive and constantly to produce solutions in accordance with security threats and challenges. The Banks themselves should invest more in their information system, be safe, not easily vulnerable, more protection on their Internet banking websites, in order not to have a phishing side (identical to the original web page). With the increasing popularity of online banking and electronic billing, it means that there is a growing risk of stealing confidential information, which can cause a collapse in the financial system. In doing so, it is necessary to have more protection at the ATM machines themselves, so that "skimmer" devices cannot be installed which are used to steal the data from the actual

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<sup>130</sup><http://www.stat.gov.mk/PrikaziSoopstenie.aspx?rbtxt=77> (22.05.2018)

payment cards, to install Anti Skimmer Devices, to install ATM detectors that will alert directly to the Bank if there is a device located on the ATM itself, a device that is not within the ATM itself.

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# **GROWING INEQUALITY AS ONE OF THE BIGGEST SOCIAL, ECONOMIC AND POLITICAL CHALLENGES OF OUR TIME**

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## **ABSTRACT**

The paper provides an overview of global income inequality based on the latest distribution of data from the World Bank, World Economic Forum (WEF) and Eurostat and discusses the negative implications of rising income inequality as one of the biggest political, economic and social problems in the globalized world. In all sections of society, there is growing agreement that the world is becoming more unequal, and that today's disparities and their likely trajectory are dangerous. Not only does inequality slows economic growth, but it results in social and health problems and generates political instability. Given that inequality is attributed to a complex interaction of various conditions, a multidimensional call for action across various policy fields is needed. Therefore, as concluding remarks, paper advocates for urgent policy changes at the national and international level and offers future policy recommendations to relevant stakeholders to ensure more balanced world development.

**Key words:** *economic inequality, globalization, income, poverty*

## **INTRODUCTION**

Economic inequality is an increasingly important topic in modern economics, affecting countries all over the globe. Although inequality has been mainly linked with developing countries, ever since the economic crisis of 2008 the phenomenon has also been identified as a wide-ranging problem in more developed nations. Economic inequality is an important issue for countries to analyze and understand, because it has a great impact on a nation's economic well-being, overall growth and prosperity. On the top of economic problems, inequality can also create and contribute to other issues, such as political instability, poverty, crime and corruption

(Hiltunen 2017, p.4). World Economic Forum's Global Risk Report rated inequality as one of the top global risks to human progress (WEF 2018, p.16).

Economic inequality is rapidly increasing in the majority of countries. The wealth of the world is divided in two: almost half is going to the richest one percent; and the other half to the remaining 99 percent (Credit Suisse, 2017). Despite high growth in emerging countries, global inequality increased since 1980. The top 1% captured twice as much of the global income growth as bottom 50% (World Inequality Report, 2018 pp.20). Following the financial crisis, the process has accelerated, with the top 1% further increasing their share of income. The luxury goods market has registered double-digit growth every year since the crisis hit (Oxfam, 2013).

Economic inequality has been a prominent topic in the economics and politics alike throughout history, and has been seen a resurgence in its importance and topicality during the past decade resulting from the financial crisis of 2008. A steep rise in inequality leading up to the crisis, and especially after it hit, has caused a multitude of political problems, economic issues and human suffering all over the globe (Stiglitz, 2013). Economic inequality is associated with various disadvantages in terms of economic growth and the overall prosperity of a nations. Many authors, such as Joseph Stiglitz (2016) and Thomas Piketty (2015) argue that inequality hampers growth directly by decreasing citizens' buying power, lowering demand and threatening the public confidence for investment. More indirectly, inequality can negatively affect growth rates by decreasing general productivity due to poor education and access to medical, financial and professional support services, increasing political instability, and lowering innovation. Inequality can also generally lower the efficiency of a respective economy, as the lower-income population is increasingly dependent on government income transfers, and can develop various problems ranging from criminal activity to mental health issues, which cause an additional strain on the economy.

Extreme economic inequality and political capture are too often interdependent. Political institutions become undermined and governments to a larger extent serve the interests of economic elites to the detriment of ordinary people. Inequality is impacting social stability within countries and threatening security on a global scale. Some economic inequality is essential to drive growth and progress, rewarding those with talent, hard earned skills, and the ambition to innovate and take entrepreneurial risks. It deals with the world distribution of income and with whether the distribution between rich and poor is likely to equalize or to become more polarized in the long run (Jones, 1997). However, the extreme levels of wealth concentration occurring today threaten to exclude hundreds of millions of people from realizing the benefits of their talents and hard work.

Extreme economic inequality is damaging and worrying for many reasons: it is morally questionable; it can have negative impacts on economic growth and poverty

reduction and it can multiply social problems. It compounds other inequalities, such as those between women and men. In all societies, human beings care deeply about inequality changes that have concrete consequences for people's living conditions, and challenge people's most basic and cherished notions of justice and fairness. In many countries, extreme economic inequality is worrying because of the detrimental impact that wealth concentrations can have on equal political representation. When wealth captures government policymaking, the rules bend to favor the rich, often to the detriment of everyone else. The consequences include the erosion of democratic governance, the pulling apart of social cohesion, and the vanishing of equal opportunities for all. Unless bold political solutions are instituted to curb the influence of wealth on politics, governments will work for the interests of the rich, while economic and political inequalities continue to rise.

The purpose of this paper is to provide an overview of global income inequality based on the latest distribution of data from the World Bank, World Economic Forum (WEF), OXFAM and Credit Suisse and to discuss the negative implications of rising income inequality as one of the biggest political, economic and social problems in the globalized world. In the conclusion we offer future policy recommendations to relevant stakeholders.

## **THE GROWING GAP BETWEEN RICH AND POOR**

Inequality is a wide-ranging term, and it can be applied to a variety of contexts. Using the term inequality, this paper refers to the economic variant, which can be defined as the variation in the distribution of income, pay or wealth between the citizens of a respective nation (*OECD, 2017*). Economic inequality is a complex phenomenon that can be measured in various ways using different indicators and data sources. Several world inequality databases exist today. These inequality databases include for instance the World bank's PovcalNet, the Luxembourg Income Study (LIS), the socio-economic database for Latin America and the Caribbean (SEDLAC) and the OECD Income Distribution Database (IDD). There are also various sources that combine the aforementioned databases to increase their coverage, the most important being the World Panel Income Distribution (LM-WPID) and the Standardized World Income Inequality Database (SWILD).<sup>131</sup> These databases have proved useful information to researchers, policymakers, journalists, and the general public focusing on the evolution of inequality over the past decades.

Official inequality reports and statisticians often use synthetic measures of inequality and one of the most common being the "Gini Coefficient." (*The Equality Trust,*

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<sup>131</sup> See more at: <http://www.oecd.org/social/income-distribution-database.htm> and <https://ourworldindata.org/income-inequality>

2017). Technically speaking, the Gini corresponds to the average distance between the income or wealth of all the pairs of individuals. The Gini index is often presented as a convenient, synthetic tool that allows comparisons of inequality across time and space. The Gini Coefficient measures inequality in terms of income, wealth, or both, across a whole society, giving a value ranging from 0 to 1, with 0 meaning complete equality, and 1 meaning complete inequality.

The democratization of living standards has masked a dramatic concentration of incomes over the past 30 years. Given the scale of rising wealth concentrations, opportunity capture and unequal political representation are a serious and worrying trend. For instance: Almost half of the world’s wealth is now owned by just one percent of the population; The wealth of the one percent richest people in the world amounts to \$110 trillion; That’s 65 times the total wealth of the bottom half of the world’s population; The bottom half of the world’s population owns the same as the richest 85 people in the world; Seven out of ten people live in countries where economic inequality has increased in the last 30 years; The richest one percent increased their share of income in 24 out of 26 countries for which we have data between 1980 and 2012. In the United States, the wealthiest one percent captured 95 percent of post-financial crisis growth since 2009, while the bottom 90 percent became poorer (Oxfam 2014, p.2) (See Table 1).

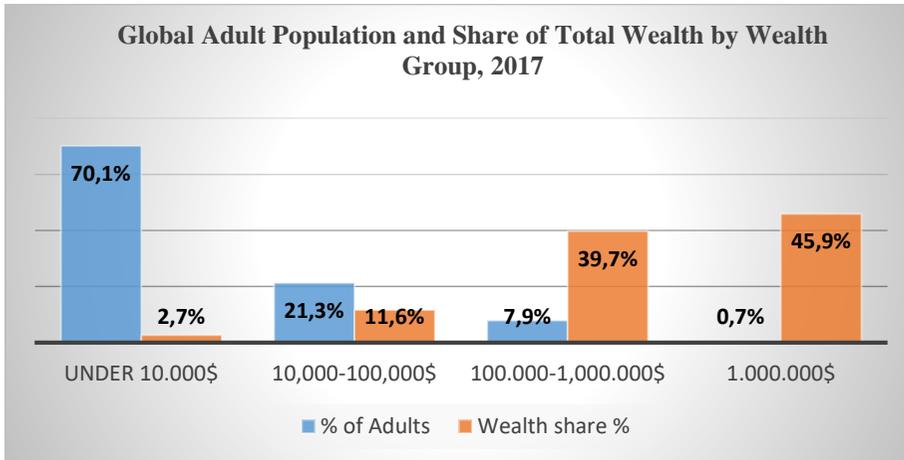
**Table 1: The concentration of global wealth**

<b>Wealth (USD)</b>	<b>Percentage of the world's population</b>	<b>Number of adults (millions)</b>	<b>Percentage of world's wealth</b>	<b>Total wealth (trillions of dollars)</b>
<b>&lt;10,000</b>	68.7	3,207	3.0	7
<b>10,000–100,000</b>	22.9	1,066	13.7	33
<b>100,000–1 million</b>	7.7	361	42.3	102
<b>&gt; 1 million</b>	0.7	32	41.0	99

Source: Oxfam, 2014. Available online at: <http://www.oxfam.org/en/research/working-few>

More than 70 percent of the world’s adults own under \$10,000 in wealth. This 70.1 percent of the world holds only 3 percent of global wealth (See Figure 1). The world’s wealthiest individuals, those owning over \$100,000 in assets, total only 8.6 percent of the global population, but own 85.6 percent of global wealth.

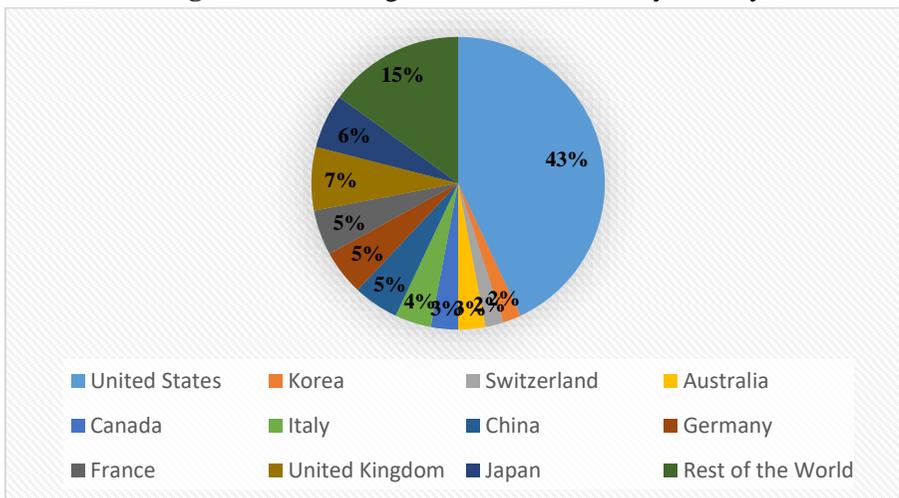
Figure 1: Global Adult Population and Share of Total Wealth by Wealth Group, 2017



Source: <https://inequality.org/facts/global-inequality/>

The numbers of the ultra-wealthy have soared around the globe. According to *Forbes* magazine's rich list<sup>132</sup>, America has some 421 billionaires, Russia 96, China 95 and India 48. See *Figure 2*.

Figure 2: Percentage of world milliners by country, 2017



Source: Credit Suisse Global Wealth Report, 2017

<sup>132</sup> <http://www.forbes.com/billionaires/list/>

Western and European countries host the lion's share of the world's millionaires. More than 70 percent of the world's millionaires reside in Europe or North America, with 43 percent of these millionaires in the United States. The only non-Western nations with a significant share of millionaires are the industrial powerhouses Japan, China, and Korea. The top 100 billionaires added \$240 billion to their wealth in 2012 - enough to end world poverty four times over (*Oxfam, 2013 p.2*)

Among the G20 countries<sup>133</sup>, emerging economies were usually those with higher levels of inequality (including South Africa, Brazil, Mexico, Russia, Argentina, China, and Turkey) whereas developed countries tended to have lower levels of inequality (France, Germany, Canada, Italy, and Australia). Yet even this is changing, and now high-income G20 countries (except South Korea) are experiencing rising inequality, while Brazil, Mexico, and Argentina are seeing levels of inequality decline (*Oxfam 2014, p.9*).

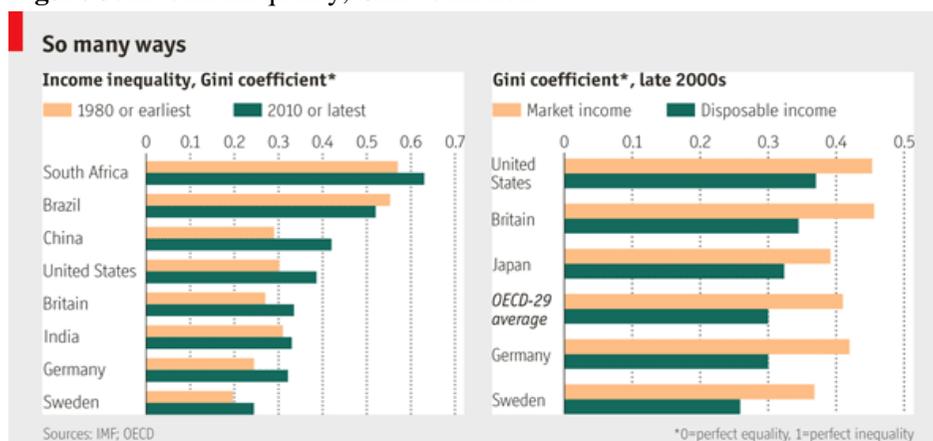
As we mentioned before, the best-known way of measuring inequality is the Gini coefficient. The level of inequality differs widely around the world. Over the past few years, income inequality levels have remained at historically high levels. All OECD nations fall somewhere between 0.24 and 0.5, with Iceland having the lowest reported inequality of 0.244, and Chile having the highest of 0.465 (*OECD, 2017*). This is the highest value on record, since the mid-1980s (*Roser and Ortiz-Ospina, 2018*). Emerging economies are more unequal than rich ones. Scandinavian countries have the smallest income disparities, with a Gini coefficient for disposable income of around 0.25. At the other end of the spectrum the world's most unequal country, such as South Africa, register Ginis of around 0.6.<sup>134</sup> Transition economies of Eastern Europe, including the Russian Federation, have experienced the highest spikes in income inequality. The transition from centrally planned to more liberal regimes appears to have led to detrimental outcomes in terms of equity, due to the social impacts of privatization, changes in tax/transfer systems, financial and labour market liberalization, reliance on commodity exports, and migrant remittances, among others (*Cornia, 2010*).

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<sup>133</sup> The G20 (or Group of Twenty) is an international forum for the governments and centralbank governors from Argentina, Australia, Brazil, Canada, China, France, Germany, India, Indonesia, Italy, Japan, Mexico, Russia, Saudi Arabia, South Africa, South Korea, Turkey, the United Kingdom, the United States and the European Union

<sup>134</sup> Because of the way the scale is constructed, a modest-sounding difference in the Gini ratio implies a big difference in inequality

**Figure 3: Income inequality, Gini coefficient**



Source: <https://www.economist.com/special-report/2012/10/13/for-richer-for-poorer>

Figure 3 indicates that international income inequality increased quite sharply between 1980 and 2010, both measured through the weighted Gini coefficient. As it can be noticed, middle-income countries appear the most unequal. Gini index trends show that Eastern Europe and Asia had the largest increases between 1990 and 2010. Latin America remains the region with the highest level of income inequality, although the region is marked by significant improvement since 2000. Low-income countries show mixed results; Sub-Saharan Africa is highly unequal but appears that have reduced its Gini index by almost five points, on average, since 1990 (*UNICEF 2011, p.7*). That does not mean the world as a whole has become more unequal. Global inequality has begun to fall as poorer countries catch up with richer ones. A “global Gini” that measures the scale of income disparities among everyone in the world shows that global inequality rose in the 19th and 20th centuries because richer economies, on average, grew faster than poorer ones (*Bourguignon & Morrisson, 2002*).

