International Scientific Conference

"Towards a Better Future: Peace, Justice, and Strong Institutions"

Conference Proceedings

Faculty of Law - Kicevo

Kicevo, 2024

CIP - Каталогизација во публикација
Национална и универзитетска библиотека "Св. Климент Охридски", Скопје

502.131.1:34(062)
332.146.2:34(062)

INTERNATIONAL scientific conference (2023 ; Bitola)
Towards a better future: peace, justice, and strong institutions : conference proceedings / International scientific conference, Bitola, 20.10.2023 ; [editors Goran Ilik, Svetlana Veljanovska, Angelina Stanojoska]. - Kicevo : University "St. Kliment Ohridski"- Bitola, Faculty of Law, 2024

Начин на пристапување (URL):
https://pfk.uklo.edu.mk/con_proc_tbf_peace_justice_and_strong_institutions/.
- Текст во ПДФ формат, содржи 352 стр., илустр. - Наслов преземен од екранот. - Опис на изворот на ден 11.01.2024. - Фусноти кон трудовите. - Библиографија кон трудовите

ISBN 978-608-4670-24-7

а) Одржлив развој -- Правни аспекти -- Собири

COBISS.MK-ID 62764805

International Scientific Conference

“Towards a Better Future: Peace, Justice, and Strong Institutions”

Bitola, 20.10.2023

Conference Proceedings

Publisher
University “St. Kliment Ohridski”- Bitola, Faculty of Law - Kicevo

For the Publisher
Prof. Dr.sc Svetlana Veljanovska, Dean of the Faculty of Law – Kicevo

Address of the Publisher
Rudnicka BB
6250 Kicevo, Republic of North Macedonia
+ 389 45 220 267
http://pfk.uklo.edu.mk

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

International Programme Committee

Artur Adamczyk, PhD, Centre for Europe, University of Warsaw, Poland
Angelo Viglianisi Ferraro, PhD, Mediterranea University of Reggio Calabria, Italy
Hans-JuergenZahorka, LIBERTAS - European Institute GmbH, Germany
Goran Bandov, PhD, Dag Hammarskjold University, Croatia
Oxana Karnaukhova, PhD, Southern Federal University, Russian Federation
Mehmet Sahin, PhD, Canakkale Onsekiz Mart University, Turkey
Dimitar Eftimovski, PhD, University "St. Kliment Ohridski" in Bitola, North Macedonia
Aleksandra Patoska, PhD, University "St. Kliment Ohridski" in Bitola, North Macedonia
Sasa Dukoski PhD, University "St. Kliment Ohridski" in Bitola, North Macedonia
Helmut Kury, PhD, University of Freiburg, Germany
Lee Ann Slocum, PhD, University of Missouri – St. Louis, MO, United States of America
Miomira Kostic, PhD, University of Nis, Serbia
Darko Dimovski, PhD, University of Nis, Serbia
Ivan Ilic, PhD, University of Nis, Serbia
Christian Ruggiero, PhD, Sapienza University, Italy
Zoran Lutovac, PhD, Institute of Social Sciences, Serbia
Marko Babic, PhD, Institute of European Studies, University of Warsaw, Poland
Przemyslaw Biskup, PhD, Polish Institute of International Affairs, Poland
Gloria Esteban de la Rosa, PhD, University of Jaen, Spain
Habib Kazzi, PhD, Lebanese University, Lebanon
Valeri Modebadze, PhD, Caucasus International University, Georgia
Eloi Martins Senhoras, PhD, Federal University of Roraima (UFRR), Brazil
PoloncaKovac, PhD, University of Ljubljana, Slovenia
Viorel Paska, PhD, West University of Timisoara, Romania
Lucian Bercea, PhD, West University of Timisoara, Romania
Laura Stanila, PhD, West University of Timisoara, Romania
Zoran Pavlovic, PhD, University of Novi Sad, Serbia
Goran Ilic, PhD, University of Belgrade, Serbia
Istvan Gal, PhD, University of Pecs, Hungary
Nedzad Koraljic, PhD, University of Sarajevo, BiH
Tanja Kesic, PhD, University of Criminal Investigation and Police Studies, Belgrade, Serbia
Milan Zarkovic, PhD University of Criminal Investigation and Police Studies, Belgrade, Serbia
Milica Kolakovic, PhD, Institute of criminological and sociological research, Belgrade, Serbia
Alba Kreka,PhD, Faculty of Education and Philology, Albania
Sergiu Popovici, PhD, West University of Timisoara, Romania
Florentina Mutiu, PhD, West University of Timisoara, Romania
Judithanne Scourfield McLauchlan, PhD, The University of South Florida St. Petersburg, USA

Organizing Committee

Svetlana Veljanovska, PhD – Chairwoman
Angelina Stanojoska, PhD – Vice - Chairwoman
Goran Ilik, PhD
Ice Ilijevski, PhD
Ivona Shushak Lozanovska, PhD
Elena Tilovska - Kechegi, PhD
Elena Temelkovska - Anevska, PhD
Elizabeta Tosheva, PhD
Mirjana Ristovska, PhD
Mladen Karadzoski, PhD
Pakiza Tufekci, PhD
Laze Jakimoski, PhD

Andrea Zdravkovska, LLM - Secretary

Technical Editor and IT Consultant:
Blagojce Nenovski, PhD

ISBN
608-4670-24-5
978-608-4670-24-7
9786084670247

PREFACE

The world today is developing at a tremendous speed and globalization is a process that no country, no individual can ignore. Changes happen in politics, in the economy, in law, everywhere where man can impose his influence.

The United Nations Organization is trying to give its own direction in all those changes by funding the goals for sustainable development until 2030, with a recommendation that they be respected by the member states of the organization.

I believe that the idea of a global partnership is viable only if science gets the primacy of guidance in the states and if the ideas of peace, good governance, sustainable economic and social development are accepted by the authorities right now, so that we can see the effects in a few years.

The international scientific conference organized by the Faculty of Law with the title "Toward a better future" this year had the sixteenth goal of the UN as a light motive. This is our sixth conference and we believe that as an educational as well as a scientific institution, we should make our own contribution towards the achievement of the given goal, which is to live in a better and happier society.

This year, the framework of our thinking is the ideas of the UN to try to give our proposals and ideas as to peace, justice and strong institutions.

The authors who registered their papers at the conference deal with different scientific fields in the social sciences and offered us quality papers in the direction of the development of our societies towards inclusiveness and representation of everyone regardless of origin, race, religion or sexual orientation.

The rule of law, the protection of human rights and freedoms must be on the pedestal because without it we will not have the opportunity as humanity to get the best out of ourselves and contribute to social development.

I wish that the conclusions that will emerge from our papers at this international meeting will become part of the policies of the states that strive to achieve peace, justice and strong institutions.

Prof. Dr.sc. Svetlana Veljanovska
Dean of the Faculty of Law –Kicevo

Kicevo, 2023

Ladies and gentlemen,

Distinguished guests,

It is with great pleasure and honor that I stand before you today as we gather for the opening of the International Scientific Conference of the Law Faculty. Our conference carries the significant title of "Towards a Better Future: Peace, Justice, and Strong Institutions." This topic aligns perfectly with the global pursuit of sustainable development and underscores the crucial role of law in shaping a brighter future for all.

The Sustainable Development Goal 16, known as SDG16, encompasses the principles of peace, justice, and the establishment of strong institutions. These pillars are essential for the advancement of societies and the well-being of individuals worldwide. As we gather here today, we recognize the pressing need to address the challenges that hinder the realization of these fundamental values.

Peace, as we know, forms the bedrock upon which prosperous societies are built. It is the absence of conflict, the presence of harmony, and the pursuit of understanding among nations, communities, and individuals. Achieving lasting peace requires our collective efforts in resolving conflicts, promoting dialogue, and fostering a culture of tolerance and respect for diversity. Through our discussions and research during this conference, we aim to explore innovative legal approaches and strategies that can contribute to sustainable peace-building efforts.

Justice, too, is an indispensable component of a better future. It ensures the fair and equitable treatment of individuals, upholds the rule of law, and safeguards human rights. Yet, justice is often elusive for many, particularly the marginalized and vulnerable. It is our duty as legal scholars and practitioners to address these disparities, examine the existing legal frameworks, and propose reforms that promote equal access to justice for all. By doing so, we can pave the way towards a more inclusive and just society.

Strong institutions are the pillars that support the rule of law, good governance, and effective public administration. They provide the necessary framework for sustainable development and ensure that the benefits are shared by all members of society. Our conference serves as a platform to delve into the crucial role of legal institutions in promoting transparency, accountability, and the efficient delivery of justice. Together, we can identify

best practices, exchange knowledge, and shape the future of legal institutions that are robust, efficient, and responsive to the evolving needs of our societies.

Ladies and gentlemen,

The challenges before us are formidable, but so is our determination to overcome them. Through this conference, let us harness our collective expertise, ignite meaningful discussions, and foster collaborations that will contribute to the realization of SDG16 and a better future for all.

I encourage you to actively participate, share your insights, and engage in fruitful dialogue that will enrich our understanding and pave the way for impactful change.

I extend my heartfelt gratitude to the organizing committee, the participants, and our esteemed speakers who have contributed their time, knowledge, and dedication to make this conference a reality.

Together, let us embark on this intellectual journey, united in our commitment to peace, justice, and strong institutions.

Thank you, and I wish you all a productive and inspiring conference.

Prof. dr. sc Goran Ilik
Vice-Rector for Science of the University "St. Kliment Ohridski" – Bitola

Bitola, 20.10.2023

TABLE OF CONTENTS

Scientific Article
UDK 327(497.11)
355.45.075.1(497.11):355.48(477)"2022"

CONCLUSION OF THE COUNCIL FOR NATIONAL SECURITY OF THE REPUBLIC OF SERBIA ADOPTED ON THE OCCASION OF THE ARMED CONFLICT ON THE TERRITORY OF UKRAINE THAT BEGAN ON 24 FEBRUARY 2022.

Associate Professor, dr Marjan Gjurovski
Univesity of St. Cyril and Methodius – Faculty of Philosophy, Skopje, North Macedonia,
marjan.gjurovski@fzf.ukim.edu.mk
dr Mitko Arnaudov
Research Fellow, Institute of International Politics and Economics, Belgrade, Serbia,
mitko@diplomacy.bg.ac.rs
Nikola Hadžić, MA
Faculty of Political Science, Belgrade, Serbia,
hadzic307322@student.fpn.bg.ac.rs

Abstract: The aim of this paper is to try to explain the foreign policy of small states in contemporary and current international relations through the theory of neoclassical realism and on the example of the case study of the Republic of Serbia. The contribution of this paper in the theoretical sense testifies to the applicability of the theory of neoclassical realism in current international relations. When it comes to scientific knowledge, a kind of contribution to the theory itself is provided, bearing in mind the fact that it is about the application of the said theory to a small country, with limited economic, political, military and diplomatic capacities on the international level. In the context of small states, this work provides a contribution to the understanding of the creation of foreign policy and the adoption of foreign policy decisions by small states, and provides an explanation of how much room for maneuver they have in foreign policy action in current international relations.
Keywords: small states, foreign policy activities, national security, Serbia, neoclassical realism

INTRODUCTION

The conclusion of the National Security Council of the Republic of Serbia, adopted the day after the beginning of the armed conflict on the territory of Ukraine, is the subject of the analysis of this paper, in which we will try to explain the foreign policy actions and foreign policy decision-making of the Republic of Serbia in the current internal political circumstances, as well as the challenges that the Republic

of Serbia faces in regional, European and international plan. The importance of this analysis is twofold: First, in order to analyze the model of making foreign policy decisions of the Republic of Serbia, in the institutional sense, that is, to determine how much the constitutional-institutional framework determines the foreign policy action and decision-making of the Republic of Serbia, on the one hand, and on the other hand, to analyze how much these decisions and foreign policy processes of Serbia are influenced by the political elite, that is, more specifically, the decision-makers in the political system; Second, the importance of this analysis is reflected in the need to understand the relationship, that is, the pressures that the Republic of Serbia faces on the foreign policy front in the context of open regional issues and its foreign policy action and decision-making. More specifically, we are talking about the challenges regarding the territorial integrity of the Republic of Serbia and the dialogue between Belgrade and Pristina as a determinant that greatly affects the foreign policy of Serbia, and especially on the concrete example of the armed conflict on the territory of Ukraine and the violation of the territorial integrity of Ukraine as an independent and sovereign state, a member of the United nation, the status enjoyed by the Republic of Serbia, which is also simultaneously faced with the challenge of preserving its territorial integrity, however without armed actions.

Through the analysis of the conclusion adopted by the National Security Council of the Republic of Serbia, we will try to answer the following questions: is the conclusion and such a foreign policy decision aligned with the national interests of the Republic of Serbia? Is such a conclusion in line with Serbia's foreign policy goals? What is the role of the institutional mechanism of the Republic of Serbia in the process of adopting this conclusion? To what extent is the conclusion a product of the internal political consensus of the ruling coalition? Is the conclusion of the National Security Council of the Republic of Serbia determined by the political convictions, worldview and understanding of current international relations of the most influential political figure, that is, the President of the Republic?

In this analysis, we will not try to answer only the question about the way and methods used in the foreign policy action and decision-making of the Republic of Serbia, but we will indirectly determine how significant the model of neoclassical realism is in defining and implementing foreign policy decisions, not only in large states where political elites enjoy great international reputation based on the economic, political, military or resource power of their country, but also with small countries like the Republic of Serbia, which have limited resource capacities, and their room for maneuver is in a certain sense limited by the fact that their foreign policy action and decision-making in itself brings greater risks and challenges.

THEORETICAL MODEL

In order to provide a precise theoretical and practical explanation of the topic of this paper, we decided on the model of neoclassical realism because we believe that this model fits in the theoretical sense to provide an explanation of the conclusions adopted by the Republic of Serbia and related to the beginning of the armed conflict on the territory of Ukraine. However, before entering into the process of connecting the model of neoclassical realism and the aforementioned decision of the Republic of Serbia, we must point out that numerous authors approach the study

of foreign policy in different ways and from different points of view, applying different academic approaches, but we must also emphasize that international relations as a scientific discipline they are most often divided into sectors that study international relations in a systemic sense and international relations as a whole, but also sectors that deal with the analysis of foreign policy with a focus on states and their foreign policy actions. (Hellmann and Urrestarazu 2013 op. cit.) It is important to point out that neoclassical realism, like realism, does not represent a normative theory that deals with the desirable behavior of states, but tends to explain the foreign policy and actions of states without defining correct behavior. (Meibauer, Desmaele, et al. 2021, 2, op. cit.) This is exactly why neoclassical realism can offer a more objective analysis without ideological overtones. (Mintas 2020, 15) In fact, neoclassical realism seeks to explain the variation in the foreign policy of one state in a certain period or between several states facing similar foreign policy constraints. (Mintas 2020, 17) However, in order not to go in the direction of misunderstanding neoclassical realism as a model, it is also important to say that neoclassical realism accepts Waltz's assumption that world politics and the policies of individual states are limited by the structure of the international system. (Meibauer, Desmaele, et al. 2021, 2, op. cit.)

Namely, neoclassical realism starts from the assumption that the state will shape its foreign policy primarily as a response to the signals coming from the international community, but not all leaders will perceive all those signals in the same way, that is, how the signals will be accepted and perceived depends primarily on the leaders and the executive authorities, and their attitudes, views on the world, ideology, as well as beliefs. And that is precisely why it is possible that certain foreign policy decisions are taken exclusively from internal political motives, and it is also possible the other way around, regardless of whether it is in the national interest or not. (Ripsman 2017, 11, op. cit.) In addition, it is important to emphasize that the national interest is also the starting point and the main guiding line in foreign policy in the model of neoclassical realism, however, in neoclassical realism, unlike the position of classical realists, the national interest is not considered completely given in advance, but the fact is emphasized that it can be defined and determined by the leaders of the states. (Reichwein 2020, 18, op. cit.)

Neoclassical realists believe that they must possess certain knowledge and experience in order to be able to correctly understand systemic opportunities and threats and at the same time transform them into foreign policy decisions, for which they need a certain amount of time both for making and for implementing that decision. (Mintas 2020, 26) What we fundamentally associate with the topic of this work is the position of neoclassical realists that leaders are very often faced with the challenge of not having enough time or information in the process of making and implementing foreign policy decisions, and decisions are made on the basis of prior knowledge, understanding, ideas, but also ideology. (Mintas 2020, 26) Therefore, in neoclassical realism, it is important to include the so-called ideation (creative) variable in the analysis, which can help leaders understand opportunities and dangers, and as such, provide them with guidelines in the decision-making process. (Meibauer, Interests, ideas, and the study of state behaviour in neoclassical realism 2020a, 27, op. cit.) But because of the possibility of introducing an ideational

variable into the analysis, neoclassical realism is particularly important for the inclusion of subjectivities that are grounded in the beliefs and styles of leaders. (Foulon and Meibauer 2020, 15, op. cit.)

In this context, we actually find a key link that will help us in analyzing and explaining the conclusion reached by the National Security Council of the Republic of Serbia, which concerned the beginning of the armed conflict on the territory of Ukraine. Although it is a decision of one institution, because the National Security Council of the Republic of Serbia has institutional frameworks, we did not choose a model of bureaucratic politics in this analysis of foreign policy decisions, bearing in mind the role of leaders and the internal political circumstances of Serbia as key determinants in foreign policy action, and thus foreign policy decisions of the Republic of Serbia.

And when it comes to leaders and their role in foreign policy action and foreign policy decision-making, it is important to note that leaders will assess opportunities and threats on the international level also in context, i.e. according to a cause-and-effect model depending on their identity, interests and beliefs, and that's why it is not impossible to imagine that internal processes influence the objectivity of decisions and actions of leaders in foreign policy decision-making. (Sterling-Folker 1997, 19-20, op. cit.) In neoclassical realism, the leader's perceptions, beliefs and ideas are a particularly important variable that helps explain the leader's role in understanding and interpreting systemic incentives, and subsequently in shaping and implementing foreign policy. (Marsh 2012, 489, op. cit.) Leaders try to respond to challenges that come from outside, but at the same time they are under the influence of their personal perception, worldview, beliefs and ideology, so the foreign policy of a country can differ greatly depending on who is in power, even though the position is also relative material. the power of the state in the international system is equal. And in the short and medium term, foreign policy decisions do not always have to correspond to external requirements. (Marsh 2012, 490, op. cit.)

This is precisely why we consider this theoretical model to be fully suitable for the analysis of the selected topic in order to provide a more comprehensive answer to the question and try to explain Serbia's foreign policy decision regarding the beginning of armed conflicts on the territory of Ukraine. The theoretical model, on the other hand, in this work will also serve us in the context of a better understanding of neoclassical realism in contemporary international relations, more specifically in the processes of foreign policy action and foreign policy decision-making by small states on the example of the Republic of Serbia.

CASE STUDY

The armed conflict on the territory of Ukraine began on February 24, 2022, while the Republic of Serbia defined its position and position on this conflict one day later, on February 25, 2022, when the Conclusion of the National Security Council of the Republic of Serbia was adopted. After two consecutive sessions of the National Security Council of the Republic of Serbia, a 15-point conclusion was adopted, which was summarized by the President of Serbia, Aleksandar Vučić, with the following statement: "Serbia respects the norms of international public law, because that is the only way to protect its principles, but Serbia understands its

needs very well." regardless of what anyone would like, Serbia respects traditional friendships and does not forget what happened in 2015 and 1999, nor the years that preceded this year". (Đurović 2022) After that, President Vučić pointed out that there was a difficult decision before the top of the state and that Serbia was faced with almost no hidden pressures, but that the decision was made in the best interest of Serbia. In addition, he pointed out that Serbia is on the European path, but that it will not rush into hostilities because someone is asking for it, even though the European Union said that it expects Serbia, as a candidate country, to join the sanctions against Russia. (Đurović 2022)

In addition, he pointed out that it was not possible to impose sanctions on Russia, because it was the only one that did not impose sanctions in the 90s, did not impose sanctions on Republika Srpska, protected Serbia in 2015 at the United Nations when it vetoed the adoption of the resolution on Srebrenica, and maintains the position of the Resolution 1244 as a permanent member of the Security Council. (Đurović 2022)

But in order to have a clearer picture of the position of the Republic of Serbia regarding the beginning of the armed conflict on the territory of Ukraine, we will list in full all 15 points adopted by the National Security Council of the Republic of Serbia.

NATIONAL SECURITY COUNCIL CONCLUSION ADOPTED 25 FEBRUARY 2022.

On the basis of Article 5, Paragraph 2 of the Law on the Organization of the Security Services of the Republic of Serbia, the National Security Council, based on its role in protecting national security, reached the following conclusion at the session of 25 February 2022:

1. The Republic of Serbia most sincerely regrets everything that is happening in Eastern Europe. Russia and Ukraine have always been friendly countries for the Republic of Serbia, and the Serbian people consider Russians and Ukrainians as brotherly nations. We perceive the loss of life of every person in Ukraine as a true tragedy.
2. The Republic of Serbia is committed to respecting the principles of territorial integrity and political independence of states, as one of the basic principles of international law contained in the Charter of the United Nations and the final act from Helsinki (1975), which guarantees the right of states to the inviolability of borders.
3. Starting from Article 16 of the Constitution of the Republic of Serbia, which stipulates that the foreign policy of the Republic of Serbia rests on generally recognized rules and principles of international law, one of the basic principles of the foreign policy of the Republic of Serbia is consistent respect for the inviolability of the territorial integrity of sovereign states. Just as it is committed to preserving the sovereignty and integrity of its territory, the Republic of Serbia also advocates respect for the territorial integrity of other sovereign states and the principle that borders can only be changed in accordance with the rules of international law.

4. The Republic of Serbia has always led a responsible and principled foreign policy and has paid dearly for its commitment to the principles and rules of international law, including the principles of territorial integrity, because due to its efforts to preserve its territorial integrity at the end of the 20th century, it was exposed not only to restrictive measures but and the aggression of 19 NATO countries. Despite all that, the position of the Republic of Serbia in international relations has always been and remains legally and politically flawless, responsible and principled. No objection can be made to the Republic of Serbia due to its consistency in respecting the principles of international law.
5. In accordance with its previous policy of advocating for consistent and principled respect for the principles of international law and the inviolability of borders, the Republic of Serbia provides full and principled support for respect for the principles of territorial integrity of Ukraine.
6. The fundamental principle of modern international law is the principle of peaceful settlement of disputes and refraining from the threat and use of armed force against the territorial integrity and political independence of any state and in any way that is not in accordance with the Charter of the United Nations. Guided by the basic principles on which it bases its foreign policy, the Republic of Serbia considers it very wrong to violate the territorial integrity of any country, including Ukraine.
7. The Republic of Serbia, regardless of the provocations that often come from the countries and entities in the Western Balkans, remains consistent with respect for the principle from its Constitution that it bases its foreign policy on the generally accepted principles and rules of international law and permanently advocates that those principles be respected and that preserve peace in the region at all costs. The Republic of Serbia believes that the preservation of peace and stability is of key importance both for the progress of its economy and for the biological survival of its citizens. This is precisely why the policy of the Republic of Serbia must be even more careful and lenient towards irresponsible statements and actions coming from the region, because the preservation of peace represents the vital interest of the Serbian people and citizens of the Republic of Serbia.
8. Proceeding from the fact that its basic duty is to devote all its forces to preserving the peace and well-being of its citizens, the Republic of Serbia, when considering the need to possibly adopt restrictive measures or sanctions against any country, including the Russian Federation, will be guided exclusively by the protection of its vital economic and political interests. As a country that experienced Western sanctions in the recent past and whose compatriots in the Republika Srpska are suffering sanctions today, the Republic of Serbia believes that it is not in its vital political and economic interest to impose sanctions on any country at this time, not even its representatives or economic entities.
9. Starting from the principle of military neutrality of the Republic of Serbia, and bearing in mind the tremendous pressures to which the state of Serbia is exposed, it is necessary that all planning and training activities of the

Serbian Armed Forces and the Ministry of Internal Affairs of the Republic of Serbia with foreign partners be stopped immediately, and that such activities are not undertake until further notice.