Income gaps have also changed to varying degrees. America’s Gini for disposable income is up by almost 30% since 1980, to 0.39. Sweden’s is up by a quarter, to 0.24. China’s has risen by around 50% to 0.42 (and by some measures to 0.48). The biggest exception to the general upward trend is Latin America, long the world’s most unequal continent, where Gini coefficients have fallen sharply over the past ten years. But the majority of the people on the planet live in countries where income disparities are bigger than they were a generation ago.

## ECONOMIC, POLITICAL AND SOCIOLOGICAL EFFECTS OF INEQUALITY

This massive concentration of economic resources in the hands of fewer people presents a significant threat to inclusive political and economic systems. Instead of moving forward together, people are increasingly separated by economic and political power, inevitably heightening social tensions and increasing the risk of societal breakdown. A survey for the World Economic Forum meeting at Davos<sup>135</sup> pointed to inequality as the most pressing problem of the coming decade (alongside fiscal imbalances). In all sections of society, there is growing agreement that the world is becoming more unequal, and that today's disparities and their likely trajectory are dangerous.

There are basically two broad perspectives that can support contentions that inequality is a serious problem in itself independently of its links to poverty. First, it could be argued that economic inequality violates accepted norms of distributive justice and is, therefore, inherently unjust. Second, one might argue that inequality needs to be reduced because it has negative effects on other important economic and social variables such as economic growth or democratic political systems.

**The Economic Effects of Inequality.** Economic inequality may affect economic growth and the efficient use of resources such as labor and capital. By definition, economic growth is equal to population growth plus growth in per capita output (*Peterson & Wesley, 2017; Piketty 2014*). *Conard (2016, p.11)* argues that countries with high levels of inequality experience greater economic growth. If true, this would suggest that efforts to lower economic inequality are costly because they reduce growth and prosperity. *Stiglitz (2013)* argues that greater inequality leads to economic instability and lower output than would be possible given a country's resources. Inequality may also adversely affect the economy through the inefficiencies introduced by politicians responding to their high-income constituents who lobby for reduced regulations, lower public investment in scientific research and infrastructure, and economic distortions that benefit them at the expense of everyone else (*Stiglitz 2013*). These inefficiencies mean that productive resources are being wasted so that less output is obtained than would be possible if there were no such distortions. In a statistical analysis of the relationship between economic growth and inequality in countries belonging to the Organization of Economic Cooperation and Development (OECD), *Cingano (2014)* finds that greater income inequality leads to lower economic growth noting that efforts to reduce inequality will not only advance social

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<sup>135</sup> <https://www.weforum.org/events/world-economic-forum-annual-meeting>

justice but may also contribute to increased economic prosperity. Sustained poverty reduction is a twin function of the rate of growth and of changes in income distribution, whereby more equal distribution tends to have faster impacts on reducing poverty than growth (*World Bank 2018*).

One way inequality might slow economic growth is through its impact on the behavior of economic agents. *Ku and Salmon (2009)* set up an experiment to test whether workers in unequal settings become discouraged and reduce their work efforts. They find strong support for this “discouragement effect” and argue that such behavioral changes affect not only the individuals themselves but also the broader economy which grows more slowly.

**The Political Effects of Inequality.** If, in the words of the old adage ‘money equals power’ then more unequal societies represent a threat to meaningful democracy. This power can be exercised legally, with hundreds of millions spent each year in many countries on lobbying politicians, or illegitimately with money used to corrupt the political process and purchase democratic decision making (*Stiglitz, 2016*). Income and wealth give rise to political power making it much easier for wealthy individuals to influence public policies in favor of their own interests (*Domhoff, 2017*). These distortions reduce efficiency and slow economic growth to the detriment of those with lower incomes. In addition, they lead to self-reinforcing cycles in which the exercise of power associated with great wealth and income leads to policy distortions that further increase the wealth and income of the rich who then have an even greater ability to induce policy distortions that support their interests (*Milanovic 2016, p. 190*). While the sources of political conflict vary from country to country, conflict generally originates from severe social grievances, including class conflict and the perception of inequality among ethnic, religious or other groups (*UNICEF, 2011, p.35*).

**Behavioral Changes.** Rising inequality may influence individual behavior and such behavioral changes are likely to have an impact on a wide variety of socio-economic variables. As noted earlier, *Ku and Salmon (2009)* found that inequality can give rise to a “discouragement effect” that causes workers to reduce their efforts to the detriment of economic growth. *Piketty (2014)* fears that rising inequality will result in the revival of the kind of “patrimonial capitalism” that was prominent in the 19th and early 20th centuries.

**Health Disparities.** *Payne (2017)* points out that individuals of low status, whether they are absolutely poor or not, experience greater stress which can have serious negative effects on their health as well as on social cohesion: “Inequality divides us, cleaving us into camps not only of income but also of ideology and race, eroding our trust in one another. It generates stress and makes us all less healthy and less happy” (*Payne 2017, p. 4*). *Wilkinson and Pickett (2009)* and *Graham (2007)* argue that inequality has negative effects on both mental and physical health. In particular,

individuals in more equal societies, enjoy better health, live longer, are less likely to experience mental illness, perform better in school, use less illegal drugs, engage in less criminal behaviour, have better social mobility, are more trusting, experience less violence and are less likely to be teenage mothers when compared to those living in more unequal societies.

**Inequality and Social and Environmental issues.** *Wilkinson and Pickett (2009)* document correlations between inequality and a wide range of social ills including crime, murder rates, teenage pregnancy, family conflict, obesity, poor health, and social mobility.

As the world is rapidly entering a new and unprecedented age of scarcity and volatility, extreme inequality is increasingly environmentally unaffordable and destructive. Increasing scarcity of resources like land and water mean that assets being monopolised by the few cannot continue if we are to have a sustainable future.

## CONCLUSIONS AND POLICY RECOMMENDATIONS

It is now widely accepted that rapidly growing extreme wealth and inequality are harmful to human progress and that something needs to be done. Diverging country inequality trajectories highlight the importance of institutional changes and political choices rather than deterministic forces. This suggests much can be done in the coming decades to promote more equitable growth. Governments need to invest in the future to address current income and wealth inequality levels and to prevent further increases in them. Public investments are needed in education, health, and environmental protection both to tackle existing inequality and to prevent further increases. This is particularly difficult, however, given that governments in rich countries have become poor and largely indebted. Reducing public debt is by no means an easy task, but several options to accomplish it exists (including wealth taxation, debt relief, and inflation) and have been used throughout history when governments were highly indebted, to empower younger generations (*World Inequality Report, 2018*).

Based on previous analyses we will make several arguments to policymakers. The promotion of productive employment and decent work for all should be an objective not only of social policy but also of macroeconomic policy; The emphasis in public spending must be on universal, good-quality; Access for everyone to essential services such as health, nutrition, sanitation, and education at all levels; Urgent action must be taken to establish, and extend, a basic social protection platform that ensures access to basic services for all. Fiscal consolidation measures must be designed in such a way as not to undermine essential public spending on such services; The basic principle of universalism must be combined with particular policy focus on disadvantaged groups, especially those affected by multiple deprivations; Gender

inequalities are cross-cutting and must be addressed actively when dealing with all other dimensions of inequality.

In the end, policy initiatives focusing on either poverty reduction or inequality need not be mutually exclusive. Policies designed to raise the incomes of the poor contribute to both poverty and inequality reduction. Such policies include higher minimum wages, public support for early childhood education and enhanced educational opportunities at all levels, infrastructure development, income support for those who are disabled or otherwise disadvantaged, re-training for people who have lost jobs to technological change and globalization, and other social programs aimed at the poorest.

Finally, regulation and taxation play a critical role in reining in extreme wealth and inequality. Other policies should be aimed at reducing the economic disparities between the rich and poor through progressive taxation, inheritance taxes, regulations and laws to control the negative effects of rent-seeking, and elimination of loopholes in the tax codes that protect the rich. These policies would also generate the resources needed to attack poverty. Taxation systems in high-income countries are generally less progressive than often thought (*Piketty, 2015*) and higher taxes on the wealthy would have a very little impact on their well-being while potentially giving them a greater stake in the overall prosperity of their societies.

Whatever the combination of policies pursued, the first step is for the world to recognize this as the goal. There are many steps that can be taken to reverse inequality. The benefits are huge, for the poorest – but also for the richest. In a world of increasingly scarce resources, reducing inequality is more important than ever and it needs to be quickly reduced.

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## THE ROLE OF THE MEDIA IN THE SOCIETY

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### ABSTRACT

Understanding the role of media in society is not a simple matter. Very often the opinion that they provide articulation of one or another interest is wrong and leads to a view that is not in line with the role of the media.

The starting point of this paper is to understand the role of the media in terms of their role to allow different opinions and to express different attitudes in the public sphere. In order to function correctly, it is necessary to have a free flow of information and an opportunity for citizens to express their own views. The media should be a place where, among other things, there will be a possibility for civil debate, agreement and action.

The issue that we will try to open and explain will be to the creators of the media policies that need to create a framework for the media and communication and a practice that will maintain such a set of things.

**Keywords:** media, influence, politics, creators, democracy

### INTRODUCTION

Media and communication play a key role in the democratic development of societies. The goal of communication by government and non-governmental institutions that advocate reform and improve people's lives is to create a broad and comprehensive dialogue in the public to gain trust, approval and support.

What is particularly important throughout this system of communication are professional and independent media. They should promote transparency and create platforms for joint policy shaping. Citizens and civil society can engage in dialogue with the state and put their views in the process of political decision-making. This

generates acceptance and legitimacy and increases pressure on the government to be responsible.

The aspect of communication and its treatment as a key element in the sustainable development of good governance, the development of specialist skills and the establishment of the necessary infrastructure gives the opportunity to work in parallel with media companies and associations, professional journalists and citizen journalists. The idea is that it is necessary to perceive their role as mediators and guards, especially in the field of politics. The digital world (especially social media) plays a key role and opens up new opportunities for communication.

In general, there are several types of communication, and in this paper we will consider political communication through the media and its influence in society.

## **COMMUNICATION IN THE SPHERE OF POLITICS**

Communicating in the field of politics is a characteristic activity of governments, civic organizations, interest groups. That has always existed, not just today, in the era of social media, citizens and traditional media. Political communication involves a strategic, holistic approach that stands out from the chaotic, diverse, amorphous voice of voices that communicates on a multitude of things.

Our understanding of political communication is based on dialogue and respect for the principles of good governance, participation, transparency, accountability and inclusion. Political communication must be seen as an essential task and a managerial responsibility of state and non-governmental institutions involved in the democratization of each and every one of our societies.

What is the role of successful political communication? By definition, it should transmit and explain political actions accurately and appropriately, in a way that the target groups can then appreciate and respond. Political communication entities can identify target groups, define key messages, and determine which methods they will use to convey messages. They decide whether they intend to pursue communication for reform, raise awareness about specific issues, or change behavior. They also consider whether they want to mobilize target groups, or simply communicate with information. Once they make these decisions, they will choose communications content ranging from flyers that will be distributed to the target groups to events in the city hall (or in another environment at the local level).

To what extent political communication results and whether its improvement is necessary is also a very important aspect of this kind of communication. In doing so, the communicative goals are perceived and whether they are achieved. It is also important to keep an eye on their sustainability, objectivity and integrity.

Every government or administration that wants to work successfully must communicate. She must inform, educate, explain, listen and react to gain acceptance

and trust. It must also communicate in order to encourage citizens, civil society, the private sector, its employees and all active stakeholders in society to support and actively participate in its ongoing activities, but also reforms if they are needed for a better life.

The key to all this is integrated communication. This means presenting carefully selected, strategically aligned communication messages and their comprehensive targeting of specific groups. Regardless of whether the process involves fiscal reform or decentralization of the state, reforms typically have a significant impact on specific parts of the population. Reform processes create complex influences, and for many people it is not easy to understand.

Therefore, public institutions must send messages through communication tools to target groups. State institutions must deal with the people's feelings of insecurity and deactivate the debates about the supposed winners and losers of the reform process from the very beginning.

Through information, education and proactive dialogue, the path for changes in social behavior opens. They are credible to the extent that they support ethical standards, that the information they provide can be checked and that they react swiftly to the critical issues posed by the media.

An important element in political communication is the development of communication strategies and the selection of appropriate instruments that are aimed at dialogue with the target groups it communicates with.

## **THE ROLE OF THE MEDIA**

Independent and professional media play a key role in the democratic development of societies. They can and should create public space and publicity by informing, questioning, exhibiting and debating. The media thus contribute to the transparency of society and at the same time give citizens the opportunity to be an active voice of the civil society in the process of policy making.

However, one of the serious problems recorded in a number of countries is that the media is subject to censorship. Of course, this restriction is not good, but it must be known that even in these countries (where there is censorship), the media can support and provide information on current or reform processes through professionally prepared reports. Training acquired during the educational process is quite sufficient professional and independent journalist to respect all aspects of the journalistic profession, ethical standards and the code of conduct. The dialogue with the state bodies ie the communication must be in the interest of the community, but it does not harm the professionalism of the employees in the media.

## SOCIAL MEDIA

The Internet has led to profound political, economic and social changes around the world. What was originally interpreted as a source of technological change has proved to be a catalyst for cultural transformation, whose implications are still difficult to predict. The latest reform movements around the world have shown what effects mobile communications, social networks, blogs and other forms of digital communication have on the way countries and societies communicate.

Where political freedoms are limited and traditional media are censored or when the media are unable to fulfill their role of providing information because they do not have adequate resources, social debates and the expression of political will are increasingly occurring in the digital world. Engaged citizens and civil society organizations use interactive and participatory opportunities to create new spaces and their own public sphere for their issues - both online and in the real world. This creates completely new opportunities for cooperation and vitality in the dialogue between governments and civil societies.

The survey done in 2014 shows that many of the citizens of the Republic of Macedonia use digital technologies, with the majority of citizens having some form of direct access to the Internet and / or using mobile technologies. Various estimates (imprecise due to a lack of relevant census data) indicate that over 60% of citizens use the Internet and that more than 50% use social networks (data from the Facebook marketing department).

At the same time, it is a fact that almost all state institutions in the country have some sort of online presence. Nevertheless, very few of their websites provide services (services) to citizens, especially in the area of civic participation, but also to complete a range of other daily functions and services for citizens. The Web institutions, as well as other information and communication technologies (ICTs), mostly use them as a means for one-way selective information or as digital "IDs" with basic information about the institution.

Globally, governments around the world are trying to respond to major social changes stemming from the wider application of new technologies, through the transformation to the comprehensive application of the e-government concept. This includes not only the "use of ICTs, and especially the Internet, in order to achieve better governance" (OECD, 2003), but also a complete change of relations between governments and citizens, businesses and between different levels of government with the application of ICT (World Bank , 2009).

This transformation involves more efficient government services, ie e-government services or e-services, improved interaction with the private sector, as well as

strengthening the power of citizens through access to information and more efficient governance.

In order to establish world-level coordination, the Open Government Partnership (OGP) was established in 2011 - an international platform that brings together reformers from the government sector and civil society from 64 countries in efforts to make governments more open, more accountable and responsible to the citizens. The Republic of Macedonia is a member of this partnership and has undertaken an obligation to promote the following priority areas:

- 1 participative policy making,*
- 1. Improved electronic services and procedures,*
- 2. open data,*
- 3. Protection of consumers and citizens,*
- 4. Operated information at local level.*

According to the report of the International Telecommunication Union, "Measurement of the Information Society", which identifies the key elements of ICT development for the UN and monitors the costs and availability of ICT services according to internationally determined methods through the ICT Development Index, the Republic of Macedonia according to the global ranking for 2015 was at the 57th place, a drop compared to 2011. when it was 55th (ITU, 2013).

The authors of this paper advocate the premise that a citizen must be at the center of the development and application of information technology. In addition, it is particularly important that the positive influence is included on the inclusion of the values of inclusion of all members of the society, protection of human rights in the digital sphere and the promotion of active civic participation at the level of public policies.

The Republic of Macedonia has its own National Strategy in this area. Thus, the e-Citizen section of the 2005 National Strategy explicitly states that: "E-services that take into account the needs of citizens are one of the main reasons for the overall transformation towards a knowledge-based society. They will bring real improvement to the quality of life of citizens, as well as increased participation. "

Although new technologies offer efficient and cheaper means of involving citizens in decision-making processes, this potential in Macedonia is not fully realized.

## **RESEARCH AND FINAL CONSIDERATIONS**

In a survey conducted in the period December 2013 - May 2014, on a sample of 383 internet domains, ie 220 websites owned by government bodies and state administration institutions, we have a more detailed insight into the situation and the use of government websites as a tool for transparency, accountability and e-participation.