10. In accordance with Article 13 of the Constitution of the Republic of Serbia, which stipulates the obligation of the Republic of Serbia to protect the interests of its citizens abroad, the Ministry of Foreign Affairs, in cooperation with other competent state bodies, will take all measures provided by law to protect the safety of citizens of the Republic of Serbia residing in Ukraine.
11. All state bodies and officials of the Republic of Serbia are warned of their legal obligation to refrain from inciting and helping individuals to participate in conflicts in Eastern Europe. Competent state authorities will take all measures to prevent the participation of citizens of the Republic of Serbia, the so-called volunteers, in the conflicts in the east of Europe and will sanction all citizens who do not comply with the legal prohibitions from art. 386a and 386b of the Criminal Code.
12. The Republic of Serbia, of course, will provide all kinds of humanitarian aid to the endangered people and population of Ukraine.
13. In accordance with their powers, the competent state authorities will take all measures to ensure that in the time ahead, citizens and the economy are supplied with the necessary amount of energy, oil and oil derivatives, gas, but also with food and other necessities necessary for a decent and dignified life.
14. The Ministry of Foreign Affairs will introduce this Conclusion to diplomatic and consular missions of the Republic of Serbia abroad and instruct them to strictly adhere to this conclusion in their actions.
15. For the purpose of implementation, submit this conclusion to the General Secretariat of the Government of the Republic of Serbia, the Ministry of Foreign Affairs, the Ministry of Defense, the Ministry of Internal Affairs, the Ministry of Justice, the General Staff of the Serbian Armed Forces, the Security and Information Agency, the Military Security Agency and the Military Intelligence Agency. (Official site, President of the Republic of Serbia 2022)

ANALYSIS OF THE CONTENT OF THE CONCLUSION OF THE NATIONAL SECURITY COUNCIL OF THE REPUBLIC OF SERBIA

Point 1 of the Conclusion is a declarative statement of the Republic of Serbia, which does not speak about the foreign policy of the state regarding the armed conflict on the territory of Ukraine, nor about the possible condemnation of the military activities of the Russian Federation on the territory of Ukraine, but only declaratively states the fact that both Ukraine and Russia are for the Republic of Serbia friendly countries and peoples throughout history. Viewed from the point of view of neoclassical realism, this point actually represents a political formulation of the political leadership of Serbia in which regret is expressed for the beginning of armed conflicts in Ukraine, but the action of the Russian army on the territory of the neighboring sovereign country is not precisely condemned.

Point number 2., similarly to point number 1., cannot be interpreted as a conclusion adopted at the session of the National Security Council, but as a general principle that in essence and in practice should be respected by every member state of the United Nations, as well as Serbia, and this point as such does not serve anything in this context, except to confirm adherence to the principles of territorial integrity and political independence, which was done according to the same model in point 3, except that in the third point it is emphasized that there is an article in the Constitution of the Republic of Serbia that guarantees that Serbia's foreign policy is based on the principles of international law.

If we analyze these three points from the point of view of the adoption of specific foreign policy decisions of a UN member state, we will determine that these points represent perhaps a kind of excess, bearing in mind the fact that all of the above could be presented in one concrete sentence in which it would be stated that the Republic of Serbia as a state a member of the UN committed to the principles of the UN Charter, which speaks volumes and testifies to respect for the territorial integrity and political independence of any country, including Ukraine. This calls into question point 1, in which the context of friendly relations in no way changes the fact that the Russian Federation carried out military aggression on the territory of a sovereign country.

But that is precisely why here we find numerous elements of neoclassical realism, which, in addition to foreign political circumstances, also takes into account internal political circumstances, coalition circumstances, leaders' beliefs, but also time frames regarding the speed of decision-making.

In fact, point 4 represents the most precise presentation of Serbia's position on the conflict on the territory of Ukraine, although it is indirectly given as such. In this point, Serbia uses its personal example to state that it was exposed to aggression in modern history, but that despite this it remained consistent with the principles and principles of international law. This is followed by point 5, in which Serbia expresses its full and principled support for the respect of the territorial integrity of Ukraine, which *de facto* condemns the Russian military operation on the territory of Ukraine and at the same time promotes the national interest in the preservation of territorial integrity, which has otherwise been threatened for the past 24 years. In addition to that, point 6 is added, where the Republic of Serbia clearly states its position that it is wrong to violate the territorial integrity of any country, including Ukraine. When it comes to sanctions against the Russian Federation, the position is expressed in point 8, which states that when making a decision on the introduction of sanctions against Russia, Serbia will be guided exclusively by the protection of its vital economic and political interests, and as a country that has experienced Western sanctions in the recent past. and whose compatriots in Republika Srpska continue to suffer sanctions, Serbia believes that it is not in its vital political and economic interest to impose sanctions on any state and its representatives and economic entities. (Đurović 2022)

Point 8 is also very closely related to the views of representatives of the neoclassical realism model because it takes into account multiple constant and changing variables in the process of making foreign policy decisions. As constant variables here, we can recognize the vital economic and political interests of Serbia,

as well as the experience of dealing with the policy of sanctions, which is also a given and unchangeable variable, while opening the possibility for the possible adoption of restrictive measures or sanctions is actually a changeable variable that can contribute to the adoption of a new foreign policy decision or a new course of foreign policy action depending on the new circumstances.

If we look at this point through the prism of the non-alignment of Serbia's foreign policy with the Common Security and Foreign Policy of the European Union, more specifically in the context of sanctions, while keeping in mind the material possibilities of Serbia and its room for maneuver in foreign policy action, and in the context of the attitudes of neoclassical realists, we can very simply determine that the given decision turned out to be correct in the sense that Serbia was not faced with restrictive measures in the past period when it comes to the process of European integration, especially in the field of trade cooperation with the EU and with the member states of the Union, in the field of using EU financial instruments, but also the domain of investments from the EU and member states.

When it comes to point 9, it is important to point out that in the given circumstances on the international level, Serbia has decided to preserve a kind of balanced position, temporarily stopping intensified military cooperation with all foreign partners, that is, those who condemn the military operations of the Russian army on the territory of Ukraine, but also with those who support Russian military activities on Ukrainian territory.

Point 10 represents a foreign policy decision typical of all subjects of international law when it comes to the protection of their fellow citizens living in war zones.

When it comes to point 11, it is interesting that this document contains a warning to citizens who would potentially participate in conflicts on the territory of Ukraine on a voluntary basis. In fact, the leadership of the Republic of Serbia made it clear to the citizens of Serbia who are simultaneously members of extremist and radical groups, regardless of whether they support the Ukrainian or Russian side, and based on the experience of the Republic of Serbia with volunteers during the wars of the 90s, that participating in wars in abroad on a voluntary or mercenary basis is a punishable crime. With this stance, the Republic of Serbia has once again shown its commitment to the principles and principles of international law by sending a clear message to the citizens of Serbia that it will not tolerate the participation of any individual in hostilities in Eastern Europe, primarily referring to the conflict in Ukraine.

Point 12 actually represents a message addressed to the authorities and citizens of Ukraine, i.e. the provision of indirect support through the readiness to provide humanitarian aid to the vulnerable population.

Point number 13 is actually outside the domain of foreign policy decisions because it does not deal with the foreign policy of the Republic of Serbia, but with internal issues, i.e. providing a kind of guarantee to the citizens of Serbia that the necessary and required amount of energy sources, oil and oil derivatives, gas, but also other food and necessary necessities for the sustainability of a decent and dignified life of the citizens of the Republic of Serbia. This point testifies to the adoption of the Conclusion concerning Serbia's foreign policy action, but at the

same time it is also based on the current internal circumstances, which representatives of neoclassical realism talk a lot about when it comes to the adoption of foreign policy decisions. With this point, the political elite actually tried to avoid any kind of social panic and hysteria when it comes to issues of sufficient resource capacity, and based on examples from societies in Western, Central and Northern Europe when the inhabitants of countries in those parts of Europe interpreted the beginning of the Ukrainian conflict as an existential issue, especially in terms of energy and resources, bearing in mind the role played by Russian energy companies in the economic sector in the member states of the European Union until that moment.

The conclusion of the National Security Council of the Republic of Serbia represents a modern and original empirical example of the role of the neoclassical realism model in the foreign policy action and foreign policy decision-making of small states, in this case on the example of the Republic of Serbia. A conclusion defined in this way, which includes different segments, starting with support for the territorial integrity of Ukraine, through the challenges that the Republic of Serbia faces in terms of protecting territorial integrity, and the decision to refuse to accept the policy of sanctions against the Russian Federation, which is also based on the personal experience of the Republic of Serbia, up to the decision to provide humanitarian aid to the vulnerable population of Ukraine, as well as providing a kind of guarantee to the citizens of Serbia when it comes to energy sustainability in the new circumstances, testifies to the application of the neoclassical model in practice in the process of making concrete foreign policy decisions.

Author Mandoline Rutkovski for the German newspaper Welt stated that the Serbian president dares to walk the geostrategic tightrope, adding that Serbia has close economic ties with the European Union, with which it achieves about two-thirds of its trade, at the same time describing the president as a political figure oriented towards to the East, who presents himself as a defender of Serbian interests and in this way panders to the voters, while the European Union lets him go, because he is their only hope to reach a compromise on the Kosovo issue that would be acceptable to the Serbian population. (Đerković 2022)

Immediately before the adoption of the Conclusion, the member of the European Parliament from the ranks of the Greens, Viola von Cramon-Taubadel, announced that it is high time for Serbia and President Aleksandar Vučić to publicly condemn the Russian invasion of Ukraine, and she wrote on the social network: "Time to sit for two chair is finished". (Nastevski 2022) Such a conclusion of the National Security Council of the Republic of Serbia was interpreted as a negative point for Serbia in Europe, and foreign policy analyst Boško Jakšić said at that moment for Deutsche Welle that the time of Angela Merkel, when indecision would be read favorably, and that Serbia had the opportunity to on this occasion brought it closer to the European Union, but that it did not take advantage of it and that we will see what price Serbia will pay for that. (Petrović and Rujević 2022) However, on the other hand, the opposition candidate for president at the time, Zdravko Ponoš, gave a more balanced statement, and said that Serbia should first of all insist on respecting international law because it went through the trauma of 1999 and the rush

of recognition of the unilateral declaration of Kosovo's independence. (Petrović and Rujević 2022)

In fact, there were various comments regarding the Conclusion won by the National Security Council of the Republic of Serbia, however, all those comments were mostly politically motivated, without a realistic understanding of the objective circumstances that the Republic of Serbia was facing at that moment and in different domains. , starting from the pressures for harmonization with the Common Security and Foreign Policy of the European Union, through the long-standing problems faced in the matter of preserving the territorial integrity and status of Kosovo and Metohija within the framework of the Republic of Serbia, all the way to modern security challenges such as the stable supply of energy resources due to which Serbia is also in a kind of dependent status.

CONCLUSION

In this paper, we tried to use the example of the foreign policy decision of small states in the case study of the Republic of Serbia to show the application of the model of neoclassical realism in foreign policy decision-making in contemporary international circumstances, as stated by the representatives of the model of neoclassical realism, almost in the same way the foreign policy decision of the Republic of Serbia was adopted. on the occasion of the beginning of the conflict on the territory of Ukraine. That decision took into account not only the current circumstances on the international and European scene, but also the current political circumstances on the internal level of Serbia, the perception and interpretation of the current situation by the political elite in Serbia, the understanding of the attitudes and positions of Serbian society, respect for vital national interests of the Republic of Serbia, threats to them, but also to economic interests and goals in the direction of creating a sustainable future in the current uncertain times. Apart from that, Serbia managed during the conflict period to ensure energy sustainability for its population and economic sector, which realistically represented a big risk not only for developing countries, but also for developed countries. This work certainly provides an opportunity for further research in the field of foreign policy decision-making of small states through the theories of realism, neorealism, neoclassical realism, but also through the comparison of these models on concrete empirical examples.

BIBLIOGRAPHY

1. Đerković, Ivan. 2022. *„Vučić hoda po geostrateškom konopcu“.* 8 August. Poslednji pristup June 20, 2023. https://www.dw.com/sr/%C5%A1tampa-vu%C4%8Di%C4%87-hoda-po-geostrate%C5%A1kom-konopcu/a-62741114.
2. Đurović, Jovana. 2022. *Vučić: Podrška teritorijalnom integritetu Ukrajine, ali bez sankcija Rusiji.* February 25. Accessed June 27, 2023. https://www.glasamerike.net/a/vucic-ukrajina-srbija-stav-savet-bezbednosti/6459293.html.
3. Foulon, Michiel, and Gustav Meibauer. 2020. "Neoclassical Realism and Global IR:." *Forum: Rethinking Neoclassical Realism at Theory's End. International Studies Review* 268–295. doi:https://doi.org/10.1093/isr/viaa018.

4. Hellmann, Gunther, and Ursula Stark Urrestarazu. 2013 op. cit. *Theories of Foreign Policy.* Oxford University Press. Accessed June 22, 2023. doi:DOI: 10.1093/OBO/9780199743292-0104.
5. Marsh, Kevin. 2012. "Managing Relative Decline: A Neoclassical Realist Analysis of the 2012 US Defense Strategic Guidance." *Contemporary Security Policy 33(3)* 487–511.
6. Meibauer, Gustav. 2020a. "Interests, ideas, and the study of state behaviour in neoclassical realism." *Review of International Studies 46(1)* 20-36, op. cit.
7. Meibauer, Gustav, Linde Desmaele, Tudor Onea, Nicholas Kitchen, Michiel Foulon, Alexander Reichwein, and Jennifer Sterling-Folker. 2021. "Forum: Rethinking Neoclassical Realism at Theory's End." *International Studies Review* 268–295. https://doi.org/10.1093/isr/viaa018.
8. Mintas, Ivan. 2020. "NEOCLASSICAL REALISM AS A THEORETICAL FRAMEWORK FOR FOREIGN POLICY ANALYSIS, WITH SPECIAL REFERENCE TO THE PERCEPTIONS, BELIEFS AND IDEAS OF STATE LEADERS." *Polemos XXIII, br. 46.* 13-35. https://hrcak.srce.hr/248082.
9. Nastevski, Aleksandar. 2022. *Vučić saopštio zvanični stav Srbije po pitanju Ukrajine.* February 25. Accessed June 23, 2023. https://nova.rs/vesti/politika/zvanicni-stav-srbije-po-pitanju-ukrajine/.
10.Official site, President of the Republic of Serbia. 2022. *Zaključak Saveta za nacionalnu bezbednost Republike Srbije broj 1-10/2022 od 25. februara 2022. godine.* February 25. Accessed June 25, 2023. https://www.predsednik.rs/pres-centar/saopstenja/zakljucak-saveta-za-nacionalnu-bezbednost-republike-srbije-broj-1-102022-od-25-februara-2022-godine.
11.Petrović, Ivica, and Nemanja Rujević. 2022. *Srbija: Podrška Ukrajini bez osude Rusije.* February 26. Accessed June 28, 2023. https://www.dw.com/sr/srbija-podr%C5%A1ka-ukrajini-bez-osude-rusije/a-60925893.
12.Reichwein, Alexander. 2020. "Neoclassical Realism and Statecraft: Toward a Normative Foreign Policy Theory." *In Forum: Rethinking Neoclassical Realism at Theory's End. International Studies Review.* doi:https://doi.org/10.1093/isr/viaa018.
13.Ripsman, Norrin M. 2017. "Neoclassical Realism." *Oxford Research Encyclopedia of International Studies.* Accessed June 26, 2023. https://oxfordre.com/internationalstudies/view/10.1093/acrefore/9780190846626.001.0001/acrefore-9780190846626-e-36.
14.Sterling-Folker, Jennifer. 1997. "Realist Environment, Liberal Process, and Domestic-Level Variables." *International Studies Quarterly 41(1)* 1-25.

Original Scientific Article
UDK 355.11-053.2/.6:341.24
355.11-053.2/.6:17

CHILD SOLDIERS – ETHICAL AND LEGAL ASPECTS

Assoc. Prof., **Danijela Lucić, PhD**
University of Zagreb, Faculty of Philosophy, Croatia, European Union,
dalucic@ffzg.hr

Assist. Prof., **Dijana Gracin, PhD**
University of Zagreb, Military Studies, Zagreb, Croatia, European Union,
gdijana39@gmail.com

Marija Vidić, MA
Univ. Mag. Art. Milit., University of Zagreb, Military Studies Croatia, European Union,
marijavidic23@gmail.com

Abstract[1]

Armed conflicts of varying intensities have been a constant feature of human history and continue to be so today. Children are one of the most vulnerable groups in such conflicts. In light of this, the paper examines various aspects of children who participate in war activities, who are frequently both victims and perpetrators. Child soldiers are defined as girls and boys under the age of 18 who participate in armed conflicts in a variety of capacities – including active combat, guards, cooks, messengers, spies, bodyguards, etc., and are also used for sexual purposes. The paper addresses the process of recruiting children in war activities, the methods of using children in warfare, presents the most recent available statistical data, and the legal framework pertaining to the 2000 Optional Protocol to the Convention on the Rights of the Child regarding the involvement of children in armed conflicts. In conclusion, the ethical dimensions of the treatment of child soldiers and the response of society (the state) to demobilization, reintegration, and rehabilitation are examined.

Keywords: child soldiers, recruitment, legal problem, ethical problem, child protection

[1] This work was created in collaboration with a student/cadet Marija Vidić, based on research for her master thesis, defended at the University of Zagreb on July 4, 2023.

Introduction

The phrase "child soldiers" is an oxymoron that creates a sense of unease that grows deeper as you delve deeper into the issue. Regardless of the perspective from which it is viewed, the issue of child soldiers is a major social problem whose scope is frequently unknown to the majority of the world, particularly those who live far from the events of war. With characteristics such as youth, curiosity, naivety, and so on, children – as the most vulnerable group in society – are a very suitable and appealing population for numerous armed groups that want to employ them in their war activities. Children and young people are drawn into groups that use them in armed (war) activities utilizing various manipulative methods, violence, intoxicants etc. Children are engaged in warfare through active participation in combat activities as bodyguards, guards, supervisors, miners, spies, but also as cooks, cleaners, and the like. In addition to the aforementioned, children are sexually exploited in such circumstances. The roles mentioned above can result in death, physical injuries, as well as psychological consequences, i.e. major trauma. This significant topic has already received media attention, but public interest in it has grown since the 1980s. Although it is not a modern phenomenon, it has not vanished with modernity and is still present in various parts of the world. Afghanistan, Chad, Colombia, the Democratic Republic of the Congo, Ivory Coast, Myanmar, Somalia, Sudan, and Uganda continue to use children and youth in armed conflicts today. Undoubtedly, it is a serious and manifold social issue, but the focus of the paper is on the legal and ethical levels. There are international legal acts that address the issue of child soldiers, but the key is active engagement, that is, legislation implementation. The paper raises the question, "What are the major challenges in dealing with the issue of child soldiers?" To answer the above question, the paper discusses the issue of child soldiers, from definition to presentation of the recruiting process and children's experiences in armed conflicts. Furthermore, the existing legal framework and how states (societies) deal with this problem are taken into due account. The paper employs a descriptive method, as well as an analysis and synthesis of publicly available secondary quantitative and qualitative data.

Based on the research and a brief overview of the situation in Croatia, it is possible to conclude that children are victims, perpetrators, and witnesses all at the same time (UNICEF 2007).

Child soldiers – definition

Global instabilities that result in armed conflicts of various types and scales provoke an array of social issues. One of the most significant is the use of children

in these types of conflicts, which has resulted in the creation of the category of child soldiers. This issue was high on the UN agenda, therefore the Protocol from Cape Town[2] in 1997 defined "child soldier" as "any person under the age of 18 who serves in any capacity in any kind of regular or irregular armed force or armed group, including but not limited to cooks, porters, messengers, and those accompanying such groups, other than purely as family members. It includes the recruitment of girls for sexual purposes as well as forced marriage. As a result, it does not only refer to a child who carries or has carried arms" (UN 1997). It should be noted that the Geneva Convention of 1949 set the age of child soldiers at 15 years in order to protect children. However, with the aforementioned Cape Town Protocol in 1997, this age limit was raised to 18 years (Tassé 2015). Although some societies (and cultures) still set the age for determining children differently, the UN definition is unquestionably the basis for categorization. Further international cooperation resulted in the adoption and ratification of the new UN *Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict* in 2000 (UN 2002). The aforesaid Protocol reached an agreement that child soldiers, even those who committed crimes, should be treated as war victims, rehabilitated, and reintegrated into society.

Several cases have had a significant impact on the issue's visibility and international community awareness. The most serious violation of children's rights is undoubtedly the case of a child soldier who was convicted of attempted murder and sentenced to prison. Mohammed Jawad, then fifteen, was arrested for allegedly throwing a hand grenade at an American military vehicle in Kabul's center. Several people were arrested, but only Jawad was convicted and handed over. Jawad was eventually transferred to Guantanamo, the notorious US military prison. Jawad was dubbed the "forgotten kid from Guantanamo" after the case became widely publicized (Frakt 2011).

Ishmael Beah, who in 2007 published the memoir *A Long Way Gone – Memories of a Boy Soldier* in which he described his life as a child soldier, was the next important figure in bringing attention to the issue of child soldiers. The book contains some shocking details about the recruitment process and life as a child in the ranks of rebels and armed gangs.

Tiefenbrun (2007: 431-433) lists the characteristics of children that make them a good target for military recruitment and use. These are appearance, age, and mindset; they are easy to meet your needs; and, unlike the elderly, they require less money for food, weapons, and the like. Children's abilities such as agility, quick memory and learning, steadfastness, aggressiveness in task performance, and so on. According to Tiefenbrum, some of the most common activities that children engage

[2] The full title of the protocol is *Cape Town Principles on the Prevention of Recruitment of Children into the Armed Forces and Demobilization and Social Reintegration of Child Soldiers in Africa to the attention of States and international and non-governmental organizations*.

in during wartime include demining, planting IEDs[3], monitoring, spying, and leading the first wave of attacks on the opposing side. In addition to combat duties, combat units must perform household chores such as stealing food, cooking, cleaning, and serving their superiors, but young boys and girls are not immune to sexual exploitation (Tiefenbrun 2007).

According to the findings of P.W. Singer (2005: 93), an American political scientist and expert on twenty-first-century wars, the majority of the duties of child soldiers, more than 60%, relate to direct combat, followed by the role of patrolling and surveillance, which is performed by 50% of child recruitment.[4] Furthermore, approximately 35% of child soldiers work as base guards and prison guards, with approximately 25% serving as commander's bodyguards. The next most common position in the base is spy and recon, which is filled by 35% of child soldiers. Weapon maintenance is the last combat activity performed by children, and it accounts for approximately 30% of all child soldiers. Because modern weapons are made of light materials and simple parts, they can easily master manipulating them – disassembly, cleaning, and assembly. In addition to combat duties, child soldiers must perform household chores such as caring for the sick, acting as porters, and cooking. These figures fall just short of 10% of children (Singer 2005).

Modern warfare and preconditions for the "creation" of child soldiers

Traditional ways of combat have given way to modern ways of warfare in which unconventional weapons are ubiquitous while asymmetric conflicts and the use of children are commonplace. Children like the aforementioned Mohammed Jawad and Ishmael Beah are both reality and the result of a variety of social circumstances.

Decades of political crises, aggressive attacks marked by massacres, and destruction of social and economic infrastructure have devastated Central African, Middle Eastern, Asian, and numerous other underdeveloped nations with comparable social problems. Many dysfunctional states lack democratic processes, human rights, and freedoms. African countries – as primary examples of areas where child soldiers are used as weapons of conflict – have a high level of instability and a prominent rate of armed conflicts, which continue to take place today. Aside from poor socioeconomic conditions, the diseases that afflict the central African states have created a fertile ground for child abduction, as many children are left without parents and thus easy targets for kidnappers.

Another crucial precondition for the "creation" of child soldiers is the widespread availability of a new type of weapon that is lightweight and simple to

[3] IED, abbreviation for *improvised explosive device*: a type of bomb made and used by people who are not members of an official army, etc. (URL: IED | English meaning - Cambridge Dictionary, last access on 31 August 2023)

[4] It is important to note that one role does not preclude another, i.e. children who participate in combat activities also have other responsibilities (roles).

use. According to (Anderson 2017), Germany exported small arms worth 47 million euros in 2016. Although German legislation prohibits the export of arms to conflict-torn countries, the report claims that weapons continue to cross borders illegally. Furthermore, German weapons may be licensed for production in other countries, but it remains unclear where they will end up (Anderson 2017).