In addition to the overview of the contents available through .gov.mk web addresses and the functionalities of government websites, 17 structured interviews were conducted with experts from various fields who answered questions about their expert opinion regarding the situation with government websites in the Republic of Macedonia, with what functions and to what extent government bodies use new technologies in order to provide relevant information and e-participation of citizens, what information is missing, what are the standards, laws and regulations regulating e-citizen participation which is lacking in the Republic of Macedonia in relation to EU-level standards that guarantee citizens' participation in the decision-making process using new technologies and what should the Republic of Macedonia do in order to promote the opportunities for e-participation of citizens.

Also, 10 interviews with representatives of government bodies have been conducted in order to determine which new technologies are used by the institution from which they come, about which functions are most often used by websites, what are the standards, laws and regulations that regulate e-citizen participation, what steps are being taken to improve the transparency, accountability and e-participation of citizens, what kind of public information is available, and what they proactively publish on their websites, what mechanisms for e-participation are used, on which way and familiarize citizens with e-services and mechanisms for e-participation of the institution, the extent to consult citizens and how often they update their websites. There are numerous tools offered by the institutions, but the respondents point out that there is inadequate use of these tools by the civil servants themselves who are in charge of their updating, and on the other hand, insufficient activity from the public itself - both the expert and the general public, the citizens themselves. It is of great importance to increase the capacity of the public administration to practice greater transparency, accountability and involvement of stakeholders in decision-making.

There is a lack of publicly available policies regarding the use of social networks and moderation of comments at the level of public administration or at the level of individual institutions. The development and application of such policies, harmonized with the positive legal regulations, especially those related to the fight against hate speech, will provide a favorable environment for increased interaction with citizens. Demonstrating awareness and concern for the protection of human rights in the digital sphere is an important aspect of building trust between institutions and citizens. One step in this direction is the publication of privacy policies, as well as other documents, such as regulations and codes, which guarantee this, within the competencies of the institutions.

Although the institutions become aware of the importance of Internet space and there is a trend of increasing the e-services offered, our conclusion is that the state should be the leader in this field. In doing so, it is necessary to work on meeting the principles of e-inclusion and addressing issues related to accessibility, as well as

issues for persons with disabilities. E-inclusion and e-participation are a reflection of the democratic capacity of the government. At the moment, the challenge is the democratic capacity of the authorities, and less the instrument itself, through which they realize their will and readiness to secure participation in decision-making and transparency. The ongoing efforts of public institutions need to be promoted by strengthening capacities and harmonizing centrally adopted policies and their dispersion at all levels of government and state administration.

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## SERBIA IN BRITISH AND AMERICAN MEDIA

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### ABSTRACT

The aim of this paper is to explore the role of media within international cooperation by analyzing the latest developments through the contents of different foreign newspaper articles that deal with Serbia and the ways in which they affect the language, public opinion and international cooperation between Serbia and Western countries, predominantly the UK and the United States. By analysing the contents of some most popular British and American magazines, we will try to determine to what extent the media enhances or hinders the international cooperation in question and what is the main factor that predetermines and affects the way Serbia is presented in Western media.

**Key words:** media freedom, press freedom, newspaper articles, public opinion, international cooperation

### INTRODUCTION

In an attempt to examine how Serbia is portrayed in Western media, we conducted a research that included the analysis of 12 newspaper articles regarding Serbia that appeared in the latest editions of British online weekly magazines (the *Independent*, the *Guardian* and the *Economist*) and the most popular American magazines (the *New York Times* and the *Washington Post*). Through excessive reading of the articles concerning Serbia and its image in Western media published during 2017 and 2018, we decided to narrow our research by merely focusing on the news dealing with the presidential elections, precisely the candidacy and selection of Aleksandar Vučić, in the context of media freedom issue in Serbia. Serbia's international cooperation with western countries is directly affected by the way Serbia is perceived in Western media and its image in the West is predominantly created through the lenses of press freedom issue in Serbia.

## LEGAL FRAMEWORK IN TERMS OF MEDIA FREEDOM IN SERBIA

Serbia ratified the [European Convention on Human Rights](#) and the UN [International Covenant on Civil and Political Rights](#), both imposing obligations to protect freedom of expression and information. The [Constitution of Serbia](#) guarantees [freedom of expression](#) (including [freedom of speech](#) and [press](#)) and allows for its restriction only “to protect the rights and reputation of others, to uphold the authority and objectivity of the courts and to protect public health, morals of a democratic society and national security of the Republic of Serbia” (Brogi et al. 2014, 23). The Constitution in Serbia guarantees the right to freely establish media without prior authorization and prohibits [censorship](#) (Brogi et al. 2014, 23). The legal framework regarding media consists of the Law on Public Information, Law on Broadcasting, Law on Free Access to Information of Public Importance and Law on Elections of the Members of the Parliament that regulates the covering of elections by the media (Brogi et al. 2014, 23). The Republic Broadcasting Agency (RBA) is the independent authority regulating broadcast media whose independence relies on the procedure of electing its Council members and the RBA’s own source of revenue (its financial independence). However, the selection rules and procedures of the RBA members in Serbia are “rather complicated and unclear”, thus subject to “arbitrary or biased interpretations and implementation” (Brogi et al. 2014, 23-24). It is also noted that there is a lack of adequate implementation of the legal documents (Marko 2013).

There are concerns that media freedom in Serbia has been deteriorating recently. One of the crucial factors regarding governmental economic influence over media is municipality budget funding that compromises independence of media (Milivojević 2012). The deteriorating financial status of media also makes the media weaker in their attempts to resist economic and political pressures (Brogi et al. 2014, 25). There are also many cases of violence against journalists (Balkan Human Rights Network 2014). The EU accession process calls for changes in Serbian media policy. It is noted that despite good quality of the legal framework regarding the EU standards in Serbia, the media remains constrained by economic difficulties, corruption and political pressures (Freedom House 2012).

The media freedom issue in Serbia dates back to 2013 and the case concerning an NGO, Youth Initiative for Human Rights that complained in Strasbourg about the refusal to have access to the requested information held by the Serbian intelligence agency despite the fact that the European Court for Human Rights recognizes the right to access the documents held by public authorities, based on the Article 10 of the Convention (right to freedom of expression and information) (Voorhoof et al. 2015, 283). Namely, the NGO requested the intelligence agency in Serbia to provide it with the information concerning the use of electronic surveillance measures used

by that agency in 2005. The agency at first refused the request and when ordered by the Information Commissioner that the information at issue should be disclosed under the Serbian Freedom of Information Act 2004<sup>136</sup>, the agency claimed that it did not hold the requested information. The Court concluded that the intelligence agency in Serbia had violated Article 10 of the Convention and stressed that the NGO as a non-governmental organization could “play a role as important as that of the press in a democratic society” (Voorhoof et al. 2015, 283).

Freedom of speech is the cornerstone of democracy. It is also a fundamental right of all people irrespective of sexual orientation or gender identity (Nikolić 2015, 286). Without media freedom, it is hard for society to have media independence or media pluralism. This is why media freedom is the core focus each year of World Press Freedom Day led by UNESCO. According to the World Trends in Freedom of Expression and Media Development Global Report from 2017/2018, the current climate for media freedom is marked by “continued technological advances, increased political polarization and threats by non-state actors to national security” (UNESCO 2018, 35). Along with defining the legal status of freedom of expression, it is necessary to translate that status into practice. It is important to determine what restricts public expression “beyond accepted international standards” (UNESCO 2018, 34). Such practices refer to situations when “journalists are required to be licensed, when media are arbitrarily banned, blocked or filtered, and when internet access is cut off” (UNESCO 2018, 34). According to the Global Report from 2017/2018, media independence is under pressure in most regions of the world, especially in Western Europe and North America that have witnessed “the most significant declines in [public] trust” concerning the credibility of journalism (UNESCO 2018, 105).

The latest report compiled by non-profit organization Reporters Without Borders (RFS) has indicated that Serbia is ranked 76<sup>th</sup>, the UK 40<sup>th</sup> and the United States 45<sup>th</sup> out of 180 countries in the 2018 World Press Freedom Index (Reporters Without Borders 2018). It is interesting to mention the article published in the *Independent* that cited the findings of the RFS report and portrayed the UK as “one of the worst countries in Western Europe for press freedom because of “new media-muzzling laws and a climate of hostility towards journalists” (Agerholm 2018).

### **1. Corpus analysis: Serbian press freedom issue in Western media**

The articles that deal with the portrayal of Serbian president Aleksandar Vučić and his government are of great importance since they directly reflect and affect the image of Serbia in Western media. Given that Mr. Vučić is portrayed in the context of his change of views, his past reputation, the regime that the critics describe as dictatorial

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<sup>136</sup> The Freedom of Information Act 2004 published in Official Gazette of the Republic of Serbia no. [120/04](#), amendments published in Official Gazette nos. [54/07](#), [104/09](#) and [36/10](#) has been in force since 13 November 2004 (<https://hudoc.echr.coe.int/eng#%7B%22itemid%22:%5B%22001-120955%22%5D%7D>).

and his alleged control of media, Serbia is predominantly depicted as a country with a powerful anti-western campaign and little media freedom. Independent media is undoubtedly a prerequisite condition for establishing a good foundation for a stable international cooperation between Serbia and western countries.

The *Independent* reported on protests organized outside the National Assembly of Serbia after the election victory of Mr. Vučić in April last year. The protesters were said to be mainly students who gathered in front of the Serbian government to rally against corruption, lack of jobs, poor education system and Vučić's dictatorial regime. The *Independent* cites the statements of the protesters who claim that Serbia is currently facing a "media blackout" and that "the media regulator and top editors of state-owned RTS TV [...] failed to facilitate a free and fair vote" (Da Silva 2017). It is also stated that the opposition leaders denied the Government's accusation that they organized demonstrations and pointed out that there were many "irregularities, including muzzling of the media, as well as voter intimidation and bribe on Election Day" (Da Silva 2017). The *Independent* also cites the organization that on its website claims that the media is being subject to "frequent arbitrary financial and administration inspections" and that journalists "critical of the government are often publicly attacked" (Da Silva 2017).

In one of the articles published on 30 March 2017 in the *New York Times*, it is said that Vučić, while he was Serbia's information minister in the late 1990s, "censored journalists, forced media critics out of business and served as chief propagandist for the regime of Slobodan Milošević" only to renounce "the extreme nationalist views of the past" when he was elected prime minister in 2014 (Brunwasser 2017). It is further stated that, according to Serbian journalists, it is "impossible to do fair-minded journalism" due to the tactics of harassment and intimidation, taking as an example Stevan Dojčinović, the editor of a nonprofit organization the Crime and Corruption Reporting Network, who investigated the alleged undeclared assets of Mr. Vučić. Serbia is depicted as a country with "repressive media environment" and "pro-Vučić" tabloides (i.e. *The Informer*) (Brunwasser 2017). The article quotes Vučić's political opponent, Vuk Jeremić, who claims that "Serbian media landscape has become more murky, dangerous and even lawless" (Brunwasser 2017). It is also stated that such an atmosphere resulted in "journalists facing economic pressures and media owners facing threats and intimidation, smear campaigns by pro-government media and personal attacks from Mr. Vučić and his allies" (Brunwasser 2017). This statement is further backed by the opinion of Dejan Anastasijević, a reporter of Serbian weekly magazine *Vreme* who says that there was no debate anymore and that "the range in commentary is no more diverse than 'pro-Vučić' and 'extremely pro-Vučić' views" (Brunwasser 2017).

The above mentioned article from the *New York Times* relies on the findings of an independent research group, BIRODI (Bureau for Social Research), that indicates that

Mr. Vučić has gotten “120 times more news coverage on Serbian broadcast media than the two leading opposition candidates combined” (Brunwasser 2017). It also refers to a study by the nongovernmental monitoring organization [CRTA](#) that showed that “about 10 percent of front-page newspaper stories about Mr. Vučić over the last month were negative, compared with 53 percent and 61 percent for the leading opposition candidates” (Brunwasser 2017). To back this statements the magazine further relies on the most recent Annual Human Rights report of the State Department that lists “multiple problems with freedom of expression in Serbia: harassment of journalists; pressure that leads to self-censorship; and even accusations of treason against critics” (Brunwasser 2017).

In another article published in the *New York Times* this year, Serbia is portrayed as a country with no media freedom due to the fact that Mr. Vučić has had “almost unchallenged control of Serbia’s institutions and news media since his landslide victory” (Santora and Surk 2018). This statement is further backed by the argument that the news media in Serbia regularly attacks those who advocate any sort of compromise on Kosovo by “using derogatory language to disseminate Mr. Vučić’s populist message against Kosovo’s independence” (Santora and Surk 2018). The *New York Times* relies on the statement of Dragan Popović, a political analyst leading the Policy Institute, who believes Mr. Vučić is taking advantage of recent developments (i.e. the assassination of Mr. Oliver Ivanović) for political ends. Namely, Mr. Popović has said for the *New York Times* that “Kosovo and Serbs in Kosovo, has always been the central part of a nationalist and populist rule in Serbia” and that Mr. Vučić is no exception” (Santora and Surk 2018). According to Mr. Popović, Mr. Vučić’s visit to Kosovo has been inspired by his wish to remain in power and casting himself protector and saviour of Serbs in Kosovo is a good way of ensuring this.

The *Washington Post* writes that “there is a mounting anti-Western media campaign in Serbia” by providing the Reporters Without Borders’ statement that warns the Serbian, European and international public against “the extremely worrying situation of media freedom in Serbia, where independent journalists are nowadays the targets of physical and verbal violence and even hate campaigns by pro-government media” (Stojanović 2018).

In another article in the *Washington Post* Vuk Jeremić, Serbia’s foreign minister from 2007 to 2012 and president of the U.N General Assembly from 2012 to 2013, warns that democracy in Serbia is “under siege” since its president was given “free rein to suppress fundamental rights and freedoms” (Jeremić 2017). Mr. Jeremić argued that Serbia had experienced “rigged” elections that witnessed “media outlets surrender their objectivity and independence to autocratic demands of fealty and subservience” (Jeremić 2017). He has also stated that Vučić manipulates the state institutions and public opinion through media and such practices do not contribute to establishing regional and international cooperation.

The article published on 1 July 2017 in the *Economist* under the title “The West back Balkan autocrats to keep the peace again”, also deals with a “filthy media campaign” led against Vučić’s opponent Vuk Jeremić during the presidential elections and unequal treatment of other opposition leaders by the pro-government media in Serbia.<sup>137</sup>

In the light of presidential elections in Serbia and Vučić’s landslide victory, the article published in the *Guardian* entitled “Serbian PM elected president as EU warns over increased powers” deals with the newly-elected president who is referred to as “a former extreme nationalist who has rebranded himself pro-EU reformer” (Tait et al. 2017). It is stated in the article that while Vučić’s candidacy was endorsed by Vladimir Putin and hailed by the EU enlargement commissioner, Johannes Hahn, the opposition candidates accuse him of “control over the media, mudslinging and intimidation of voters” (Tait et al. 2017). The article further refers to the statements of the critics who expressed their concern that he could become “too powerful” which would lead to complete erosion of democracy in Serbia (Tait et al. 2017). His political reputation is particularly troubling, given his role as a communication minister under Milošević, when he “fined newspapers for breaking draconian censorship regulations during the 1999 conflict with NATO over Kosovo, and presided over a diet of state broadcast propaganda” (Tait et al. 2017).

In an interview with Robert Tait for the *Guardian* Vučić denied accusations of authoritarian tendencies by referring to an idiom in Serbia saying that “only donkeys don’t change” (Tait 2017). Mr. Vučić explained that it was very normal to change your views and to change yourself as you become more mature and more responsible. When addressing the charges of autocracy, he explained that his way of democracy meant that others “[could] always express their attitudes, they [could] always say [he was] authoritarian, autocratic, or whatever they [wanted]” (Tait 2017). In an interview Vučić also described himself as a modest politician with modest expectations regarding foreign policy. Yet the *Guardian* says that the presence of “massive election posters showing Vučić’s youthful, bespectacled features smiling beside his name – written in Cyrillic – and initials in the Latin script belie his protestations of modesty”, while pro-Vučić election adverts “massively [outnumbered] those of all other candidates combined” (Tait 2017).

Perhaps this is why Natalie Nougayrède, the *Guardian*’s columnist, refers to Mr. Vučić, as “the chameleon strongman of Europe” that has managed to “reinvent [himself] spectacularly over the years” (Nougayrède 2018). Namely, Vučić is compared to his ‘close friend’, the Hungarian prime minister, Viktor Orbán. Both of them are portrayed in the article as chameleons that can easily adapt to circumstances

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<sup>137</sup> The author of the text is unknown. It is only stated that this article appeared in the Europe section of the print edition under the headline “Wrong and stable”.

and that Europe should beware these two politicians. The *Guardian's* columnist warns the EU that Mr. Vučić has “little interest for checks and balances, liberal democracy or free media” and that his real intention is to “secure power” (Nougayrède 2018). She also pointed out that Vučić was once “a staunch admirer of Serbia’s blood-drenched warlords in the 1990s Balkans”, but that all that changed by the 2010s when he “had mutated into a seemingly reasonable, eager pro-European” (Nougayrède 2018).