The conditions in the countries themselves, the development of technology from other countries, the international community's weakness, and often its lack of interest in solving problems and (armed) conflicts in the world's underdeveloped countries, provide fertile ground for the recruitment and use of children in armed conflicts.

According to Tiefenbrun (2007), child soldiers are frequently kidnapped from their own homes, tortured, indoctrinated, drugged, threatened with death and/or dismemberment if they do not fight, witness murders or torture of family members, are required to kill friends who disobey their commanders, are forced to watch the punishment of other child soldiers who try to escape, and so on. One of the initial stages in the process of recruiting new members to an organization is recruitment. Although, under the *Optional Protocol to the Convention on the Rights of the Child on the Participation of Children in Armed Conflicts*, states must ensure that persons under the age of 18 are not compulsorily recruited into their armed forces, while armed groups not affiliated with the state's armed forces should not, under any circumstances, recruit individuals under the age of 18, children will still be included in some kind of combat groups. According to the data, countries marked by political and economic instability, but also by armed conflicts of various scales, have the highest risk of recruiting children into the military, rebel groups, and criminal gangs.

Children are recruited into rebel groups through a variety of means, including abduction, coercion, ideological indoctrination, and economic necessity.

When it comes to kidnapping, rebel groups have an elaborate plan that includes answers to where, when, and how much. It is primarily a violent abduction in which children are taken from their homes, schools, or playgrounds using force and surprise. Kidnappers also use threats and intimidation to scare children into obedience. According to Jens Andvig, child abduction is easier for rebel groups when the children are orphans and extremely difficult when the children have finished primary school. According to Andvig, the most famous *fishing sites* are refugee camps, markets, school playgrounds after classes, and remote wells or fields (Andvig 2006).

In addition to kidnapping, ideological recruitment can be used to gain entry into combat groups. The process of persuading individuals to join a cause or movement based on ideological or political beliefs is referred to as ideological recruitment. In the context of child soldiers, ideological recruitment frequently involves armed groups or military forces manipulating vulnerable children to

promote a specific agenda or ideology. Children are frequently recruited for economic reasons, i.e. to provide financial security for the family or themselves.

Legal aspects

Children's rights in international documents were systematically addressed for the first time in the Geneva Declaration of 1924. The basic principles of the Declaration contained the following five points:

1) *The child must be given the means requisite for its normal development, both materially and spiritually;*
2) *The child that is hungry must be fed; the child that is sick must be nursed; the child that is backward must be helped; the delinquent child must be reclaimed; and the orphan and the waif must be sheltered and succored;*
3) *The child must be the first to receive relief in times of distress;*
4) *The child must be put in a position to earn a livelihood, and must be protected against every form of exploitation;*
5) *The child must be brought up in the consciousness that its talents must be devoted to the service of fellow men* (UN 1924).

As fundamental documents of international humanitarian law, the 1949 Geneva Conventions on the Protection of War Victims contain only a few provisions on the protection of children within the general protection of civilians, but no special rules applicable to children actively participating in military operations. Only their Supplementary Protocols from 1977 mark the beginning of international legal regulation of child recruitment protection (Fabijanić Gagro 2017).

The Convention on the Rights of the Child, which was adopted by the United Nations General Assembly on November 20, 1989, is the legal document that deals with the issue of children. This is the first document that recognizes the child as a subject with rights, and it carries moral weight. It speaks volumes about society's and adults' obligations to children, and it binds signatories to certain aspects of the Convention. It also defines survival rights, developmental rights, protective rights, participation rights, non-discrimination, and all rights as universal (UNICEF 1989).

The participation of children in military operations is defined in Article 38 of the Convention on the Rights of the Child – "Children who have not reached the age of 15 may not be recruited into the armed forces or participate in armed conflicts."

The aforementioned Protocol, which specifically mentions armed conflicts and the use of children in them, was adopted in Cape Town in 1997, and approved by the UN General Assembly on May 25, 2000. It became effective for the Republic of Croatia on February 12, 2002. The signatory states' obligations are clearly defined:

- *States will not recruit children under the age of 18 to send them to the battlefield.*
- *States will not conscript soldiers below the age of 18.*
- *States should take all possible measures to prevent such recruitment – including legislation to prohibit and criminalize the recruitment of children under 18 and involve them in hostilities.*
- *States will demobilize anyone under 18 conscripted or used in hostilities and will provide physical, psychological recovery services and help their social reintegration.*
- *Armed groups distinct from the armed forces of a country should not, under any circumstances, recruit or use in hostilities anyone under 18* (UN 2002).

The most significant contribution of this document is the raising of the age limit for minor recruitment from 15 to 18 years. To this, we should add the Conclusions of the Council of the European Union on the EU strategy on the rights of the child from June 9, 2022, in which it is explicitly stated – against the background of Russia's war of aggression against Ukraine – that children are in greater danger than adults in armed conflicts in the upcoming period, affirming that they should be protected, particularly from recruitment into and exploitation by the military or other armed forces, as well as from sexual exploitation.

In addition to the aforementioned international documents, several International Labor Organization conventions, it protects children from work, particularly work in hazardous conditions, such as armed conflicts. First, the 1973 *Minimum Age Convention* was designed to ensure the effective abolition of child labor. This Convention, No 138, Article 3 states:
The minimum age for admission to any type of employment or work which by its nature or the circumstances in which it is carried out is likely to jeopardise the health, safety or morals of young persons shall not be less than 18 years (ILO 1973).

Convention 138 is supported by Convention 182 – Worst Forms of Child Labor Convention – which states in Article 3 that "the worst form of child labor" includes "all forms of slavery or practices similar to slavery, such as the sale and trafficking of children, debt bondage and serfdom, and forced or compulsory labour, including forced or compulsory recruitment of children for use in armed conflict" (ILO 1999).

Given the nature of the problem of child soldiers and their use in armed conflicts, as well as the manner in which they are recruited, abducted, and used in combat groups, they are frequently linked to and correspond to human trafficking concepts. According to Article 3 of the Palermo Protocol, "the recruitment, transportation, transfer, harboring, or receipt of a child for the purpose of exploitation shall be considered "trafficking in persons," even if it does not involve

any of the previously defined means, such as abduction, fraud, deception, abuse of power or vulnerability, or the giving or receiving of payments or benefits.

There is clearly a normative framework in place, as well as some activities aimed at implementing legislation, but the issue of efficiency, particularly in some countries, undoubtedly necessitates more significant and decisive steps in the protection of children, particularly their rehabilitation and reintegration into society.

Implementation of the Optional Protocol to the Convention regarding the involvement of children in armed conflicts – the case of Croatia

As previously stated for the Republic of Croatia, the Optional Protocol entered into force in 2002.[5] However, it is not the only instrument that protects minors from recruitment in Croatia. Below are just a few of the most important documents that legislatively protect minors, i.e. under 18 years of age, from recruitment. Article 95 of the Criminal Code of the Republic of Croatia sanctions the offender who recruits a child for armed purposes or armed groups not affiliated with the armed forces, or uses such a recruited child in direct hostile actions (CC). According to the Criminal Code, recruiting children during wartime is a war crime. In accordance with the provisions of the Law on Defense, the Law on Service in the Armed Forces of the Republic of Croatia, the Ordinance on Voluntary Military Training and the Ordinance on the Method of Keeping Records of Military Conscripts and Performing Military Obligations, the Ministry of Defense (MOD) and the CAF do not engage or forcibly recruit persons under the age of 18. Military obligation arises in the calendar year in which a citizen of the Republic of Croatia turns 18 years of age, and in that year citizens of the Republic of Croatia are registered into the military records. The above cannot be considered a violation of the Article 2 of the Optional Protocol, which defines that the party states are obliged to ensure that persons who have not yet reached the age of 18 are not forcibly recruited into the armed forces. According to Article 26 of the Law on Defense, only adult citizens of the Republic of Croatia may be sent to voluntary military training. There is currently no conscription in place in Croatia. Criminal offenses against humanity and human dignity, child recruitment, in the case of the criminal offense of recruitment for terrorism (Article 100 of the Criminal Code), would be taken as an aggravating circumstance when determining the type and measure of criminal sanctions. The MOD does not have, or manage, military schools with children as participants, but it does implement a scholarship program for students in higher grades at certain secondary schools with the goal of their later employment and engagement in the Armed Forces. Candidates are sent to military training only after they turn 18 (Fifth and Sixth Periodic Report of the Republic of Croatia according to the UN Convention on the Rights of the Child, April 2020). The Ministry of Interior does not record a single case of an identified child who was

[5] https://narodne-novine.nn.hr/clanci/medunarodni/2002_04_5_51.html

previously a member of "terrorist" or "violent extremist" groups, therefore there are no targeted services aimed at reintegration and recovery (Fifth and Sixth Periodic Report of the Republic of Croatia according to the UN Convention on the Rights of the Child, April 2020).

Ethical aspects

The ethical dimension of this issue is related to legislation. In terms of the legal norms mentioned, children have rights but not the responsibilities that come with those rights. What exactly does that imply? According to the UN Convention on the Rights of the Child, children have binding and guaranteed rights to survival, protection, development, and participation in society, and children cannot make completely rational decisions because they have not yet matured mentally and physically and do not fully comprehend the world. When we talk about countries where armed groups use children in conflicts and in rebel organizations, we are mostly talking about economically underdeveloped and politically unstable countries that are also dangerous places to live.

The treatment of child soldiers is an extremely difficult ethical issue, particularly on the battlefield or during an armed conflict. Child soldiers are perpetrators who pick up weapons with the intention of committing a crime. They fight alongside soldiers from other armed organizations in order to defeat the adversary. According to the law, children recruited into military conflicts are victims of someone else's illegal activities. Above all, they are victims of unethical behavior of those who recruit them. There are certainly differences when it comes to the age of the child, at least from an ethical standpoint, even though all legal frameworks define a child as anyone under the age of 18. When it comes to child soldiers, a number of complex ethical dilemmas arise.

Myriam Denov, for instance, describes encounters between soldiers and child soldiers in her work. According to the study, UN soldiers who were in contact with and interviewed child soldiers frequently expressed empathy and stated that they were hesitant to respond to a direct attack by child soldiers. They frequently changed their tactics to protect the children, jeopardizing the outcome of their military mission (Denov 2022).

However, in order to comprehend a portion of the ethical issue, it is necessary to determine the effects of recruitment and participation in armed conflicts on child soldiers. The ramifications are both physical and psychological.

When it comes to psychological consequences, the most common issue is PTSD, or post-traumatic stress disorder. It manifests itself through reliving stressful events for the person, as well as constant vigilance and increased excitement. Some children lose skills they have learned, such as speaking and feeding (Schauer 2009). Furthermore, depression and suicidality among child soldiers are common side effects of life in combat groups, and in many cases, they are linked to PTSD disorder. A large number of child soldiers develop depression and suicidality as a

result of the changes in their lives, their experiences in combat groups, and the events they witnessed. According to research conducted in Northern Uganda, 52% of children abducted by insurgents in Uganda are suffering depression (Vinck 2007).

Child soldiers' physical consequences are easier to detect and treat than psychological trauma. Broken limbs, limb loss, loss of hearing, sight, various untreated infections, internal organ and bone injuries, head trauma and diseases, shrapnel, bullets, and iron in the skin and body, but also malnutrition and weak immunity are most common (Schauer 2009).

All of the consequences listed above have a significant impact on the child's mind and developmental abilities, including not only physical development but also mental development and behavior. The consequences have an impact not only on the children, but on society as well. Young people's ability to reintegrate into society is hampered by mental and physical injuries. While living and working in combat groups, child soldiers miss out on formal education and training opportunities in the civilian world that could make them "employable" (Fisher 2013). Maladjusted children frequently become dysfunctional members of the community, and the rate of crime and violence in society rises. Finally, there are the costs of rehabilitation and reintegration (both time and money).

Conclusion - demobilization, reintegration and rehabilitation as a solution to the consequences, but not to the underlying cause

The highest value of the rule of law includes additional special requirements for substantively drafting laws as well as formal and legal regularity. Laws must be general and equal for all people, legal and of a nature that has consequences that are certain for the addressees of the law (the principle of legal certainty), i.e. appropriate to their legitimate expectations in any concrete direct application of the law. nature.

Demobilizing all minors under the age of 18, reintegrating them into the families and communities from which they were kidnapped or coerced to join armed groups, and assisting them in making the transition from military service to civilian life are the first steps toward recovery. Shelter, food, water, and security are all provided by efficient demobilization programs.

In order to aid child ex-soldiers physically, mentally, and to "equip" them for a new life, reintegration is in and of itself a social act directed at society's attitudes that must facilitate it. Although it takes time, the process is essential. Education, vocational training, work on various social skills, and the absence of stigmatization and discrimination in society are all prerequisites for successful reintegration.

The reintegration of child soldiers is the focus of numerous organizations, including private associations and non-governmental organizations. Human Rights Watch, UNHCR, War Child, Coalition to End the Use of Child Soldiers, World Health Organization, UNICEF Save the Children, and others to name but a few. One

successful demobilization of 83% of the 2,900 child soldiers in Angola was achieved by the *Christian Children's Fund*, a UNICEF program (Wessels 1997).

The institutions mentioned above have a positive impact on rescuing and protecting child soldiers, but there are still issues that need to be resolved because they are what "give birth" to child soldiers. These include a lack of life-sustaining resources, a lack of systematic education, a lack of infrastructure, a labor shortage, etc. All these are the consequences of underdevelopment, political and economic, of such countries. While unfavorable assumptions are stable, such states generate unstable societies, where armed conflicts of various intensities are highly probable, and thus the "birth" of new child soldiers.

It cannot be overemphasized that some children are more susceptible to socioeconomic exclusion and discrimination than others, particularly child soldiers, and that this is also the Council of the European Union's recommendation on children's rights. It is of particular importance to introduce children to their fundamental rights in a child-friendly way.

Ultimately, it is crucial to acknowledge that in the context of armed conflict, there are no winners, and it is undeniable that children bear the brunt of the detrimental consequences. Among these vulnerable individuals, it is evident that child soldiers suffer the most severe repercussions.

Literature

1. Anderson, Emma. *How German guns often end up in child soldiers' hands* . 10 Feb, 2017 CET. https://www.thelocal.de/20170210/study-shows-how-german-guns-are-landing-in-child-soldiers-hands (Accessed 2 September 2023).
2. Andvig, Jens. *Child soldiers: Reasons for.* Oslo: NUPI, 2006.
3. Denov, Myriam. *Encountering children and child soldiers during military deployments: the impact and implications for moral injury.* European Journal of Psychotraumatology., 2022. https://doi:org. 10.1080/20008066.2022.2104007.
4. Fabijanić Gagro, Sandra. *Zaštita djece vojnika u suvremenim oružanim sukobima.* Zagreb: Zbornik Pravnog fakulteta u Zagrebu, 2017. 67 (3-4), 439-464.
5. Fisher, Kirsten. *Transitional Justice for Child Soldiers.* New York: PALGRAVE MACMILLAN, 2013.
6. Frakt, David. »Mohammed Jawad and the military commissions of Guantanamo.« 1367-1411. Duke University School of Law, 2011.
7. ILO. »Minimum Age Convention.« 1973.
8. ILO. »Worst Forms of Child Labour Convention.« 1999.
9. *Kazneni zakon Republike Hrvatske.* NN 125/11, 144/12, 56/15, 61/15, 101/17, 118/18, 126/19, 84/21, 114/22
10. Peto i šesto periodično izvješće RH prema Konvenciji o pravima djeteta UN-a, travanj 2020. https://www.gov.hr
11. *Pravilnik o dragovoljnom vojnom osposobljavanju.* NN 158/13, 121/16, 3/19 .

12.*Pravilnik o načinu vođenja evidencije vojnih obveznika i izvršavanju vojne obveze.* NN 114/14, 102/17 .
13.Schauer, Elisabeth. »The Psychological Impact of Child Soldiering.« 2009. https://doi.org. 10.1007/978-1-4419-5722-1-14,
14.Singer, Peter. »Children at war.« *Children, Youth and Environments*, 2005.: 399-402.
15.Tassé , Abye. *Child Soldiers as Victims and Actors: Lessons from Ethiopia.* International Encyclopedia of the Social & Behavioral Sciences, 2015.
16.Tiefenbrun, Susan. »Child Soldiers, Slavery and the Trafficking of Children.« 2007.: 431-433.
17.UN. » Ženevska deklaracija o pravima djeteta.« 1924.
18.UN. »Cape Town Protocol.« 1997.
19.UN. »Optional Protocol on the Involvement of Children in Armed Conflict.« 2002.
20.UN. »Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime.« 2000.
21.UNICEF. »Convention on the Rights of the Child.« 1989.
22.UNICEF. »Paris principles and guidelines on children associated with armed forces or armed group.« 2007.
23.Vinck, Patrick. *Exposure to war crimes and implications for peace building in nothern Uganda.* Jama, 2007.
24.Vijeće EU, Zaključci Vijeća o strategiji EU-a o pravima djeteta, Bruxelles, (Accessed 9 June). https://www.consilium.europa.eu/
25.Wessels, Michael. »Child Soldiers.« *Bulletin of the Atomic Scientists*, 1997.: 32-39.
26.*Zakon o obrani Republike Hrvatske.* NN 73/1 3, 75/15, 27/16, 110/17, 30/18.
27.*Zakon o službi u oružanim snagama Republike Hrvatske.* NN 73/13, 75/15, 50/16, 30/18, 125/19.

Scientific Article
UDK 364.2:332.146.2(100-773)

Ensure healthy lives and promote well being for all by using technological advances in order to promote sustainable development in developing countries

Associate professor, Elena Tilovska-Kechedji, PhD
Faculty of Law, University "St. Kliment Ohridski" – Bitola
elena-tilovska-kechegi@hotmail.com
Full professor, Goran Ilik, PhD
Faculty of Law, University "St. Kliment Ohridski" - Bitola
goran.eu@gmail.com

Abstract
Even though the world today has prospered economically and advanced technologically, still it faces big challenges like poverty, hunger, inequality, migrations, diseases, climate change and even wars. These are all hurdles that should have been overcome years ago. Therefore, the world needs to make strategic steps to overcome these hurdles. The UN member states adopted the 2030 Agenda for Sustainable development and introduced the Global Goals to renew our world. Part of these agenda is the safeguarding of the fundamental right to health and well being which is a key element for sustainable development for all. Poor health threatens the rights of children to education, limits economic opportunities and increases poverty in the world. In addition health is connected to other aspects of sustainable development, including water and sanitation, climate change, peace and stability. Of course, there has been some progress in certain spheres, but hurdles remain and need to be overcome with concise strategy and by using modern technological advances.

Keywords*: UN, sustainable development, health, technological advances.*

I. The UN global goals

Even though our world has become more modernized, humanity is still facing the old challenges like poverty, hunger, inequality, migrations, diseases, climate change and wars. That is why bold actions should be taken in order to overcome these hurdles, and that is why in 2015 the UN adopted the 2030 Agenda for Sustainable development and the Global Goals were introduced to give a second chance to humanity and our world by 2030, a goal which is long over due but it is necessary.[1]

One of these Global goals is to 'ensure healthy lives and promote well being' and the aims of this goal are by 2030 to:

[1] "Global goals". Retrieved from: Goals Archive - The Global Goals

- ❖ Reduce the global maternal mortality ratio to less than 70 per 100,000 live births.
- ❖ To end preventable deaths of newborns and children under 5 years of age, with all countries aiming to reduce neonatal mortality to at least as low as 12 per 1,000 live births and under-5 mortality to at least as low as 25 per 1,000 live births.
- ❖ To end the epidemics of AIDS, tuberculosis, malaria and neglected tropical diseases and combat hepatitis, water-borne diseases and other communicable diseases.
- ❖ To reduce by one third premature mortality from non-communicable diseases through prevention and treatment and promote mental health and well-being.
- ❖ Strengthen the prevention and treatment of substance abuse, (narcotic, alcohol).
- ❖ Reduce the number of global deaths and injuries from road traffic accidents.
- ❖ Ensure universal access to sexual and reproductive health-care services, including for family planning, information and education, and the integration of reproductive health into national strategies and programme.
- ❖ Achieve universal health coverage, quality essential health-care services and access to medicines and vaccines for all.
- ❖ Reduce the number of deaths and illnesses from hazardous chemicals and air, water and soil pollution.
- ❖ Strengthen Tobacco Control in all countries.
- ❖ Support the research and development of vaccines and medicines that primarily affect developing countries, provide access to affordable essential medicines and vaccines.
- ❖ Increase health financing and the recruitment, development, training of the health workforce in developing countries.
- ❖ Strengthen the capacity of all countries, in particular developing countries, for early warning, risk reduction and management of national and global health risks.[2]

All of these aims were presented due to the devastating statistics. In 2018, around 6.2 million children and adolescents under the age of 15 years, died, mostly from preventable cause like simple cold. Of these numbers, 5.3 million occurred until the 5 year of the child's life, and half of these deaths occurred to newborns in the first month. There still exists an increase in child deaths in Sub-Saharan Africa and Southern Asia. Also, malnourished children, have a higher risk of death from simple cold or from diarrhoea. Malnutrition is the key factor that contributes to about 45 % of deaths in children, especially infants.[3] Furthermore:

- ❖ Over 40 per cent of all countries have fewer than 10 medical doctors per 10,000 people; over 55 per cent of countries have fewer than 40 nursing and midwifery personnel per 10,000 people.

[2] "Good Health and well being". Retrieved from: Goal 3: Good health and well-being - The Global Goals

[3] "Goal 3: Good health and well being". Retrived from: Health - United Nations Sustainable Development

- In 2017, approximately 810 women died from preventable causes related to pregnancy and childbirth.
- 94 per cent of all maternal deaths occur in low and lower middle-income countries.
- Maternal mortality ratio – the proportion of mothers that do not survive childbirth compared to those who do in developing regions is still 14 times higher than in the developed regions.[4]
- 1.7 million people became infected with HIV in 2019.
- Tuberculosis remains the leading cause of death among people living with HIV.
- Globally, adolescent girls and young women face gender-based inequalities, exclusion, discrimination and violence, which put them at increased risk of acquiring HIV.
- AIDS is now the leading cause of death among adolescents (aged 10–19) in Africa and the second most common cause of death among adolescents globally.[5]

From the above numbers it is obvious that due to lack of food, nutrition, vaccines, drinkable water and proper sanitation, lack of good education, lack of medical personnel, due to the poor economies and so forth, the developing world is still suffering great losses. Don't these children have the right to life, and normal childhood? Don't women in these countries have the right to safe pregnancy and childbirth? Don't people in the developing countries have the right to normal life? Of course they do and that is why the UN presented the above goals from which we will discuss the goal of "ensuring healthy lives and promoting well being for all" but by using the technological advances that exist today in order to achieve these goal faster.

II. The right to health

Every human being has the right to health, this is a fundamental right. The WHO in 1946 presented the following definition: "Health is a state of complete physical, mental and social well-being and not merely the absence of disease or infirmity".[6] And in 1978, with the Alma Ata declaration it was taken an action to promote 'Health for All' meaning that health applies to all the people as well as to all the sectors like food, industry, education, food supply, nutrition, safe water, immunization, and all other aspects of life. This declaration pointed out the need to fight and prevent diseases, but also the health care system to be applicable to all human beings. Furthermore, it stressed the need of preventive, pro-motive and rehabilitation services that need to be provided by the health care systems. In 1986,

[4] Ibid
[5] Ibid
[6] "ENSURE HEALTHY LIVES AND PROMOTE WELL-BEING FOR ALL". Experiences of Community Health, Hygiene, Sanitation and Nutrition.UNI_IAS, 2018 Retrieved from: EnsureHealthyLives2018_ONLINE.pdf (unu.edu)

the Ottawa Charter, pointed out the fundamental requirements and resources for ensuring health, social support in order to achieve good health for all.[7]

Therefore, health is a fundamental human right and a key for sustainable development for all, on this planet. Poor health threatens the rights of all people but especially of children rights and their right to have a good and safe childhood. Furthermore, poor health threatens the right to education, the right to work and provide, it limits economic opportunities and all these leads to increase of poverty. In addition health does not only influence, but it is itself affected by other aspects of life for example the excess to clear water and sanitation, the climate changes and the affects it has on the life cycle as well as on agriculture, furthermore the wars and stability in the developing world, all of these and many more affect the right to health. [8]

III. Preventive mechanisms

There are many preventable mechanism that can be used in order to promote health and prevent diseases. But one of the key elements in the puzzle is to promote education and knowledge. Improving and empowering education gives the foundation for societies to grow, meaning educated and cultivated societies can play an active role in improving their own health and pushing their governments to address health issues and prevent problems that arise. [9]

Furthermore, another preventive mechanism is creating a solution for the biggest problem that exist in the developing countries and that is having drinkable water and proper sanitation. For example, in 2015, only 66 % of the population in the developing countries had access to drinkable water and sanitation, which are the crucial elements of having a good health. In these countries, only 28 per cent use improved sanitation facilities. Therefore, the lack of basic water and sanitation is the result of the spread of diseases.[10] Furthermore, a study by WHO shows that 1.8 billion people use a drinking water with fecal contamination. And due to these numbers we have diarrhoea diseases especially in children. Therefore, the lack of hygiene, sanitation and water are the leading causes to death especially in the developing countries. [11] So this a major problem that needs to be solved.