Another article in the *Guardian* deals with the portrayal of Serbian president as the only person able to deliver a compromise package on Kosovo, despite referring to him as a “tireless martyr for Serbia”, “a man of contradictions”, and a domineering leader who uses “whispered emotional appeals” to manipulate the public (Walker 2018). It is further stated that in the eyes of the critics, Mr. Vučić is presented as “a selfless fighter for Serbia that masks a raw drive to consolidate power”, while the EU and other institutions criticize him for “a media crackdown” (Walker 2018).

The fact that the Western media is suspicious of his intentions does not come as a surprise given his political past and his own earlier national outbursts. Namely, Mr. Vučić is once again portrayed through the lenses of his former political involvement as a member of the Radical Party which sought a Greater Serbia and supported the Serb military formations fighting in Croatia, Bosnia and Kosovo. Mr. Vučić is also marked as a political figure under Vojislav Šešelj’s mentorship. It should be also pointed out that the above mentioned article in the *Guardian* relies on the statement of Boban Stojanović, a Serbian political expert, who has said that despite Mr. Vučić’s efforts to create a public image of the ‘best’ person in Serbia, there is “corruption, little free media and the threat of emergence of a one-party system” (Walker 2018). However, it is clearly stated in the article that European leaders approve of Mr. Vučić because they believe he is most likely to bring reconciliation over Kosovo on the condition that Serbia is granted a package of concrete benefits. Namely, they are of opinion that “a weaker leader would not be able to sell [a compromise package on Kosovo] to the Serbian public opinion” (Walker 2018). Moreover, it is in their interest to support someone who may “counter Russian influence in the region” (Walker 2018) It is also stated that Serbian president denied accusations that media in Serbia were under his immediate control and complained that it was independent media that had been leading a “campaign 24/7” against him (Walker 2018).

## DISCUSSION

Since magazines and newspaper articles have tremendous influence on the societal attitudes (Nikolić 2017, 296), it is of great importance to tackle the issue of press freedom. The selected articles reporting on Serbia have indicated that there is still little media freedom in this country, despite the fact that Serbia ratified the [European](#)

[Convention on Human Rights](#) and the UN [International Covenant on Civil and Political Rights](#). Censoring the newspapers is the first step towards establishing a totalitarian regime (Nikolić 2015a, 942). Although censorship is prohibited by the Constitution, some independent Serbian journalists and reporters said for the British and American magazines that their rights regarding freedom of speech and expression had been violated by the government. The *Independent* and the *Guardian* wrote about the ‘media blackout’ and ‘media crackdown’, muzzling of the media in Serbia and unfair treatment of journalists critical of the government. The *New York Times* depicted Serbia as a country with ‘repressive media environment’ and ‘pro-Vučić’ tabloids (i.e. the *Informer*) relying on the statements of some Serbian journalists and reporters who were treated unfairly or who claimed that it was hard to do fair-minded journalism, as well as members of opposition who constantly warned against pro-government media in Serbia. The *New York Times* relies on the findings of BIRODI and CRTA, independent and nongovernmental organizations that indicated that broadcast media in Serbia did not adhere to strong standards of impartiality in news during 2017 presidential elections. The magazine also uses the most recent Annual Human Rights report of the State Department that warns against many problems with freedom of expression in Serbia. The *Washington Post* writes about ongoing anti-Western media campaign in Serbia relying on the Reporters Without Borders statement, while the *Guardian* informs on pro-Vučić election adverts that ‘massively outnumbered those of all other candidates combined’.

Given that Serbia is ranked 59th out of 180 countries in the 2016 Press Freedom Index report compiled by Reporters Without Borders (2016), 66th in 2017 (Reporters Without Borders 2017) and 76th in 2018 (Reporters Without Borders 2018), it is evident that there has been a falling trend of media freedom in Serbia in the last two years. In order to enhance the international cooperation between Serbia and the United Kingdom/the United States, our country needs to improve its status regarding media freedom. It is inferred from the selected articles that Western media identify the existence of anti-western media campaign in Serbia, while the Serbian government points to anti-Serbia media campaign in British and American newspapers. The newspapers should not be encouraged to follow a partial news agenda, especially in opinion pieces and political reporting. A tighter and more frequent cooperation between Serbian and English/American journalists/reporters should be bolstered up. The articles written by two authors, the one from Serbia and the other from the UK/US, offer more objective image of Serbia and the problems it faces. Also, it is very likely that Serbs themselves turn out to be the most responsible for the image their country has abroad.

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# **POSSIBLE SUPPORT OF THE EU FOR THE REPUBLIC OF MACEDONIA FOR REGIONAL AND RURAL DEVELOPMENT**

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## **ABSTRACT**

The conditionality of the EU for the potential member states and its respective pre-accession funding prepare these states for the future possibilities and circumstances within European policies and forms of cooperation. The goal of this paper is to establish the possible conceptual and financial support of the EU for the Republic of Macedonia, regarding the regional and agricultural policy. The regional policy of the EU which is aimed at diminishing economic, social and infrastructural disparities and the concept of balanced regional development of the Republic of Macedonia necessarily have overlapping points with the agricultural policies since rural areas in RM are underdeveloped and comprise the living area of about 40% of the Macedonian population. Therefore, it is of great significance to determine sustainable development strategy in these terms, dominantly to the end of improving economic activities and living conditions of the rural population.

The basic method applied in the paper is the analysis of the EU and RM policies and necessary means for agricultural and regional development. The main expected results can be seen in identification of the circumstances and conditions that have an impact on the effectiveness of these developmental trends and possible opportunities that RM would take in former areas upon EU accession.

**Key words:** regional development, cohesion, rural development, agricultural policy, EU funding, Republic of Macedonia

## **INTRODUCTION**

EU's regional policy today represents a significant part of the overall EU functioning and is considered an equalizing and binding factor in favor of the European integration processes. The regional policy's goal is to contribute to EU's strive towards sustainable development through diminishing economic and social

disparities among regions in the EU by providing substantial funding for less developed regions aimed at creating and improving job opportunities, enhancing infrastructure and treatment of environmental issues, including renewable energy sources.

The common agricultural policy (CAP) of the EU is aimed at farmers support for the purpose of obtaining quality and safe food, which includes help for tackling climate change and sustainable management of natural resources (European Commission 2018). CAP is also aimed at providing certain standard of living for the farming population in the rural areas thus maintaining the demographic and quality of life of those areas.

EU's regional and agricultural policies necessarily have overlapping points, since more often than not, less developed regions are the dominantly agricultural ones, therefore some of the goals, resources and instruments of these policies might be applicable to both.

## **SIGNIFICANCE OF THE CONDITIONALITY**

The strategy and official approach that entails all the aspects specific for the Western Balkans' integration is the Stabilisation and Association Process and the most useful instrument of the EU for accomplishing this optimal accession is the EU's incentive towards the integration of WB - the conditionality. SAP encompasses the Copenhagen criteria (1993) accompanied by a set of new conditions (1997, that are consisted out of regional cooperation, cooperation with the ICTY and implementation of the Dayton accords) and it presents EU first attempt in institutionalizing relations with the region (Zarin 2007, 518). Some additional conditions occasionally occur, such as the recent requirements upon RM to reach solution regarding the name dispute with Greece, *a-priori* entering NATO and providing solid picture of good neighbourhood relations. This strategy of conditionality has also been disputed by some studies regarding its relative ineffectiveness. However, although impeded by the recently overcome EU economic crisis, recent developments (Reuters 2018) in the area of enlargement and fulfilment of the conditionality have marked advance.

Anyhow, even faced with challenges and fluctuations, the conditionality of the EU (especially the necessary adoption of the *acquis*) for the potential member states and its respective vast pre-accession funding serves a practical purpose, i.e. it prepares these states for the future possibilities and circumstances within European policies and forms of cooperation. Hence, narrowing on the topic at hand, IPA funds and certain EU-RM multi-level institutional and non-institutional cooperation prepare RM for the legal framework, standards and financial possibilities, among other areas, within the regional and agricultural policy of the EU upon accession.

## **EU'S DYNAMIC LEGAL AND POLITICAL MECHANISM REGARDING REGIONAL POLICY AND SOME AGRICULTURAL ISSUES**

The European integration deepens and overflows on each area of policy making or citizens' lives, consequently regional policy marks evolution as well. The EU focus on regional policy intensifies, i.e. its goals, content, financial instruments and overall resources and attention are increasingly significant.

During the previous decades, cohesion and agricultural policies have been evolving according to the respective European circumstances which impacted the *acquis communautaire*. For instance, the UK, right from the moment of entering the Union has challenged several aspects of the Community law. UK's criticism of the CAP has influenced this policy, as well as its insistence on the changing the competence of regional policy – from EU level to an individual state's level (Pelkmans 2006, 428). There is also the lesson from the 'poor four'. At the beginning of the 1970's, there have been only 3% of the Community budget dedicated to structural spending – a situation that has been developing ever since the entrance of Ireland in 1973 when a small fund, the ERDF has been introduced to redistribute finances to the poorest regions (Baldwin and Wyplosz 2009, 405). Then, with the accession of Greece, Spain and Portugal, these three countries together with Ireland have overturned the voting power which has become sufficient to produce major realignment of EU spending priorities, thus significant increase on spending on poor regions has been achieved (Ibid.). That has even been upgraded by the introduction of the Maastricht by creation of an even wider fund – the Cohesion Fund that could be spent only in these countries (Ibid.). There is a frequent remark that when WB enters the Union, additional adapting within these policy areas would be needed, since WB countries consist of exclusively underdeveloped regions.

Today, the Lisbon Treaty regulates the basis of the regional policy under TFEU Articles 174-178 (ex 158-162 of the TEC) under the name “economic, social and territorial cohesion”. These articles set the definition and the goals of the policy – diminishing disparities among variously developed regions, with special accent on rural and remote regions (Art. 174, Lisbon Treaty); then, the financing, i.e. the Structural funds (Art. 175, Lisbon Treaty) and the institutional framework – that the European Parliament and the Council after consulting the Economic-social Committee and the Committee of Regions, define goals, priorities and organizing of the Structural funds within the ordinary legislative procedure (Art. 177, Lisbon Treaty). The TFEU articles 162-164 (ex 146-148 TEC) stipulate the European Social Fund.

EU regional policy constitutes immense part of the EU budget for 2014-2020 – 351.8 billion, out of a total 1082 billion euros and is therefore the Union’s main investment aim (EC, 2014, 3). There are various forms of financing regional development, including additional donor’s cooperation, however, current main funds that support EU regional policy are the European Regional Development Fund and the Cohesion Fund. European Social Fund is of essential significance, as well and along with the European Agricultural Fund for Rural Development and the European Maritime and Fisheries Fund it makes up the European Structural and Investment Funds (EC, Main investment policy). ERDF addresses economic, environmental and social challenges, focusing on sustainable urban development and to specific territorial characteristics like geographically disadvantages areas (EC 2014, 7). ERDF entails infrastructural, innovation, communication and job creation measures (EC 2014, 7). ESF enhances employability by developing skills and access to job markets, fosters inclusive policies of marginalised groups and invests in the efficiency of public administrations. (EC 2014, 7). CF, consisted of investments in transport network and environment, along with the potential increase of job and connections, targets countries with a GDP lower than 90% of the EU 28 average (EC 2014, 7). Indubitably, RM would account as eligible beneficiary upon accession for all these funds, since it is comprised of underdeveloped regions and low GDP. Moreover, supposedly, great amount of these funds would be allocated to RM given the economic and social features of the greatest area of RM. That would prove to be an irreplaceable developmental incentive for RM with great not only cohesive and social impact but a general economic one.

### **RELATION BETWEEN THE EU REGIONAL POLICY AND THE POLICY FOR BALANCED REGIONAL DEVELOPMENT OF RM; EU SUPPORT FOR DEVELOPING REGIONS IN RM**

Much like the EU Regional Policy, RM has developed its own regional policy in 2007 by adopting the Law on Balanced Regional Development. This followed the previous policy on development of underdeveloped areas while the amount of the public finances under both policies allotted for this purpose remains the same – 1% of the RM state budget. Macedonian regions follow the European nomenclature (NUTS) which means that these regions have been established for statistical and administrative purposes but in RM, they do not represent units of local government. As far as the financing of BRD is concerned, there are two general problems with the mentioned 1% of the budget – not even this legally stipulated minimum has been allocated properly (Penev 2017, 169-189), moreover, 1% is highly insufficient for achieving its respective purpose. The need for more substantial funding and established and monitored criteria regarding its dispersion is accentuated by the great

importance of the BRD in RM, since demographic and economic disparities are inherent for RM since 1991. For instance, although the Macedonian BRD policy has marked small progress, still demographically, more than 50% of the population growth in RM comes from Skopje Region, with Skopje and Polog region creating approx. 90% of the national population growth and illustratively economically, Skopje region generates 43% of the national GDP, accounting for the share of 37-38% of active business entities while all the other regions fall far behind (Penev 2017, 137-138). In a way, this stance does not differ much from the EU, since Metropolitan regions host 59% of the EU population and 62% of all jobs, generating 67% of the Union's GDP (EU 2014, 13).

As of 2007 EU financial support for WB is provided under the unified IPA. IPA offers support through its five components: transition assistance and institution building, cross-border cooperation, regional development, human resources development and rural development (EC 2001). The average annual allocation for WB under IPA is immense – just for the first period 2007-2011 is approximately €800 million (EC 2008) and these numbers only increase through the years. When argued that these funds are at times inadequate (because they require certain preparation and co-financing by the beneficiary countries) or not sufficient compared with the task of accession preparation, Mrak's position, in 2007, is that the central point of the IPA is not to get “the job done” but to transfer know-how and experience to partner countries (Qorraj 2010, 83). For example, the regional development component is aimed at supporting the countries' preparations for the implementation of the EU's cohesion policy, and in particular for the ERDF and the Cohesion Fund. This approach is consistent with global purpose of the previously mentioned SAP.

Anyhow, the NETO amounts have been proven helpful and constructive. Today, just for RM out of 664.2 million EUR programmed under IPA II for the period 2014-2020, 298.8 mill are dedicated to socio-economic and regional development. This means that the RM BRD policy is essentially financed and highly dependable on EU funds. Such extensive funding also indicate strong and consistent will for WB integration compliant with the official promises made by the EU in the previous period.

In any event, it is notable that a sustainable development strategy in RM is needed, one which addresses current and ensuing challenges, i.e. sufficiency and usage of the RM public funds and IPA sources, their effectiveness and criteria for distributing, long-term goals of the balanced regional development, which would anticipate the circumstances of entering EU and becoming eligible beneficiary of the aforementioned funds, as well as much greater institutional effort and coordination.

### ***Social significance of rural development***

The rural development is of great significance for the agricultural development since it produces normal and functional living environment in the settlements the most affiliated to food production. The rural development covers many areas of private and social life in these settlements like appropriate operation of primary schools, primary health care institutions, social care institutions, and construction and maintenance of physical infrastructure including local roads, water pipes, sewage systems, etc. The satisfaction of the rural population with these life opportunities is another incentive of theirs to stay and produce food, on contrary their food production will decrease as a result of insufficient revenues or emigrations. Therefore, rural development is of special importance for any state and society.

### **MEASURES IN AGRICULTURE**

The measures of the EU under CAP (for agriculture and rural development) are extremely similar to the ones stipulated in the Macedonian legislature. Namely, EU finances direct payments to farmers and measures to respond to market disturbances, such as private or public storage. (EU 2014, Budget, 8). However, RM falls behind EU's endeavours for reducing waste production and greenhouse emissions, as well as for developing clean technologies.

In RM, the measures undertaken by the state authorities to strengthen agriculture lie in the financing of the national agricultural policy through the budget of RM, the budget of the EU, donations and other sources in accordance with law (Art. 5, Law on Agriculture and Rural Development 49/2010). These measures have two goals. The first goal is stabilization of the market of the agricultural products through the intervention measures (Art. 37, LARD 49/2010). They can be introduced in case of disruption between the demand and supply of the agricultural products at the domestic market. The above measures can be undertaken through: intervention purchase and support for storage. These measures relate to wheat of domestic production, although the government based on the proposal of the minister (of Agriculture) can determine some other agricultural products that can become a target of the aforementioned measures. The second goal is strengthening the revenues of the agricultural farms by the policy of direct payments. Direct payments are allotted to the agricultural farmers on the basis of surface of agricultural land, unit of agricultural products and head of domestic animals. The amount of direct payments depends on the type of the agricultural culture, sort, class and quality of the agricultural product and kind of the domestic animals (Art. 47, LARD 49/2010).