There is also the challenge of redesigning the food systems in order to deliver healthy food. A study from 2019 from the 'Global Burden of Diseases, Injuries, and Risk Factors' estimated that 8 million deaths occurred due to the

---

[7] Ibid

8 "SDG 3: Ensure healthy lives and promote well-being for all at all ages" Retrieved from: SDG 3: Ensure healthy lives and promote well-being for all at all ages – SDG Compass

[9] ENSURE HEALTHY LIVES AND PROMOTE WELL-BEING FOR ALL Experiences of Community Health, Hygiene, Sanitation and Nutrition.UNI_IAS, 2018 Retrieved from: EnsureHealthyLives2018_ONLINE.pdf (unu.edu)

[10] "World Economic and Social Survey 2018 Frontier technologies for sustainable development". 2018 Retrieved from: Frontier Technologies For Sustainable Development: Chapter 1 Frontier Technologies for a Sustainable Future (un.org)

[11] Unnikrishnan Payyappallimana and Zinaida Fadeeva. "ENSURE HEALTHY LIVES AND PROMOTE WELL-BEING FOR ALL Experiences of Community Health, Hygiene, Sanitation and Nutrition". Retrieved from: (8) (PDF) Ensure Healthy Lives and Promote Well-being for All: Experiences of community health, hygiene, sanitation and nutrition (researchgate.net)

dietary malnutrition. [12] Agriculture is the leading provider for 40% of the global population and is a major source for jobs and income. But this is not enough, since 12.9% of the population in the developing world are still undernourished. Poor nutrition causes 50% of infant mortality. Also, 75% of the crops have been lost in the past years mostly due to climate change and sever weather. Helping and improving the agricultural development through promoting small farming, increasing energy access and enhancing crop diversity are important ways to improve food nutrition especially in the developing world.[13]

Poverty takes many forms. In many regions we have absolute poverty which is a measurable standard in relation to a person's ability to meet their basic human needs.[14] And in the developing world there are regions where you can not measure the poverty that people live in and the severe poverty is due to many factors mostly from natural causes but also human causes like wars.

Improving these segments of life can lead to many changes. Implementing the UN goals is not enough, we need improvement in the health regulations which will require strengthening national health systems, implementing laws and regulations, increasing the investments in health, education and personnel but also improving the infrastructure.[15] Furthermore, we need to invest more in science and with the joint collaboration with technology we will have visible improvements in this goal faster and the results will be sustainable.

IV. Technologies used as a prevention and a positive tool

In order to achieve these high goals set by the UN, states need to apply technologies in different fields.[16] The ambitious goals set by the UN can not be achieved with the health tools that states have at their disposal at the moment. The states need to develop new and improved health technologies, to prevent and treat existing diseases and health challenges, address drug resistance, and make health care affordable, accessible, and effective for all. So far there has been some progress but these progress has to be bigger and sustainable. For example, until now there has been 58% reduction in malaria mortality. 6.2 million malaria deaths were

[12]Prof Mario Herrero, PhD Philip K Thornton, et al "Articulating the effect of food systems innovation on the Sustainable Development Goals". The Lancet Planetary HealthVolume 5, Issue 1, January 2021, Pages e50-e62 Retrieved from:Articulating the effect of food systems innovation on the Sustainable Development Goals - ScienceDirect

[13] Unnikrishnan Payyappallimana and Zinaida Fadeeva. "ENSURE HEALTHY LIVES AND PROMOTE WELL-BEING FOR ALL Experiences of Community Health, Hygiene, Sanitation and Nutrition". Retrieved from: (8) (PDF) Ensure Healthy Lives and Promote Well-being for All: Experiences of community health, hygiene, sanitation and nutrition (researchgate.net)

[14] Unnikrishnan Payyappalli. "Ensure healthy lives and promote well-being for all at all ages. Retrieved from: **(9) Ensure healthy lives and promote well-being for all at all ages | Unnikrishnan Payyappalli - Academia.edu**

[15] Philippa Howden-Chapman, Jose Siri, Elinor Chisholm, Anthony Capon. "SDG3: Ensure healthy lives and promote well-being for all at all ages". May 2017. Retrieved from: (17) (PDF) SDG3: Ensure healthy lives and promote well-being for all at all ages (researchgate.net)

[16] Ibid

prevented, in children due to interventions from bed nets, innovations in antimalarial therapies, and new treatments. There was 45% reduction in tuberculosis mortality between 1990 and 2013. 37 million lives were saved through innovative treatments, prevention, and diagnostic interventions. [17]

From the above statistics we can see that there is a crucial need of emerging technologies to help save lives and improve health. These technologies are especially important for developing countries, in order to help them reach and improve the existing and create new and innovative health services. Artificial intelligence (AI) with machine learning and algorithms can improve health care. For example, image analysis algorithms can help identify skin cancer, breast cancer, pneumonia and other diseases. Furthermore, AI can improve keeping and organizing medical records which can be assist AI in predicting infection risks and other treatment complications**.** Also AI combined with other technologies can extend the capabilities and ease the shortage of health workers. Furthermore, social media can promote health campaigns to increase awareness. Robots are performing surgical procedures, which is reducing risks of human error and infection. The development of gene-editing tools can alter biological systems, and produce possibilities for new treatments for many diseases. [18] The poly-pill, which combines multiple drugs in a single pill, has been used successfully to decrease cardiovascular diseases. Also the quad pill used in the treatment of HIV has simplified the treatment of these patients. [19] So far we have seen many benefits of the use of science and technologies especially in the health sphere.

The building of innovative systems, the investment in technology and science can help developing countries effectively apply the technologies in the pandemic recovery and use actions to achieve Sustainable Development Goals, especially on health and well-being. Furthermore, investments in health innovation are important for ensuring that developing countries, can produce life-saving vaccines and treatments. But we have to take into consideration that the infrastructural constraints are present, as well as the technological capacities which are weak in the developing countries and this limits the potential adoption of these technologies. Therefore, in this aspect, global collaboration is essential to contribute to the process, of providing opportunities to create knowledge and increase and deepen research cooperation, make health innovations a global public good and produce and enforce norms and regulations on health and medical technologies globally.[20]

---

[17] "Health innovation and the Sustainable Development Goals". Global Health Technologies Coalition. 2015 Retrieved from: Health Innovation and the Sustainable Development Goals (azureedge.net)

[18] "World Economic and Social Survey 2018 Frontier technologies for sustainable development". 2018 Retrieved from: Frontier Technologies For Sustainable Development: Chapter 1 Frontier Technologies for a Sustainable Future (un.org)

[19] "World Economic and Social Survey 2018 Frontier technologies for sustainable development". 2018 Retrieved from: Frontier Technologies For Sustainable Development: Chapter 1 Frontier Technologies for a Sustainable Future (un.org)

[20] "Using science, technology and innovation to close the gap on Sustainable Development Goal 3, good health and well-being". Report of Secretary General. Commission on Science and Technology for Development Twenty-fourth session Geneva, 17–21 May 2021. Retrieved from:Using science,

V. Conclusion

Science, technology and innovations are helping in achieving the goal for ensuring healthy lives and promoting well being and with this promoting sustainable development for all. So we need to cooperate globally on these three elements in order to promote, invest and reinforce them in all segments of life, and in all the world but especially to help implement them in the developing world where they are needed the most.

During the COVID pandemic we saw that viruses do not know borders, do not know of race, or religion they affect us all. That is why we need to collaborate globally on all the UN goals but especially on the goal for health. Because we are all the same and we deserve the same treatment. In order to promote sustainable development for all human beings we need to work hard to sustain and promote healthy lives and well being for all.

Reference list

1. "ENSURE HEALTHY LIVES AND PROMOTE WELL-BEING FOR ALL" Experiences of Community Health, Hygiene, Sanitation and Nutrition.UNI_IAS, 2018 Retrieved from: EnsureHealthyLives2018_ONLINE.pdf (unu.edu)
2. "Good Health and well being". Retrieved from: Goal 3: Good health and well-being - The Global Goals
3. "Goal 3: Good health and well being". Retrieved from: Health - United Nations Sustainable Development
4. "Global goals". Retrieved from: Goals Archive - The Global Goals.
5. "Health innovation and the Sustainable Development Goals". Global Health Technologies Coalition. 2015 Retrieved from: Health Innovation and the Sustainable Development Goals (azureedge.net)
6. Philippa Howden-Chapman, Jose Siri, Elinor Chisholm, Anthony Capon. "SDG3: Ensure healthy lives and promote well-being for all at all ages". May 2017. Retrieved from: (17) (PDF) SDG3: Ensure healthy lives and promote well-being for all at all ages (researchgate.net)
7. Prof Mario Herrero, PhD Philip K Thornton et al "Articulating the effect of food systems innovation on the Sustainable Development Goals". The Lancet Planetary HealthVolume 5, Issue 1, January 2021, Pages e50-e62 Retrieved from:Articulating the effect of food systems innovation on the Sustainable Development Goals - ScienceDirect
8. "SDG 3: Ensure healthy lives and promote well-being for all at all ages" Retrieved from: SDG 3: Ensure healthy lives and promote well-being for all at all ages – SDG Compass
9. "Using science, technology and innovation to close the gap on Sustainable Development Goal 3, good health and well-being". Report of Secretary General. technology and innovation to close the gap on Sustainable Development Goal 3, good health and well-being (unctad.org)

Commission on Science and Technology for Development Twenty-fourth session Geneva, 17–21 May 2021. Retrieved from:Using science, technology and innovation to close the gap on Sustainable Development Goal 3, good health and well-being (unctad.org)
10.Unnikrishnan Payyappallimana and Zinaida Fadeeva. “ENSURE HEALTHY LIVES AND PROMOTE WELL-BEING FOR ALL Experiences of Community Health, Hygiene, Sanitation and Nutrition”. Retrieved from: (8) (PDF) Ensure Healthy Lives and Promote Well-being for All: Experiences of community health, hygiene, sanitation and nutrition (researchgate.net)
11.Unnikrishnan Payyappalli. "Ensure healthy lives and promote well-being for all at all ages. Retrieved from: (9) Ensure healthy lives and promote well-being for all at all ages | Unnikrishnan Payyappalli - Academia.edu
12.“World Economic and Social Survey 2018 Frontier technologies for sustainable development”. 2018 Retrieved from: Frontier Technologies For Sustainable Development: Chapter 1 Frontier Technologies for a Sustainable Future (un.org)

Scientific Article
UDK 343.1:340.13(497.11)
343.132:347.963(497.11)

PROSECUTORIAL INVESTIGATION AND REFORM OF THE CRIMINAL PROCEDURE LEGISLATION OF THE REPUBLIC OF SERBIA (FULFILLED EXPECTATIONS OR NOT?)