The measures based on political orientation to strengthen the agriculture as an economic activity provided larger and larger funds for state intervention in agriculture throughout the years. Thus in 2003 on annual level only 430 000 000 MK Denars or about 7 mill EUR were allotted to the agriculturists in RM and that amount was

enhancing every subsequent year. In 2007 the annual state amount for agriculture was more than 20 mill EUR; in 2009 was 65 mill EUR; in 2011 it was more than 100 mill EUR and in 2013 it reached 115 mill EUR. But, if we analyze the agricultural targets for which this state intervention money is spent we can see that for instance in 2013 – 3 564 500 000 MK Den (less than 60 mill EUR) is spent for direct payments for agricultural plant products, another 2.205.600.000 MK Den (less than 40 mill EUR) is spent for direct payments for animal husbandry products (Malcheski and Malcheski 2015, 131) or all together approximately 84% of the overall financial support in agriculture is consisted of direct payments for increase of the revenues of agriculturists to what they actually produce and the rest 16% of the overall financial support in agriculture, including the measures that modernize the agricultural production although the most of it does not exceed the level of amortization it means support to introduce new machinery in production replacing the existing worn out. In that respect small amount of the latter resources are intended for new agricultural equipment, facilities, methods and seeds that would represent technological innovation in the agricultural production. For illustration, in 2013 investments in assets in agriculture amounted for around 9 mill EUR, out of which 1,2 mill EUR were invested in buildings, 6,1 mill EUR in machinery and equipment (all from import) and perennials (0,8 mill EUR) in addition to the annual consumption of fixed capital (depreciation) in that year which was 8% of the agriculture GVA. (EC 2015, 36). In 2013, the total number of tractors in the country was about 92 708 and of harvesters – 1 797 but this agricultural machinery was worn out and obsolete as around 70% of the tractors and combine harvesters were more than 20 years old. Thus, despite the significant support under the national IPARD I for the modernization of agricultural machinery, further investment is needed in the crop production sector for machinery for sowing, fertilizing, protection and irrigation of crops (Ibid. 36). Generally, the overall result of these investments is insufficient seen through the final effects. Thus, the agricultural and food processing balance of trade through the years remains almost unchanged - in 2008 export of these products from RM to the foreign countries is less than the import of these products from the foreign countries to RM for 156 mill EUR while in 2013 the difference between the export and import is 150.5 mill EUR (Ibid., 48) it means that in both comparative years RM has almost equal deficit of agricultural and food processing products. This shows that the state financial support mainly based on EU funds in agriculture could not improve the unfavorable situation in this economic activity. This financial support is aimed to mitigate the unfavorable situation of agriculturists whose activity can be characterized as low productivity due to the aging of the labor force where only about 10% of the employed in agriculture are young (from 15-24 of age), a shortage of qualified labor in agriculture, (Ibid., 94) fragmentation of land plots, obsolete technology, lack of organized marketing, (Jakimovski 2001, 64) therefore the most

of the money is intended in a linear way to mitigate the unfavorable financial situation of the most of the agriculturists or a social care measure to raise the revenues of the agriculturists in order them not to fall beneath the existential level, but this financial support apart of other measures cannot produce real modernization and even less significant technological and organizational progress in the field of agriculture. Hence, much larger financial support in addition to other legal and institutional mechanisms for development of the Macedonian agriculture is needed.

## **RURAL DEVELOPMENT**

The rural development is supported by the Macedonian state and municipalities as well as the EU fund IPA II that is combined with the aid for development of agriculture in RM. First the rural development is provided by the municipalities as a part of their municipal development, since they have some revenues for infrastructure, primary and secondary education, social care, culture, urban planning, etc. But the revenues for municipal development are insufficient due the insufficient economic capacities of the state and inappropriate distribution of the revenues between state and local authorities to the disadvantage of the latter. Thus, RM has GDP of about 14 000 EUR in contrast to the developed countries that have GDP of 50 000 and more EUR per capita (List of countries by GDP (PPP) per capita 2017) and the share of the municipal revenues in the overall budget revenues in RM is about 10% in contrast to the developed countries where that percentage is 35-40%, (Sejdini 2017, 454) therefore RM has much less finances for municipal development. The rural development within the municipal development is a minor part because many of the villages belong to the municipalities with an urban center but where the urban population and urban representatives in the municipal bodies are prevailing against the rural representatives and they spend the joint municipal revenues in favor of urban needs. (Todorovski 2004, 46). Thus about 92% of the rural population in Macedonia is without sewage systems in contrast to the cities where about 30% are without them; about 50% of rural population is without water pipes in contrast to the urban population where this percentage is 10% (Stojanovska 2004, 158, 159); there are primary medical care facilities in one out of 5.8 village communities in contrast to the cities where every city has a multitude of these institutions (Donev 2001, 76), etc. In order to improve the situation in the rural areas, RM has established some funds for this purpose, in some cases being supported by EU. RM has some special fund for rural development established by its government in 2009 amounting 420 000 000 MK Den (about 7 mill EUR) that is raised each subsequent year, amounting 579 000 000 MK Den (about 9.6 mill EUR) in 2010; in 2011 - about 10.6 mill EUR and in 2013 approx. 19 mill EUR (Malcheski and Malcheski 2015, 131). Another fund for rural development in RM was that for Support of the Development of Underdeveloped

Areas established in 1994 co-financing rural areas in construction and reconstruction of infrastructure facilities, primary schools, post communications, etc. which amount was 0.3 % of the Macedonian budget when it was established with a tendency stipulated in the law by time to reach 1.0% of the budget, (Todorovski 1998, 102) but instead it was reduced to 0.1% of the budget (Todorovski 2001, 60). The next fund for rural development was that for Construction of Water Pipes (established in 1994), that included construction of sewage systems also, which allotted 85% of its sources for the villages and 15% for the cities. (Todorovski 1998, 100-102). As mentioned, EU, through IPA funds supported both RM agriculture and rural development. This fund amounted for the period 2014-2020 664.2 mill EUR, being 106.3 mill EUR on annual level for the year 2018 (EC 2017).

The next fund that comprises revenues for rural development in the RM Budget for 2018 is the Program of BRD covering 280 mill MK Den (4.5 mill EUR) but for rural development are intended 28 mill MK Den (450 000 EUROS) (Council for BRD 2018) or 10% of the whole amount. Therefore, the insufficient amount of these revenues for rural development resulting in less comfortable living circumstances in the villages, with lack of water pipes, sewerage systems, paved roads, primary medical care facilities, primary schools etc. badly affect the satisfaction of life of the rural population who desert their native places or have frustrations and handicaps to work there and this negatively impacts the development of agriculture in RM. Conclusively, in addition to some other political and social measures much more abundant finances are to be provided for rural development that obviously could not be fully provided by domestic sources.

## **CONCLUSION**

Both EU regional and agricultural policies are dynamic regarding their concept, competences and financing instruments and are conceptually and financially significant for the support of their counterpart policies in RM. Not only will RM be eligible beneficiary for all the excessive EU funding within these policies upon accession, current IPA funding is of essential importance for the development of underdeveloped regions and rural areas, since as elaborated in the paper, RM, despite its legislative endeavours, experiences deficiencies in the policies of BRD and rural development, i.e. it has insignificant or very modest capacities to achieve remarkable developmental trends on its own; hence, it is largely dependent on EU. Current and ensuing support of the EU is to be positively impactful since EU transfers not only finances, but know-how as well, which is crucial for obtaining elaborate sustainable development strategy in RM for the agriculture and BRD.

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## JUDICIAL ACADEMY WITHIN THE UPCOMING CONSTITUTIONAL CHANGES

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### **ABSTRACT**

The current Constitution of the Republic of Serbia has been criticized since its adoption, especially its parts related to the Judiciary and Public Prosecutor Offices, as well as the relevant accompanying legislation. Meanwhile, the Judicial Academy was established in order to further professionalize and raise quality of performance of Judicial and Prosecutorial functions. From the beginning, it has been exposed to various (non) argumentative contestations that, mainly, sought to degrade and discredit its role and significance. In 2018, Official Draft of Constitutional Amendments in terms of Judiciary and Public Prosecutor Offices was presented. In a sense, Judicial Academy gained its place in the aforementioned text, but, once again, it faced criticism. Therefore, the justification of above mentioned propositions should be considered through the analysis of the current character, role and tasks of Judicial Academy, including some proposals concerning its future position in Serbian legal system.

**KEY WORDS:** Judicial Academy, Judiciary, Public Prosecutor Offices, Judges, Deputies of Public Prosecutors, Constitution

### **INTRODUCTION**

Constitution of the Republic of Serbia from 2006 (hereinafter: Constitution) has been criticized since its adoption, especially its parts related to the Judiciary and Public Prosecutor Offices, as well as the relevant accompanying legislation.<sup>138</sup> *Inter alia*, Constitution made a distinction between the so-called "first election" and "permanent election" for Judicial and/or Prosecutorial Function (Petrov 2014, 99).

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<sup>138</sup> More about: Marković 2006, 21-6; Grabenwarter, *et al.* 2006, 13-8; Rakić, Vodinelić, *et al.* 2012, 36-13; Pajvačić 2011, 7-20; Škulić 2014, 64-75; Petrov 2014, 99-04.

Namely, "first election" refers to the Judges and Deputies of Public Prosecutors (hereinafter: DPP), which means that they are on *sui generis* probation period of three years, while after that period they could be permanently elected for above mentioned Functions. High Judicial Council (hereinafter: HJC) and State Prosecutors Council (hereinafter: SPC), only, propose candidates for the "first election" to the National Assembly (hereinafter: Assembly) that will, definitely, decide about concrete proposals. Election regime is far more differentiated in terms of the Prosecutorial Functions because there are various rules for the elections of Public Prosecutors (hereinafter: PP) and DPP (Marković 2006, 24). Thereby, PP is time limited Function, but he/she, *ex lege*, becomes a DPP in PPO which is the head after the expiration of his/her mandate, without the procedure related to the "first election".

In Official Draft of Constitutional Amendments from 2018 (hereinafter: Draft), Assembly should be excluded from the election procedure for Judges and DPP, which would be, fully and only, under the discretion of HJC and High Prosecutorial Council (hereinafter: HPC) that is envisaged as the successor of the existing SPC. Crucial novelty is the abolishment of the "first election" principle, but there is a new condition that would set the grounds for a new election regime. Namely, a person could be elected as a Judge or DPP for the first time in the Courts with exclusively first-instance jurisdiction or the lowest PPO, but, only, if he/she has previously completed one of the forms of legally stipulated training in a judicial training institution. Implicitly, Judicial Academy (hereinafter: JA) presents the aforementioned institution (Hirschfeldt, *et al.* 2018, 9). Constitutional changes will require an adequate harmonization of the accompanying legislation too. Still, there are certain questions, dilemmas and problems that have to be considered.

## CRITICAL AND COMPARATIVE ANALYSIS

JA's pandans worldwide have no ranks of Constitutional category, which indicate, *per se*, on its groundless and needless in Serbian's terms too (Petrov 2014, 104-5). Furthermore, it was emphasized that Executive Branch of Power (hereinafter: Executive) has influence over JA, and it could be served as an effective channel of political influence on Judiciary and Prosecution. (Boljević 2018, 17; Comments No. 24 2018, 24-8). Finally, critics did not pass by Initial Training Concept (hereinafter: IT), as well as Beneficiaries of Initial Training (hereinafter: Beneficiaries).

JA is officially registered in form of Institution with legal personality, while it is part of Public Services. Generally, Institution presents fluid, legal concept regulated by the Public Law, with the emphasis on expert performance of various activities in order to ensure normal functioning and fulfillment of the overall and common interests of society in the spheres of science, culture, health care, social care, education, etc. (Maletić, Aćimovska 2008, 41-2). However, Ministry of Justice

(hereinafter: MJ) supervises the legality of JA`s work, which may be interpreted as some kind of Executive`s "control" over JA, despite that it is unique for all types of Institutions. Also, it is present in other countries from ex-Yugoslav region. The only exception is Montenegro, whose Center for Training in Judiciary and State Prosecution is defined as Independent Organization that is established by the Law, but without Executive`s supervision. Draft does not explicitly mention JA, but it uses a notion "judicial training institution". It is unknown why such general term had been used except the direct mentioning of JA, but the word "institution" should be interpreted, only, in genus sense (Vujaklija 1980, 350; Mićunović 1991, 291), without prejudgication of JA`s form. Of course, one could exclude every kind of Executive`s involvement within JA. First possibility could be re-arrangement of LPS that would allow derogations for specific situations such as LJA, while another could be change of JA`s form. In this regard, JA could be defined as *sui generis* State Organ that would be under the common and mixed supervision of the HJC and HPC (SPC), which would not be new idea in terms of supervision. Above mentioned concept had been promoted in National Judicial Reform Strategy from 2006 (hereinafter: Strategy 2006) that created foundations for establishment of JA, regardless of non-acceptance of proposed title National Institute for Professional Training (hereinafter: NIPT). *Inter alia*, HJC would have supervisory powers over NIPT, which may refer, *mutatis mutandis*, on JA, but with addition of HPC (SPC). Also, one could establish "Parliamentarian control" over JA. Assembly is the highest authority that is composed of the directly elected Representatives, while, *per se*, it is the closest to the Sovereignty (Orlović 2011, 508). Thus, JA would be much more related to the Sovereignty Holders, which would additionally contribute on its legitimacy and much more independent position.

Law on Judicial Academy (hereinafter: LJA) did not copy a usual organizational model from the Law Public Services (hereinafter: LPS). JA has Steering Committee (hereinafter: SC) and Director like every other Institution, but lacks Supervisory Board, while there is Program Council (hereinafter: PC). In short, SC and PC both are collective organs, but the first one manages JA and performing electoral, normative, financial and organizational activities, while the second one performs various activities related to the relevant educational and training programs within the JA`s competencies. Director presents executive organ that represents, coordinates and organizes work of the JA, executes decisions of the SC and PC, etc. Criticism was mostly focused on the participation and activities of Executive`s representatives in JA`s organs, which has been interpreted as possible influence on the JA. It is very simplistic and trivial review that excluded many relevant aspects.

According to LPS, Government appoints and dismisses Members of the SC in Institutions that are founded by the Central State, while LJA promoted slightly different approach. JA`s SC consists of nine Members who are appointed by the

following formula: HJC appoints four Members from the ranks of Judges while two of them must be proposed by the relevant Professional NGO of Judges; SPC appoints two Members from the ranks of Prosecutors<sup>139</sup> while one of them must be proposed by the Professional NGO related to the Prosecutorial branch and Government appoints remaining three Members. Furthermore, Government is absolutely free in direct appointment of just one Member of the SC, since one of them must be a State Secretary in the MJ who is in charge of Professional Improvement of Employees in Judiciary (hereinafter: State Secretary), while the other one must be appointed from within the JA`s employees. There is illogicality, because Government does not, literally, appoint State Secretary, because it is *ex officio* Member by its position. Of course, it is related to the relevant Ministries, which are, *inter alia*, integral parts of Government. JA`s employees could be, only, indirectly "controlled" by the Government, since it provides conditions, means and, mostly, finances for the JA through Ministry of Finance, while the MJ supervises the legality of JA`s work. Anyhow, aforementioned Member is appointed by the Government, but its choice is, just, limited within the JA`s employees. So, LJA deviates significantly from the LPS as a fundamental regulation in the matter of Public Services. Surely, a crucial goal was to demonstrate ultimately reduced role of the Executive regarding JA, but it is questionable whether such kind of "anomaly" is allowed. SC`s Members among themselves elect the President of SC, but exclusively from the ranks of Judges or Prosecutors. Principally, SC makes decisions by a majority of votes, while sessions can be held, only, if more than half of all of the Members are present. However, decisions related to the election or dismissal of the President of SC, Director, adoption of Statute and other general legal acts are exceptions to the aforementioned general rule, since they must be adopted by two thirds majority votes of all Members. Thus, SC`s Members who are appointed by the Government could not, even, provide a quorum for working and deciding about regular issues without involvement of other Members who are appointed among Judges and Prosecutors. Also, their impact is even lower in terms of key decisions, since they cannot, solely, provide necessary two third majority of all SC`s Members, while other Members can decide about aforementioned issues, even, without Members who are appointed by the Government. Therefore, Executive`s role is additionally reduced both in terms of deciding within the JA`s SC, as well as regarding the head of SC, since its President, as *primus inter partes*, can be, only, elected among the Members from the ranks of Judges or Prosecutors, but not between the other Members. Finally, LJA contains "negative clause" that forbids the Members of the HJC and SPC to be, simultaneously, Members of the JA`s SC and PC.

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<sup>139</sup> It is widespread colloquial title that includes both PP and DPP.

Crucial problem could be Professional NGOs as the official proposers within above mentioned appointment procedure regarding SC, as well as PC, since two Members from the ranks of Judges and Prosecutors must be proposed by the above mentioned Professional NGOs. Professional NGOs in the sphere of Judiciary have an important role in protection of the rights, interests and reputation of Judicial Profession, and also contribute to the preserving of independence-autonomy and prevent political influence (Čavoški, and Ćirić 2011, 3-4), which refer, *mutatis mutandis*, to the Prosecution. In Serbian legal system, they are not under specific legal regime in comparison with the other types of NGOs, since the provisions of the Law on Organizations are uniform rules that do not make any differences between them. Generally, Organization is a voluntary creation of its members and it serves to satisfy the their needs and interests (Stojanović, and Antić 2004, 174; Mataga 2006, 14) as well as every other NGO including, even, a Professional NGO, regardless of proclaimed higher and general goals. Every NGO strives to, primarily and essentially, satisfy private needs and interests of its members, while no one can guarantee that SC's Members who were appointed by the proposal of the Professional NGOs will act impartially, independently and in a self-conscious. Also, which Professional NGOs can be official proposers? Especially, problem is emphasized in terms of Judiciary, because there are several Professional NGOs, but legislator used a singular term in the above mentioned provision. It means that, just, one of them can be the official proposer, while others are excluded. Futhermore, it is questionable whether they change from one to another appointment and in what regard or whether it is the exclusivity of just one Professional NGO.

LPS promotes a very flexible regime regarding the Director of Institution, because it can be arranged for every concrete Institution according to its specific. Generally, Founder appoints and dismisses Director who operates with the Institution, while if Central State was Founder, then Government appoints and dismisses Director of Institution. Again, legislator digressed from general rule, because JA's Director is appointed and dismissed by the its SC, not directly by the Government. Presumably, intension was to reduce Executive's influence as much as possible, but whether is allowed such deviation. Director could be appointed or dismissed, only, by qualified - two thirds majority votes of all SC's Members, then Executive's potentiality is significantly relativized and very low, because Members who were appointed by the Government cannot solely appoint or dismiss Director, while other Members who are appointed from the ranks of Judges or Prosecutors are able to decide regarding aforementioned issue, even, without other Members. legislator was able to regulate PC according to the JA's specificities, since LPS does not even mention aforementioned organ. Thereby, LJA predicted different regimes related to the appointment of PC and Director, since SC appoints proposed PC's Members by majority votes of its Members, which is less in comparison with appointment of

Director. Also, it is obvious that SC's Members who are appointed by the Government could not, solely, decide about aforementioned issue without the involvement of other Members who are appointed among Judges and Prosecutors.

Definitely, number of Members of collective organs must be odd, but some modifications are desirable in terms of composition. One may note various examples, such as formal involvement of the academic community or, even, attorneys; explicitly prescribed qualifications e.g. professional experience, knowledge of foreign language, etc. both for Director and Members of other collective organs; examination through written tests; involvement of Heads of the highest Courts and PPOs as well as Judicial and Prosecutorial Councils within the composition of SC, including even, certain, Executive's involvement by the Minister or other Public Servant within the MJ. Therefore, Executive's influence on the decision-making process within the JA's organs is very low, but number of "its" representatives within Members in JA's collective organs could be reduced or/and re-modified. For instance, Minister could replace State Secretary within SC, while other Members who are not appointed from the ranks of Judges and Prosecutors could be replaced by the professors of Law Faculties or some other "distinguished lawyers" who would fulfill proscribed criteria such as professional experience, Judicial Exam, profession, etc.

Another "problematic" issue is the IT. Shortly, it is paid training program for (s)electd persons before their election for appropriate Judicial or Prosecutorial Function (Trifunović 2018, 9). Upon the completion of their IT, they are obliged to apply on public concurs for Judges at Misdemeanor Court (hereinafter: MC), Basic Court (hereinafter: BC) or DPP at Basic PPO. Currently, these are the Functions in the Courts with exclusively first-instance jurisdiction as well as in the lowest PPO. On the other hand, relevant provision from Draft is not so favorable in terms of IT, since it consists following formulation: "(...) *one of the forms of legally stipulated training in a judicial training institution.*" It means that there would be several parallel "paths" to the election for the above mentioned Functions. In a certain sense, the idea of a "single entry point" is accepted, but whether are satisfied other aspects of merit based recruitment system which had been emphasized in many EU documents related to the Serbian's accession.<sup>140</sup>

Also, one should mention Decision of Constitutional Court that questioned certain provisions of LJA, since it presented crucial argument for JA's critics. Aforementioned provisions had predicted the obligation of HJC or/and SPC to propose Beneficiaries who completed IT as Candidates for the "first election" for Judicial Functions at MC, BC or DPP at Basic PPO according to the success in the IT, but if there are no Beneficiaries among the applicants, then HJC or/and SPC can

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<sup>140</sup> More about: Analytical Report 2011, 17; Serbia Progress Report 2012, 50; Serbia Progress Report 2013, 39-0; Serbia Progress Report 2014, 11; Serbia Report 2015, 50; Serbia Report 2016, 13-4.

propose any other Candidate who fulfills the general conditions. *Inter alia*, Constitutional Court (hereinafter: CC) stated that completed IT presents a defining condition related to the "first election" for the aforementioned Functions, since it forces and prevents an adequate evaluation of other conditions and restricts constitutionally defined scope of HJC and SPC in terms of election for the above mentioned Functions, which were discriminative and against Constitutional Right to Participate in Management in Public Affairs.<sup>141</sup> Unfortunately, CC did not properly understand the role and mission of JA, while its Decisions were very simplistic with a lot of misinterpretation. Actually, CC implicitly supported the existing system of "first election", which is characterized by vague notions, unclear criteria and arbitrariness (Mrdović 2015, 51-4; Trifunović 2018, 5-7; Trifunović, and Petković 2017, 26).

Meanwhile, HJC and SPC adopted by-laws that regulated issues of expertise and competence of the Candidates for the "first election" for appropriate Judicial and Prosecutorial Functions. Still, it is on a lower level in comparison with IT. Anyhow, Beneficiaries are not obliged to pass the exam that assesses the expertise and competence of Candidates regarding "first election", while it is obligatory for other Candidates. The rate obtained on the aforementioned exam will present a fulfillment of the criterion in terms of expertise and competence for each Candidate. Both by-laws predict methods of Written Test and Written Case Study, but there are significant differences in comparison with JA`s model. Firstly, they are not transparent and they lack an oral presentation, while IT phases are recorded and everyone can be acquainted with the Candidates-Beneficiaries expertise and competence, even with their oral argumentation, skills and presentation. In terms of HJC, questions on Written Test are known in advance, because they are constantly available on the web presentation of HJC. On the other hand, Written Test regarding SPC refers, only, to the audit of knowledge of Criminal Law, omitting other areas in which Prosecutor acts as well, such as Misdemeanor Law, Civil Law, etc. However, IT does not exclude any of the relevant legal areas, while aforementioned models are limited and superficial, as well as unlawful regarding Constitution and many other Laws. SPC`s by-law is even more problematic, because one provision prescribes that rates obtained on the exam, which had been implemented according to the provisions of the previous by-law, would be valid in the period of 24 months after passing the exam. It is so-called ultra-activity, which is an exception to the rule that general legal acts are valid from the moment of their entry into force, while provisions from the previous general legal act are extended (Jovičić 1977, 196-7). Generally, it is a very problematic issue, even, far more complex in a concrete case, since both HJC and SPC previous by-laws

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<sup>141</sup> More about: Decision of the Constitutional Court of the Republic of Serbia IUZ. No. 497/2011, 6-9.

had been challenged before the CC,<sup>142</sup> but in the meantime they were, self-initiated, replaced with current by-laws by their adopters. So, SPC recognizes (un)validity of rates that had been obtained through application of a "problematic" general legal act. Even more, previous SPC's by-law predicted a narrow check of Candidate's knowledge, since the questions in Written Test were adjusted in accordance with the PPO for which Candidate had applied. Therefore, Candidates who pass Written Test in accordance with the current by-law would be, unjustifiable, in a worse and unfavorable position in comparison with the Candidates who passed Written Test in accordance with previous-"problematic" by-law, which, *per se*, presents discrimination.

HJC and SPC both undertake the first step in context of IT, because they have to determine a concrete number of Beneficiaries for each year. After, JA should announce a public competition and conduct further procedure of admission. Next step is the Entrance Exam, while every person who, previously, had completed Judicial Exam and fulfilled general conditions for working in State Organs, such as legal age, citizenship, professional qualification, graduated from Faculty of Law, etc. can take this Exam. It is performed by the PC's Permanent Commission for Entrance Exam (hereinafter: PCEE), which has a specific position in comparison with other PC's Permanent Commissions. PCEE has five Members that are appointed on four years' mandate, while three of them are from the ranks of Judges and two of the others are from the ranks of Prosecutors. Furthermore, they are appointed by the PC, but Members of PC cannot be, simultaneously, Members of the PCEE. Entrance Exam (hereinafter: EE) consists of three successive parts: Written Test, Personality Test and the Oral Part, which are all recorded and transparent. In Written Test what is checked is the Candidate's knowledge of Material and Procedural Law in fields of Civil, Criminal and Misdemeanor Law, as well as their general culture, but without any literature. After a positive completion of the Written Test, Candidates can take a part in the Personality Test, which is specific in terms that JA should engage External Expert for purpose of its performance. Successful Candidates can take the Oral Part which is in a form of Case Study in Criminal or Civil Law, depending on their previous choice. Eventually, Candidates get final grade that represents the sum of grades from all the above mentioned testing according to which a ranking list is created, while dissatisfied Candidates may complain about aforementioned ranking list to the PC that will have a final say. So, final decision regarding Candidate's (s)election is totally in hands of Judges and Prosecutors without any Executive's influence as some authors sought to, incorrectly, point out.<sup>143</sup>

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<sup>142</sup> More about: Decision of the Constitutional Court of the Republic of Serbia IUO. No. 254/2016, 1-7; Decision of the Constitutional Court of the Republic of Serbia IUO. No. 215/2017, 1-7.

<sup>143</sup> More about: Boljević 2018, 17.

Candidates who were highly ranked according to their success on the EE will become Beneficiaries and start the IT Program. Generally, it lasts two years, while its theoretical part takes part through the processing of certain thematic units within the JA's organization and its practical aspect through work in Courts and PPOs under the supervision of mentors, as well as outside of the aforementioned institutions. So, Beneficiaries will have the opportunity to train in a comprehensive manner, both as Judges and Prosecutors (Debeljački 2015, 224). Upon completion of each part, Beneficiaries get rated by Mentors within Courts and PPOs, while the work outside of aforementioned institutions cannot be rated. At the end, Beneficiaries have a Final Exam (hereinafter: FE) before the Commission of five Members, while three of them are from the ranks of Judges and two other are from the ranks of Prosecutors. On the FE, practical knowledge and skills that Beneficiaries had acquired during IT is checked through a simulation of a trial with a Beneficiary in positions of both Judge and Prosecutor. Of course, FE is transparent too, since its entire duration and content are recorded. IT is completed by issuing of the Certificate with rates for every concrete part and a final rate for each Beneficiary, which presents a fulfillment of expertise and competence as one of the criteria in terms of further election. After all this, Beneficiaries are obliged to apply on public concurs for above mentioned Functions, but HJC or SPC may approve that the Beneficiary with a completed IT obtain fixed-term employment for a period of maximum three years in Court or PPO in case of their non-election.

So, IT is the most complex, transparent and objective recruitment model in terms of current "first election" for Functions of Judges at MC and BC, as well as DPP at Basic PPO (Trifunović 2017, 18). Thus, opposing claims are inaccurate, malicious and based on subjective arguments.<sup>144</sup> Generally, IT is intended for persons who fulfilled necessary conditions, regardless of whether they gained professional experience at Courts, PPOs, Law Offices, Banks, Companies, some other institutions or other relevant entities (Debeljački 2015, 224), because what is crucial is their knowledge in above mentioned areas of Law. Firstly, it should be presented on the EE both in written and oral form. During IT, Beneficiaries will be again and again evaluated by Mentors within Courts and PPOs upon completion of each part of the IT Program. At the end, their practical knowledge and skills will be rated on FE through a simulation of a trial with a Beneficiary both in positions of Judge and Prosecutor. So, the point is in choosing the best persons for above mentioned Functions and evaluating their knowledge constantly, which is the essence of merit based system. Unfortunately, the above mentioned provision in Draft did not give exclusivity to the IT, while it introduced grounds for other types of training or, even so, nullification of the IT. In this regard, it was, and it still it is, necessary to re-edit

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<sup>144</sup> More about: Krstić 2016, 13; Krstić, and Lazović, and Gajić 2018, 12; Ilić 2018, 23.

Draft in order to predict, only, IT as one of the conditions for the election for the appropriate Judicial and Prosecutorial Functions (Trifunović 2017, 23).

## CONCLUSION

JA presents central institution for professional improvement in Judiciary and Prosecution that performs many activities related to various types of professional training. The most prominent, as well as the most controversial, is the recruitment model envisaged through the IT for elections on Judicial Functions at MC and BC, as well as DPP at Basic PPO. In certain sense, authors of Draft recognized the role, mission and values of JA, and implicitly granted its place within Constitution, since there is no other "judicial training institution". Therefore, it was postponed according to the recommendations and guidelines in order to establish a "single entry point" regarding recruitment for Judiciary and Prosecution.

Constitutional changes could be used for the modification of JA that should include both its status and its organization. Currently, JA has a form of Institution, which implies, *inter alia*, certain Executive's involvement, especially in the terms of organization and supervision. However, it is an atypical Institution, regardless of ministerial supervision powers. Legislator excluded Government in its legal exclusivity regarding appointments of Members of SC and Director, despite the fact that Central State was JA's founder. LJA promoted specific approaches in terms of the appointment, composition and the decision making of JA's organs, although Executive has representatives within JA's SC. However, they cannot solely provide a quorum for working and deciding on regular matters without the involvement of the other Members who are appointed from the ranks of Judges and Prosecutors, nor even to decide on regular or key issues, such as, *inter alia*, appointment of JA's Director. Also, the President of SC can be elected, only, among SC's Members who are appointed from the ranks of Judges and Prosecutors. It is obvious that the Executive is not much involved, so that the remainder of current status and organization would not be characterized as Executive's influence. Still, ministerial supervision over legality of JA's work remains, which may be interpreted as another possibility of Executive's "control" over JA. In this regard, one can choose between two options. Firstly, recognize and allow exceptions through certain modification of LPS, as a fundamental regulation in the area of Public Services, in order to exclude by specific Laws, even, a ministerial supervision over concrete Institutions. Another option is the change of JA's form and/or organization, which again offers a lot of different options, such as form of *sui generis* State Organ, with common and mixed supervision of the HJC and HPC (SPC) or "Parliamentarian control". Anyhow, JA's organizational aspect should be re-arranged. For instance, the number of Executive's representatives within JA organs could be reduced, replaced with some other subjects such as Law

Professors or other "distinguished lawyers". Of course, it would affect the change of appropriate appointment procedures, while modifications would have to involve appointment procedures regarding Judges and Prosecutors as Members of JA's collective organs too. Concretely, Professional NGOs should not be official proposers in the appointment procedures for SC and PC, because they strive to satisfy private needs and interests of its members, despite the proclaimed higher and general goals. Additional problem is, more or less, technical, since there are several relevant Professional NGOs in Serbia, and it is questionable whether, just, some of them would be an official proposer or would they change from one to another appointment and how.

However, authors of Draft undervalue the IT; even though it is the only transparent, objective and merit-based recruitment model. Surely, IT could be recognized in the relevant provision of Draft, since it refers to the election for Judges in Courts with exclusively first-instance jurisdiction and DPP in lowest PPO, which are Judges at MC and BC, as well as DPP at Basic PPO. Aforementioned provision sets grounds for the establishment of other types of professional training too, which would be parallel with IT or, even so, nullify IT. On one hand, Draft opted for an unusual solution in order to improve the recruitment for Judiciary and Prosecution, but on the other, it did not completely support IT. Unfortunately, authors of Draft lacked courage to predict exclusively completed IT as one of the conditions for the election on above mentioned Functions. Yet, it is still (not) too late.

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# **THE NATURE OF ARTICLE 1 OF PROTOCOL No. 7 TO THE EUROPEAN CONVENTION ON HUMAN RIGHTS IN THE LIGHT OF THE CASE LAW OF THE EUROPEAN COURT OF HUMAN RIGHTS-DILEMMAS AND FUTURE CHALLENGES**

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## **ABSTRACT**

Article 1 of Protocol No. 7 to the European Convention on Human Rights affords minimum procedural guarantees of aliens in the event of expulsion from the territory of a state. The addition of this Article to the Convention enabled protection to be granted in those cases which are not covered by other international instruments and allows such protection to be brought within the purview of the system of control provided for in the European Convention on Human Rights. According to this Article the state has to provide for an accessible and foreseeable legal basis for expulsion and allow the alien concerned to submit reasons against his expulsion, to have his case reviewed and to be represented for these purposes before the competent authority. The most common “scenario” in the (relatively few) cases concerning Article 1 of Protocol No. 7, is that an individual introduces an application to the Court after his expulsion. However, there is already one case in 2018, in which, by contrast, the applicant has not been expelled at the moment of submitting the application to the Court (Case of Ljatifi v. Macedonia, App.no. 19017/16). This case has raised several questions and has provoked debates among the judges concerning the scope and the nature of Article 1 of Protocol No. 7.

This paper analyses the scope of this right and discusses the doubts that stem from the recent case-law of the Court i.e. whether Article 1 of Protocol No. 7 has a preventive character and what happens in cases where the applicant is not expelled and there has been no “definitive departure” from the territory of the respondent state.

**Key words:** Article 1 of Protocol No. 7, European Convention on Human Rights, European Court of Human Rights, procedural guarantees, expulsion of aliens.

## INTRODUCTION

Article 1 to the Protocol No. 7 was added to the Convention in order to extend the list of the guarantees recognized by the Convention to the aliens lawfully residing in the territory of a member-state, when a measure of expulsion is taken against them (notably, those which are afforded by Article 3 - prohibition of inhuman or degrading treatment and Article 8 - right to respect for private and family life). It ensures minimum guarantees to those persons in the event of expulsion from the territory (Case of *Lupsa v. Romania*, §51) and it states as follows:

*1. An alien lawfully resident in the territory of a State shall not be expelled therefrom except in pursuance of a decision reached in accordance with law and shall be allowed:*

*(a) to submit reasons against his expulsion,*

*(b) to have his case reviewed, and*

*(c) to be represented for these purposes before the competent authority or a person or persons designated by that authority.*

*2. An alien may be expelled before the exercise of his rights under paragraph 1.(a), (b) and (c) of this Article, when such expulsion is necessary in the interests of public order or is grounded on reasons of national security.*

The analysis of the case law of the European Court of Human Rights (ECtHR) shows that there are relatively small number of cases under this article and lack of legal analysis concerning this issue. Furthermore, it seems that legal debates and analysis are needed concerning the scope and the nature of this article, since the recent case law shows some aspects of dilemmas in the interpretation of the wording of this article. Doubts are raised also concerning the consistency with the previous case law of the ECtHR. Namely, in the most cases under this article, the applicants lodge the application to the ECtHR after their expulsion from the territory of the respondent state. However, recently, the Court delivered a judgment where it found that Article 1 of Protocol No. 7 is violated, even though there was no expulsion of the applicant from the Macedonian territory (*Ljatifi v. Macedonia*, App.no. 19017/16). It seems that this case has raised serious questions and has provoked debates among the judges, deciding in the panel, concerning the scope and the nature of Article 1 of Protocol No. 7.

With reference to the above mentioned, this paper will analyze the content, the scope and the nature of this Article through analysis of the case-law of the ECtHR, and will raise some serious questions that need to be discussed in future by the legal scholars.

## **THE SCOPE AND STRUCTURE OF ARTICLE 1 OF THE PROTOCOL No. 7**

Article 1 of Protocol No. 7 concerns only an alien lawfully resident in the territory of a member-state (Explanatory Report – ETS 117 – Human Rights (Protocol No. 7), 3). It is not prohibition for expulsion, and does not apply to illegal entrants (Harris, O’Boyle and Warbrick 2014, 965, and also Case of Sulejmanovic and Sultanovic v. Italy, §8). That means that it does not apply to those that have not passed through the immigration control, those in transit, or for a limited period for a non-residential purpose or those awaiting for a decision on residence (Explanatory Report, op.cit, 3). In the case of Bolat v. Russia (App.no 14139/03) the Court said that it does not apply nor for those whose visa or residence permit has expired (Bolat v. Russia, § 76, and Voulfovitch and Oulianova v. Sweden). Concerning the term “lawfully” it is up to the domestic law to determine the conditions which must be fulfilled in order for a person's presence in some territory to be considered as "lawful". Concerning the notion “resident” the Court considered in the Case of Nolan and K v. Russia that this does not necessarily means physical presence to the state’s territory, but similarly to the concept of “home” under Article 8, depends on the “existence of sufficient and continuous links with a specific place” (Nolan and K. v. Russia, §110). In the case Bolat the Court further emphasises that the notion of “expulsion” is an autonomous concept which is independent of any definition contained in domestic legislation (Bolat, op.cit, § 79). It includes any measure compelling the alien's departure from the territory where he was lawfully resident, with exception to extradition. It can be taken to have mutatis mutandis the meaning under Protocol 4 (Harris, O’Boyle and Warbrick 2014, 966). Until the delivery of the Ljatif judgment, the ECtHR has found an actual violation only in cases where the expulsion already took place. It seems that this concept was excessively stretched in Ljatif case, which will be further elaborated below.

The word “law” refers to the domestic law. However it should be noted that the Court said that this does not concern only existence of a legal grounds in the domestic law, but also the quality of the law: “it must be accessible and foreseeable and also afford a measure of protection against arbitrary interferences by the public authorities with the rights secured in the Convention” (Lupsa, §55).

Three guarantees are included in paragraph 1 of this Article. The three guarantees are clearly distinguished in three separate sub-paragraphs - a, b and c (Explanatory Report, op.cit, 3, §12). These guarantees are the following: a) the right of the person to submit reasons against his expulsion, b) to have his case reviewed, and c) to be represented for these purposes before the competent authority or a person or persons designated by that authority. The case law shows that the Court finds violation when the review of the applicant’s case by the domestic courts is purely formal and the

applicant is not genuinely able to have his case examined (Lupsa, §60). Similarly, in the Ljatifi case the Court held that the domestic courts “confined themselves to a purely formal examination of the impugned order”, and therefore it found violation of Article 1 of Protocol No 7 (Ljatifi, § 40). In the Explanatory Note for Article 1 of Protocol 7 it is said that the process of “review” of the case does not necessarily requires two-stage procedure before different authorities (Explanatory Report, op.cit, 4, §13.2). In the case of Novak v. Ukraine, the ECtHR has found a violation of Article 1 of Protocol No. 7 due to the fact that the “applicant’s expulsion was served on him on the date of his departure, in a language he did not understand and in circumstances which prevented him from being represented or submitting any reasons against his expulsion” (Case of Novak v. Ukraine, § 82).

Exceptionally an alien can be expelled without exercising the procedural rights under paragraph 1 of this Article, only where the expulsion is “necessary in the interests of public order or is grounded on reasons of national security”(Article 1 (2)). However, the case law shows that the expulsion on this ground has to be necessary and proportionate (Case of C.G. and Others v. Bulgaria, §§77-78).

### THE LJATIFI CASE

As we have mentioned above in the most of the cases before the Court under Article 1 of Protocol No. 7 (as the judge Sicilianos noted in paragraph 6 of his Concurring Opinion to the judgment delivered in the Ljatifi case), an individual usually introduces an application to the Court after his expulsion. So far the Court has found a violation of the right under Article 1 of the Protocol No. 7 only in cases involving actual (that it, already enforced) expulsion, while the *Ljatifi* case is the first one in which the applicant has not been expelled, *and* an actual violation of Article 1 of Protocol No. 7 has been found by the Court. While in the cases of *Bolat*, and *Nolan and K.* the Court has found that there “*has been* a violation of Article 1 of Protocol 7” (because actual expulsion or ban to enter the territory took place in these cases), the Chamber in point 2 of the Operative Part of the judgment of the *Ljatifi* case concluded also that “... there has been a violation of paragraph 1 (a) and (b) of Article 1 of Protocol 7 to the Convention” (and no proper formal expulsion measures aiming at compelling the applicant’s departure from Macedonia have been taken by the Macedonian authorities). This determination provokes the question of whether it would have been more reasonable the solution proposed by the judge Eicke in paragraph 2 of his Partly dissenting opinion that, concerning the factual circumstances particular to this case, the Court should rather find that there “would have been a violation of Article 1 of Protocol No. 7 to the Convention if the applicant had been expelled on the basis of the decision of 3 February 2014” (see, *mutatis mutandis*, paragraph 1 and 3 of the operative part of *Paposhvili v. Belgium*) or that

there “would be a violation of Article 1 of Protocol 7 to the Convention if the applicant were expelled on the basis of the decision of 3 February 2014” (see, *mutatis mutandis*, paragraph 3 of the operative part of *Sultani v. France*). It seems reasonable at least to think that “*would-be*” violation in the current case is in accordance with the aim of this provision, that is, to prevent arbitrary expulsion of aliens. The opposite, finding that the state *actually violated* Article 1 of Protocol 7 by rendering an individual legal act (a decision dismissing the request for asylum) that never led towards expulsion, faces the risk of imposing a disproportional burden for the State(s) and at the same time promotes a very broad interpretation of the wording of this Article.

In the case of *Naumov v. Albania* the Court observed “that the applicant was never in fact expelled from Albania, no steps having been taken to enforce the police orders of 29 September or 5 October 2001”, and, accordingly, it rejected the complaint under Article 1 of Protocol No. 7 in accordance with Article 35 §§ 3 and 4 of the Convention (*Naumov v. Albania*, referred to by the judge Eicke in a footnote pertaining to a comment in § 11 of his Partly dissenting opinion).

The existence of a real risk for applicants under Articles 2 and/or 3 can lead and has often led to finding of a potential violation of the respective provision(s), but the same might not always and automatically apply in cases under Article 1 of Protocol No. 7, owing to the different character, object and purpose of the substantive and procedural provisions. Yet we cannot ignore the wording of the latter Article that “an alien lawfully resident in the territory of a State shall not be expelled (emphasize added by the Author), which implies an actual expulsion, and does not explicitly refer to a real risk or threat of expulsion. It is reasonable to think that the risk for future expulsion must be at least serious, imminent and hardly stoppable. It seems that this question needs further elaboration which is not the case in *Ljatifi* judgment. However, this might be an issue before the Grand Chamber if the referral is accepted (at the moment of writing this paper, there is a pending request for referral).

In this case, the Chamber found a violation of paragraph 1, sub-paras. a) and b) of Article 1 of Protocol No. 7, and it held that it “*does not need to examine the Government’s argument that the impugned measure was justified under paragraph 2 of Article 1, because that provision concerns situations in which an alien has been already expelled, which is not the situation in the present case.*” We can note the similarity between the wording of paragraph 1, which in the introductory part states that “an alien shall not be expelled”, while paragraph 2 states that “an alien may be expelled when such expulsion [...] is grounded on reasons of national security”; so it appears that in the case at hand the majority’s voting for violation of Article 1 of Protocol No. 7 assigned a preventive character only to the first paragraph (*cf.* § 4 of the Concurring opinion of the judge Sicilianos).

While focusing on the procedure rather than on the effects thereof may be understood from the stand-point of the object and purpose of the Convention and particularly of Article 1 of Protocol No. 7 as a procedural provision preventing the occurrence of violation of fundamental human right(s) after expulsion of an alien to an unsafe country, we should pose the question whether the issues of procedure and the consequences thereof can be separated, particularly if no actual measure aimed at expulsion (consequence) took place.

It is questionable whether it would be too rigid approach to rely on evaluation of the procedure as such which did(could) not create imminent and serious risk for an applicant by compelling the applicant's departure, like in the *Ljatifi* case, in which there was no "departure" from the territory of the respondent state. With reference to the Court's general interpretation of the notion of a fair "procedure", encompassing also the enforcement of a decision made therein (*cf.*, *mutatis mutandis*, the procedural provisions of Article 6 of the Convention), it seems unreasonable to claim that "expulsion" (even in the meaning of Article 1 of Protocol No. 7 took place if it remained "only on a paper".

### THE SAADI CASE

It seems that the judgment in the *Ljatifi* case is not consistent with the case of *Saadi v. Italy*, where the Court "having no reason to doubt that the Government will comply with the present judgment [establishing a potential violation of Article 3], it considered that it is not necessary to decide the hypothetical question whether, in the event of expulsion to Tunisia, there would also be a violation of Article 1 of Protocol No. 7" (*Saadi v. Italy*, § 180). The words "would [...] imply a hypothetical preparedness of the Court to consider whether in Mr Saadi's case the State authorities' actions (expulsion order and efforts to enforce it) and omissions amount to a potential violation of Article 1 of Protocol No. 7 if – hypothetically – the Court has decided to examine the case under Article 1 of Protocol No. 7 as well.

### CONCLUSION

We can conclude from what was said above that there are several serious questions concerning the interpretation and application of Article 1 of Protocol No. 7 which need to be discussed and analyzed further. These questions are of importance for future cases and for the development of the Court's case-law. The most of them are raised with the last judgment delivered by the ECtHR under Article 1 of Protocol No.7, that is the *Ljatifi* case and are connected with the nature and the role of this Article. Namely, the Court should in future give answers and the legal scholars should analyze the following:

- Whether the Court went too far when it decided under the autonomous meaning of “expulsion” to include situations in which the decision at issue did not lead to departure of the applicant from the respondent state?
- Whether finding of a “would-be” violation in cases where there is no definitive departure of the state is more reasonable than finding an “actual violation”? And related to this, does a “would-be” violation in cases like this would underestimate the preventive role of Article a of Protocol no. 7?
- Is it reasonable to find a State to be responsible for *actual violation* of an Article that protects the aliens from arbitrary expulsion, if the “expulsion” as such does not exist?
- Whether in the *Ljatifi* case the Court ignored the previous case law stances pertaining to cases in which no expulsion from the respective responding State took place (like in Saadi case), notably that none of such cases resulted in finding of a violation of Article 1 of Protocol no. 7? Does this creates substantial uncertainty as regards the interpretation and application of the Court’s case-law?

How the Court will deal with future cases of this kind and what will be the opinion of the legal scholars on these issues it remains to be seen.

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5. Case of Lupsa v. Romania, Application no. 10337/04, judgment of 8 June 2006.
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# LEGAL PROTECTION OF COMMERCIAL SECRETS IN THE EU: NEW REGULATION - NEW CHALLENGES

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## ABSTRACT

**Finding** – Trade secrets are one of the most commonly used forms of protection of intellectual creation and innovative know-how by businesses, yet at the same time they are the least protected by the existing Union legal framework against their unlawful acquisition, use or disclosure by other parties. Until June 1, 2018, the member states committed themselves to transposing the Directive (EU) 2016/943<sup>145</sup> of the European Parliament and of the Council of 8 June 2016 into national law, which is providing for minimum standards for the protection of undisclosed know-how and business information (trade secrets) against their unlawful acquisition, use and disclosure (further - Directive). This Directive has a considerable impact on the legal regulation of Member States in this area since the level of legal protection of undisclosed know-how and business information (trade secrets) is different in the Member States. It should be noted that the Directive must be applied in conjunction with the provisions of the Agreement on Trade Related Aspects of Intellectual Property Rights (further – TRIPS)<sup>146</sup> Agreement, which provides the protection of trade secrets.

**Purpose** - The purpose of this research work is to assess the level of legal protection of undisclosed know-how and business information (trade secrets) both until the transposition of the directive into national law of the Member States and after this transposition.

It should be noted that the Directive does not specify the impact that it should have on the regulation of criminal law in the Member States that have criminalized the

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<sup>145</sup> Directive (EU) 2016/943 of the European Parliament and of the Council of 8 June 2016 on the protection of undisclosed know-how and business information (trade secrets) against their unlawful acquisition, use and disclosure; source:

<http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32016L0943&qid=1513590519612&from=EN>

<sup>146</sup> Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS); source: [https://www.wto.org/english/docs\\_e/legal\\_e/27-trips.pdf](https://www.wto.org/english/docs_e/legal_e/27-trips.pdf)

forms of obtaining, disclosing or using the undisclosed know-how and business information (trade secrets).

Therefore, the research work will also focus on the impact of the Directive to content and interpretation of commercial spying and other offenses related to undisclosed know-how and business information (trade secrets).

**Methodology** – The article will be written applying the teleological, systemic, linguistic, logical, historical and comparative methods.

**Implications** – The study will assess the effectiveness of the Directive and the quality of the transposition of the Directive. Also, it will help to submit proposals for improvement of the legal regulation in this area.

**Keywords:** criminal responsibility, intellectual property, commercial spying, commercial, trade secret, industrial property.

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Before analyzing the EU regulations related to commercial secrets and their disposal, should pay attention to the importance of the issue, which is due to illustrate the European Union Intellectual Property Office: *“When dealing with trade secrets, the main purpose of the Member States’ (MSs) legislators has been to protect business secrets, but also to address other interests, such as openness and freedom of information. The balance between these interests relies on the one hand in providing the protection that companies need to be able to continue their research and development without the risk of misappropriation of valuable innovative knowledge, and on the other hand in securing interest in a transparent society with a great exchange of information.”*<sup>147</sup>

Illegal acts *inter alia* criminal offenses related to commercial secrets (criminal disclosure of commercial secrets, commercial espionage, etc.) are manifestations of unfair competition law.

The primary law of the EU does not deal directly with the rules on protection against unfair competition, although the general prohibition of unfair competition can be seen in the preamble to the Treaty establishing the European Community and in Article 3 (1) (g). In addition, the provisions of Articles 28 and 49 of the Treaty establishing the European Community which preclude States from applying protection against unfair

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<sup>147</sup> The baseline of trade secrets litigation in the eu member states: European Union Intellectual Property Office, 2018; source:

[https://euipo.europa.eu/tunnel-web/secure/webdav/guest/document\\_library/observatory/documents/reports/2018\\_Baseline\\_of\\_Trade\\_Secrets\\_Litigations\\_in\\_EU\\_Member\\_States/2018\\_Baseline\\_of\\_Trade\\_Secrets\\_Litigations\\_in\\_EU\\_Member\\_States\\_EN.pdf](https://euipo.europa.eu/tunnel-web/secure/webdav/guest/document_library/observatory/documents/reports/2018_Baseline_of_Trade_Secrets_Litigations_in_EU_Member_States/2018_Baseline_of_Trade_Secrets_Litigations_in_EU_Member_States_EN.pdf)

competition in a way that would hinder the free movement of goods and services between Member States are relevant to national law.<sup>148</sup>

Therefore, the legal protection of commercial secrets should be regulated in such a way that it does not interfere with the actual business relationship, providing only the minimum necessary legal protection to the owner of the trade secret.

The Directive is perhaps the only document intended to protect exclusively commercial secrets throughout the European Union. Given that the deadline for transposition of the Directive only expired on 1 June 2018, it is not possible to assess the effectiveness of the transposition legal mechanisms chosen by the Member States. But it is clear that the directive clearly demonstrates the strengthening of the protection of intellectual property in the field of industrial property, which is indicative of a trend towards promoting responsible and fair business creation.

It should be noted that given the fact that in most European Union countries is provided criminal liability for business-related criminal offenses, the Directive is a significant source of law in the application and interpretation of the criminal law in the countries of the European Union.

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As mentioned above, unlawful *inter alia* criminal offenses related to commercial secrets (criminal disclosure of commercial secrets, commercial espionage, etc.) are manifestations of unfair competition. It shows the importance of international (regional) regulation. Both directly or indirectly (through the general prohibition of unfair competition) the protection of commercial secrets is governed by the following international regulations:

Article 10bis [Unfair Competition] of Paris Convention for the Protection of Industrial Property<sup>149</sup> states, that: „(1) *The countries of the Union are bound to assure to nationals of such countries effective protection against unfair competition. (2) Any act of competition contrary to honest practices in industrial or commercial matters constitutes an act of unfair competition. (3) The following in particular shall be prohibited: 1. all acts of such a nature as to create confusion by any means whatever with the establishment, the goods, or the industrial or commercial activities, of a competitor; 2. false allegations in the course of trade of such a nature as to discredit the establishment, the goods, or the industrial or commercial activities, of a*

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<sup>148</sup> Ramūnas Birštonas, Danguolė Klimkevičiūtė, Nijolė Janina Matulevičienė, Lina Mickienė, Jūratė Usonienė. *Intelektinės nuosavybės teisė (en. Intellectual property law)*. Vilnius: Mykolas Romeris University, 2011

<sup>149</sup> United International Bureaux for the Protection of Intellectual Property (BIRPI). 1968. Paris Convention for the Protection of Industrial Property of March 20, 1883, as revised at Brussels on December 14, 1900, at Washington on June 2, 1911, at the Hague on November 6, 1925, at London on June 2, 1934, at Lisbon on October 31, 1958, and at Stockholm on July 14, 1967. Geneva: United International Bureaux for the Protection of Intellectual Property (BIRPI).

*competitor; 3. indications or allegations the use of which in the course of trade is liable to mislead the public as to the nature, the manufacturing process, the characteristics, the suitability for their purpose, or the quantity, of the goods.*"<sup>150</sup>

Therefore, the Paris Convention for the Protection of Industrial Property establishes a general prohibition of unfair competition, further distinguishing individual aspects. *Expresis verbis* protection of commercial secrets is not mentioned.

Another international law that already regulates the *expresis verbis*, the protection of trade secrets is TRIPS. Unlike the Paris Convention for the Protection of Industrial Property, the TRIPS Agreement governs two cases which may be related to unfair competition law, the protection of geographical indications (Article 22) and the protection of trade secrets (Article 39 of Section 7 [Protection of disclosed information] which states that: „1 . *In the course of ensuring effective protection against unfair competition as provided in Article 10bis of the Paris Convention (1967), Members shall protect undisclosed information in accordance with paragraph 2 and data submitted to governments or governmental agencies in accordance with paragraph 3.*

*2. Natural and legal persons shall have the possibility of preventing information lawfully within their control from being disclosed to, acquired by, or used by others without their consent in a manner contrary to honest commercial practices (\*) so long as such information: (a) is secret in the sense that it is not', as a body or in the precise configuration and assembly of its components, generally known among or readily accessible to persons within the circles that normally deal with the kind of information in question; (b) has commercial value because it is secret; and (c) has been subject to reasonable steps under the circumstances, by the person lawfully in control of the information, to keep it secret.*

*3. Members, when requiring, as a condition of approving the marketing of pharmaceutical or of agricultural chemical products which utilize new chemical entities, the submission of undisclosed test or other data, the origination of which involves a considerable effort, shall protect such data against unfair commercial use. In addition, Members shall protect such data against disclosure, except where necessary to protect the public, or unless steps are taken to ensure that the data are protected against unfair commercial use.”)*

As mentioned in primary EU law, protection from unfair competition is not directly regulated, although the general prohibition of unfair competition can be seen in the preamble to the Treaty establishing the European Community and in Article 3 (1) (g).

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<sup>150</sup> United International Bureaux for the Protection of Intellectual Property (BIRPI). 1968. Paris Convention for the Protection of Industrial Property of March 20, 1883, as revised at Brussels on December 14, 1900, at Washington on June 2, 1911, at the Hague on November 6, 1925, at London on June 2, 1934, at Lisbon on October 31, 1958, and at Stockholm on July 14, 1967. Geneva: United International Bureaux for the Protection of Intellectual Property (BIRPI).

In addition, the provisions of Articles 28 and 49 of the Treaty establishing the European Community which preclude States from applying protection against unfair competition in a way that would hinder the free movement of goods and services between Member States are relevant to national law.<sup>151</sup>

It should be noted that the regulation of commercial secrets in European Union law before the Directive is rather fragmented and abstract (only through the prism of unfair competition protection). It does not create preconditions for the formation of equal level protection of commercial secrets in the European Union. The following is a list of EU legislation in the field of analysis:

- Council Directive 84/450/EEC of 10 September 1984 relating to the approximation of the laws, regulations and administrative provisions of the Member States concerning misleading advertising;
- Directive 97/55/EC of European Parliament and of the Council of 6 October 1997 amending Directive 84/450/EEC concerning misleading advertising so as to include comparative advertising;
- Council Directive 89/552/EEC of 3 October 1989 on the coordination of certain provisions laid down by Law, Regulation or Administrative Action in Member States concerning the pursuit of television broadcasting activities;
- Directive 2000/13/EC of the European Parliament and of the Council of 20 March 2000 on the approximation of the laws of the Member States relating to the labelling, presentation and advertising of foodstuffs;
- Directive 2005/29/EC of the European Parliament and of the Council of 11 May 2005 concerning unfair business-to-consumer commercial practices in the internal market and amending Council Directive 84/450/EEC, Directives 97/7/EC, 98/27/EC and 2002/65/EC of the European Parliament and of the Council and Regulation (EC) No 2006/2004 of the European Parliament and of the Council ('Unfair Commercial Practices Directive').

The Directive will be analyzed further in the context of criminal law.

First of all, it should be noted that the criminal liability for criminal offenses related to commercial secrecy applies in the vast majority of European Union countries, it shows that the impact of the Directive on criminal justice is extremely important. Unfortunately, as mentioned earlier, it too short time since expiring the deadline for transposition (implementing) of the Directive, therefore the effectiveness of the implementing measures of the Directive conclusions cannot be drawn at this moment. Below are specifying sources of protection for trade secrets of the state members:

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<sup>151</sup> Ramūnas Birštonas, Danguolė Klimkevičiūtė, Nijolė Janina Matulevičienė, Lina Mickienė, Jūratė Usonienė. *Intelektinės nuosavybės teisė (en. Intellectual property law)*. Vilnius: Mykolas Romeris University, 2011.

<i>Members states</i>	<i>Specific law on Trade Secrets</i>	<i>Unfair Competition Law</i>	<i>Competitions Law</i>	<i>IP law</i>	<i>Civil Code</i>	<i>Labour Law</i>	<i>Contract Law</i>	<i>Criminal Law</i>	<i>Common Law on Breach of Confidence</i>	<i>Other</i>
<i>Belgium</i>		x	x		x	x		x		
<i>Bulgaria</i>			x		x	x		x		x
<i>Czech Republic</i>					x	x		x		
<i>Denmark</i>			x					x		x
<i>Germany</i>		x			x			x		x
<i>Estonia</i>		x	x			x		x		x
<i>Ireland</i>			x				x		x	x
<i>Greece</i>		x	x	x	x	x		x		x
<i>Spain</i>		x	x	x		x		x		x
<i>France</i>			x	x	x	x		x		
<i>Croatia</i>		x	x			x		x		x
<i>Italy</i>			x	x	x			x		x
<i>Cyprus</i>			x				x	x		x
<i>Latvia</i>		x				x		x		x
<i>Lithuania</i>	x <sup>152</sup>	x	x		x	x		x		x
<i>Luxemburg</i>		x	x		x			x		
<i>Hungary</i>		x	x		x	x		x		x
<i>Malta</i>			x		x			x		
<i>Netherlands</i>			x		x			x		
<i>Austria</i>		x	x	x		x		x		x
<i>Poland</i>		x	x		x	x		x		x
<i>Portugal</i>				x		x		x		
<i>Romania</i>		x	x		x	x		x		x
<i>Slovenia</i>			x			x	x	x		x
<i>Slovakia</i>			x					x		x
<i>Finland</i>		x	x			x		x		x
<i>Sweden</i>	x		x					x		
<i>United Kingdom</i>			x				x		x	x

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<sup>152</sup> This Law did not mention in origin source: Lietuvos Respublikos komercinių paslapčių teisinės apsaugos įstatymas (en. Law on the Legal Protection of Commercial Secrets of the Republic of Lithuania). Register of legal acts: 8 May 2018, Nr. 7477; source: <https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/86178ae24dfb11e88525a4bc7611b788?jfwid=-11gea3wdkd>

<sup>153</sup> The baseline of trade secrets litigation in the EU member states. European Union Intellectual Property Office: 2018; source: [https://euipo.europa.eu/tunnel-web/secure/webdav/guest/document\\_library/observatory/documents/reports/2018\\_Baseline\\_of\\_Trade\\_Secrets\\_Litigations\\_in\\_EU\\_Member\\_States/2018\\_Baseline\\_of\\_Trade\\_Secrets\\_Litigations\\_in\\_EU\\_Member\\_States\\_EN.pdf](https://euipo.europa.eu/tunnel-web/secure/webdav/guest/document_library/observatory/documents/reports/2018_Baseline_of_Trade_Secrets_Litigations_in_EU_Member_States/2018_Baseline_of_Trade_Secrets_Litigations_in_EU_Member_States_EN.pdf)

The data in the table shows that the protection of commercial secrets requires a systematic approach. Different aspects of the protection of commercial secrets are set in the legislation of different branches of law. This may lead to a risk of inconsistency (contradiction) of the law, inter alia, the formation of a different court practice. In this context, the intention of the EU institutions to harmonize legal regulation in the area under consideration is particularly welcome.

Some Member States, such as the Republic of Lithuania and Sweden, at the implementation of the Directive, have developed the Specific Law on Trade Secrets. The administered two fundamental differences between the two countries in the implementation of the Directive way is that:

(i) In the past, the Republic of Lithuania did not have a single legal act in its national law for sole protection of commercial secret purposes, and in the case of Sweden they had such legal act (Act on the Protection of Trade Secrets which entered into force on July 1, 2018, and repealed the Act on the Protection of Trade Secrets (1990:409)). In essence, this could have enabled Sweden to assess more effectively the practical impact of the *lex specialis* sanctions and definitions.

(ii) Sweden Specific law on Trade Secrets has criminal law provisions. *“The new act also introduces criminal sanctions against those who use or disclose a trade secret to which they have had authorized access. Under the previous law, a prerequisite for criminal sanctions was that someone had obtained trade secrets to which they were not authorized access. The new criminal sanctions are independent from the directive.”*<sup>154</sup>

In this context, it should be emphasized that the implementation of the Directive depend on differences in legal systems of the member state. In that case, welcome that the criminal law provisions are in Swedish special protection of commercial secrets because it makes it easier to systematically apply the protection of commercial (trade) secrets, therefore easier to deal with issues of dissociation of liabilities (civil, administrative, criminal). However, in the legal system of the Republic of Lithuania, such a method of legal regulation is impossible, because, according to the Constitutional doctrine of the Republic of Lithuania (the case law of the Constitutional Court of the Republic of Lithuania), offences and their elements must be determined exclusively at the national criminal legal act, i.e. only in the Criminal Code of the Republic of Lithuania.

The abovementioned circumstances determine the disadvantages of the Directive because of its possible inflexibility with regard to the legal systems of the Member States. Having analyzed the text of the directive, there is a lack of attention to criminal

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<sup>154</sup> Valea AB “New Act on the Protection of Trade Secrets”. Lexology. May 29 2018. <https://www.lexology.com/library/detail.aspx?g=6d6a7ef5-a085-4fcc-b9f0-f3bd5edc1979>

justice, although it is obvious from the above table that it is relevant to an absolute majority of Member States. In the meantime, if the Directive were to contain any guidelines on the criminalization of criminal offenses related to commercial secrets, it would appear that certainly contribute to a more effective harmonization process. Despite specified, it should be noted that the Directive contains specific definitions (e. g. Article 3, 4 of Directive) which can not be ignored by criminal justice, because, in accordance with the fundamental principles of the EU, domestic law must be interpreted in the light of the Directive<sup>155</sup>.

To conclude, it should be noted the importance of the problem of dissociation of responsibilities (civil, administrative, criminal) between different types of liabilities and solution to this problem. Subjects of business are increasingly choosing to resolve business disputes through criminal law because it is simply cheaper: there is no stamp duty, data are being searched by law enforcement, there is no need to pay for forensics, etc. This tendency should be considered negative as they distort the application of criminal law as *ultima ratio* measure and complicate law enforcement work. Only high-quality and complex legislation at both EU and national level can be expected to manage this kind of legal abuse.

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2. Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS); source: [https://www.wto.org/english/docs\\_e/legal\\_e/27-trips.pdf](https://www.wto.org/english/docs_e/legal_e/27-trips.pdf);
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4. Ramūnas Birštonas, Danguolė Klimkevičiūtė, Nijolė Janina Matulevičienė, Lina Mickienė, Jūratė Usonienė. *Intelektinės nuosavybės teisė (en. Intellectual property law)*. Vilnius: Mykolas Romeris University, 2011;

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<sup>155</sup> Unfortunately, after the expiry of the deadline for the implementing the Directive, the Supreme Court of the Republic of Lithuania has not taken decisions regarding the topic under analysis.

5. United International Bureaux for the Protection of Intellectual Property (BIRPI). 1968. Paris Convention for the Protection of Industrial Property of March 20, 1883, as revised at Brussels on December 14, 1900, at Washington on June 2, 1911, at the Hague on November 6, 1925, at London on June 2, 1934, at Lisbon on October 31, 1958, and at Stockholm on July 14, 1967. Geneva: United International Bureaux for the Protection of Intellectual Property (BIRPI);
6. Valea AB “New Act on the Protection of Trade Secrets”. Lexology. May 29 2018. <https://www.lexology.com/library/detail.aspx?g=6d6a7ef5-a085-4fcc-b9f0-f3bd5edc1979>