Full professor Saša Mijalković PhD,
University of Criminal Investigations and Police Studies, Serbia
sasa.mijalkovic@kpu.edu.rs

Associate professor Dragana Čvorović PhD,
University of Criminal Investigations and Police Studies, Serbia
dragana.cvorovic@kpu.edu.rs

Associate professor Vince Vari, PhD,
University of Public Service, Faculty of Law Enforcement, Department of Criminal Procedure
vari.vince@uni-nke.hu

Assistant professor Božidar Otašević PhD,
University of Criminal Investigations and Police Studies, Serbia
bozidar.otasevic@kpu.edu.rs

Abstract: The subject of the analysis in the paper encompasses the issues regarding the new, according to the legislator - prosecutorial concept of investigation as one of the main outcomes of the process of reforming the criminal procedure legislation of the Republic of Serbia, which has lasted for more than twenty years. The subject matter in the paper is analysed through three groups of questions. The first is dedicated to general remarks about the prosecutorial concept of investigation, i.e., the legal and political reasons for the justification of its provision in the criminal procedure legislation in general, i.e., its advantages over the judicial concept of investigation. The second group of questions concerns the expert and critical analysis of the newly adopted concept of investigation in the CPC of the Republic of Serbia from 2011 (CPC RS). The key result of the analysis of this group of issues is

the position of the authors, and not only the authors but also the majority of the professional public of Serbia, that the newly adopted concept of investigation in the current text of the CPC RS is not normatively elaborated in accordance with generally accepted principles of the prosecutorial concept of investigation. Finally, the third group of questions concerns the author's views on the desirable way of standardizing the investigation so that it would be in function of what is expected of it - in the function of its efficiency.

Keywords: investigation, public prosecutor, suspect, CPC, Republic of Serbia, efficiency, reform of criminal procedure legislation.

1. Introduction

The process of reforming the criminal procedure legislation of Serbia began with the adoption of the Criminal Procedure Code from 2001 (CPC) [Official Gazette of the FRY, 2001][21] and its latest result is the CPC RS from 2011 (CPC) [Official Gazette of the RS, 2011 hereinafter referred to as: CPC][22] with several amendments before the beginning of its full implementation (October 1, 2013), with the proviso that in the meantime (September 2012) a formal procedure was initiated for the drafting of the Law on Amendments to the CPC and its Draft was made as early as the end of 2012, with an extremely extensive proposal for amendments. However, they were abandoned. All this in itself speaks of the degree of topicality of the issues that are especially insisted on in the work on the reform, as well as of the disagreement of the experts from the field about the manner of their standardization. The problem becomes even more topical if it is brought into context of the goals that should be achieved by the reform of the criminal procedure legislation of Serbia (Škulić 2012) There are more of them, but the key among them is finding instruments to increase the efficiency of criminal proceedings, creating a normative basis for more efficient criminal proceedings, which is based, above all, on the fact that criminal proceedings in Serbia were not, and unfortunately are not at the required level of efficiency (Bejatović 2018). Starting from this as well as the indisputable importance of the legal norm for the efficiency of criminal procedure, there are not a small number of novelties brought by the process of reforming the criminal procedure legislation of Serbia. Observed within this goal, two novelties stand out. These are: first, new, simplified forms of conduct in criminal matters (primarily various types of communication between the public prosecutor and the accused, expanding the scope of possible application of the principle of opportunity of criminal prosecution and expanding the scope of provisions on summary criminal

[21] Official Gazette of the FRY, No. 70/2001, 68/2002 and Official Gazette of the RS, No. 58/2004, 85/2005, 115/2005, 46/2006, 49/2007, 122/2007 , 20/2009 and 76/2010

[22] Official Gazette of the RS, No.72/2011, 101/2011, 121/2012, 32/2013, 45/2013, 55/2014 and 35/2019, 27/2021, and 62/2021

proceedings) (Škulić 2011). Secondly, leaving the judicial and moving, according to the legislator, to the prosecutorial concept of investigation. The position of the legislator is that this novelty creates a normative basis for increasing the efficiency of criminal proceedings as a key goal of the process of reforming the criminal procedural legislation of the Republic of Serbia in general. This is all the more so because it is a completely indisputable position that without an efficient investigation, and which primarily depends on its concept, there is no efficiency of the criminal procedure as a whole (Radulović 2012). Given the importance of the investigation for achieving the key goal of the reform - creating a normative basis for a more efficient criminal procedure, one of the most debatable issues in the process of reforming the criminal procedure legislation of Serbia is the question of the concept of investigation (Čvorović 2019a). Most of the professional papers and discussions during the entire reform process, which has been going on for twenty years, are dedicated to the issue of the concept of investigation, i.e., the way of its normative elaboration, because the almost unique position is that the prosecutorial concept of investigation not only has advantages over the judicial one, but that it is also in the function of the key goal of the reform - increasing the efficiency of criminal proceedings as a whole. Of course, not unconditionally. In view of all this, one of the most current issues in both theory and practice is still: Is the existing concept of investigation in the current CPC of the RS in the function expected of it? The question finds its basis in the fact that the prosecutorial concept of investigation is in the function of the efficiency of criminal procedure (Mijalković, Čvorović and Turanjanin 2019), only if it is elaborated on the principles inherent in this concept, which is not easy to achieve. There are a number of open questions on the way of solving which the degree of practical realization of this key goal of the prosecutorial concept of investigation depends. The case is, for example, with questions concerning: the degree of suspicion as a material condition for the possibility of initiating an investigation; active subjects of investigation (whether it should be only the public prosecutor or the prosecutor and the police together (Čvorović 2015)); specifying the conditions under which the police may appear as an active subject of investigation, as well as the types of investigative actions that they may take in such capacity; provision of specific mechanisms that ensure adequate cooperation between the public prosecutor and the police in the investigation; issues of probative value of actions taken by the police in the investigation and control of their work during the investigation. Then, there is the question of how to harmonize the legal nature of the investigation as a prosecutorial and police activity with its goal, which is to collect the material necessary for raising an indictment by the public prosecutor, etc. The aim of writing this paper and the conducted research is to contribute to the quality of normative elaboration of the prosecutorial concept of investigation, which, according to the views of all relevant entities, including the Ministry of Justice of the Republic of Serbia, will inevitably be set during the first interventions in the current CPC RS.

2. Material and methods

In the analysis of the subject matter, in addition to the theoretical and

normative method, the statistical method was used, with the help of which statistical indicators were collected regarding issued orders on conducting investigations and indictments filed on the basis of the Report of the Republic Public Prosecutor's Office in 2018, 2019 and 2020, in the area of basic and higher public prosecutor's offices and the prosecutor's office for organized crime.

When it comes to indictments filed, the authors used the statistical method to process data, then they analysed the data related to the number of accused persons, motions to indict, direct indictments and indictments for 2018, 2019 and 2020 in the Republic of Serbia. The analysis of data on these types of indictments is a consequence of the fact that they relate to various criminal matters and only in their entirety give a true picture of the state of crime in the Republic of Serbia from the aspect of this procedural moment. In view of this, the following should be borne in mind: first, motions to indict are a type of indictment filed for criminal offenses punishable by up to eight years in prison, for criminal offenses that are not investigated but certain evidentiary actions can be undertaken before an indictment is filed (Ilić and Banović 2013). Second, a direct indictment is filed in cases of criminal offenses for which an investigation is usually conducted, but it is not conducted in cases when, even without conducting an investigation, the prosecutor has sufficient evidence for the indictment (Škulić 2019), and the indictment is related to criminal offenses punishable by imprisonment over eight years after the conducted investigation (Čvorović 2014).

The collected data speak of two aspects of the subject matter. First about the degree of efficiency of conduct in the investigation. Secondly, on the degree of adequacy of cooperation between the public prosecutor and other subjects of investigation (primarily the police) as an important instrument for achieving the desired degree of efficiency of the investigation and thus the efficiency of criminal proceedings as a whole (Čvorović 2019b). This is especially considering the fact that the public prosecutor uses the legal possibility of engaging the police during the investigation as a subject of undertaking certain evidentiary actions to a significant extent.

3. Results

In the work on the reform of the criminal procedural legislation of Serbia, not only special attention was paid to the issue of the concept of investigation, but it was and still is one of the most current issues of criminal law theory and practice. The basis of such a high degree of relevance of this issue lies in the fact that the question of the efficiency of not only the investigation but also the efficiency of the criminal procedure as a whole as a key goal of the reform process depends on the manner of resolving this issue. Thanks to such an approach to this issue, one of the key features of the process of reforming the criminal procedure legislation of Serbia is the abandonment of the judicial concept of investigation in the CPC RS from 2011 and legalization of a new (according to the legislator) prosecutorial model of investigation. The fact that the new model of investigation was a key factor not only in the multiple (triple) shift of the deadline for the beginning of the application of the CPC from 2006, but also in its definitive use even before it was applied speaks

volumes about what kind of novelty it was (Škulić and Ilić 2012). In view of all this, the key question is: What are the reasons that justify leaving the judicial and moving to the prosecutorial concept of investigation? The reasons are numerous, but the following are key: First, a normative basis is created for a more efficient criminal procedure, which is supported primarily by the results obtained in comparative criminal procedure legislation in relation to this issue. The case is, for example, with the Law on the Reform of Criminal Procedure Law of Germany of December 9, 1974 (Roxin 2002) and with the criminal procedure legislation of Bosnia and Herzegovina, which first accepted this model of investigation in the former Yugoslavia. The results of the change in the concept of investigation in both the first and the second case after a very short time of adjustment were satisfactory - positive (Dodik 2012). Second, the level of activity of the public prosecutor is increasing, and he was rather passive in the judicial model of investigation. This level of activity relies mainly on what the police and the investigating judge collect and deliver to him, which is not in line with his basic function of prosecuting perpetrators. Third, the issue of responsibility for the inefficiency of the investigation is more adequately regulated, which in the judicial model of the investigation can be transferred from the public prosecutor to the investigating judge and the police without any problems, almost without any consequences, and vice versa which is the fact that can influence the practical realization of its goal. Fourth, the criminal procedure legislation of a state is harmonized with contemporary comparative criminal procedure legislation and international criminal law, the almost general rule of which is the prosecutorial concept of investigation. Fifth, there is the legal nature of the investigation, which is not a judicial but a prosecutorial and police activity, which is in accordance with its goal - to collect the material needed to file an indictment by the public prosecutor, which he should do independently or jointly with the police. Sixth, it contributes to the more complete realization of the basic principles of criminal procedure law (primarily the principles of immediacy), etc. (Bejatović 2010). Of course, in connection with this, the arguments that stand out in the criminal law theory and practice against the prosecutorial model of investigation should be taken into account. Thus, for example, we come across the position that this model of investigation, i.e., legalization of the police as its active subject, represents "an attack to freedom and rights of citizens guaranteed by international acts and national legislation (danger of abuse of power)". Then, there is the view that in this way there is the "unjustified concentration of several functions in the hands of the prosecutor (functions of criminal prosecution and functions of investigation)", etc. However, when it comes to the reasons against the prosecutorial concept of investigation, it seems that they can only seemingly question the justification of such an idea. Having in mind all this, as well as the undoubted importance of the investigation for the criminal procedure as a whole and for the freedoms and rights of its participants, the investigation as a special phase of the criminal procedure has long caused numerous dilemmas and disagreements. A number of questions have been raised. Among them, those of special importance are those concerning: the bodies that are to conduct the investigation; authorizations of active subjects of investigation, i.e., to what extent should they be given to individual subjects of investigation? Then, there

is the question: Are the judicial bodies conducting the investigation sufficiently professional in the field of criminology, whose knowledge is most pronounced in this procedure? Then, how and in what way to protect the freedoms and rights of the accused during the investigation? Or, which system - model of investigation is the most appropriate from the aspect of both its efficiency and the efficiency of criminal proceedings as a whole, but that it does not harm the freedoms and rights of the subjects of investigation guaranteed by international acts and national legislation? etc. In view of all this, it should come as no surprise that the investigation is an unavoidable topic of almost all important gatherings when it comes to contemporary tendencies in criminal law science in general, i.e., an unavoidable topic in working on more serious interventions in contemporary criminal procedure legislation, especially to that which belongs to the continental legal system. Serbia justifiably belongs to the circle of countries in which the issues of investigation are one of the key issues in the reform of their criminal procedure legislation. In the Republic of Serbia, one of the most important features brought by the process of reforming its criminal procedure legislation is the abandonment of the court and the transition to the prosecutorial concept of investigation.

Basic characteristics of the new concept of investigation according to the CPC RS from 2011 are reflected in the following:

1. The investigation is initiated by the order of the competent public prosecutor. The order is issued before or immediately after the first evidentiary action taken by the public prosecutor or the police in the pre-investigation procedure, and no later than thirty days from the day when the public prosecutor was informed about the first evidentiary action taken by the police (Article 296 paragraphs 1 and 2 of the CPC RS). The order on conducting the investigation is delivered to the suspect and his defence counsel, if any, together with the notification on the first evidentiary action that they may attend, and the public prosecutor informs the injured party about the initiation of the investigation and instructs him on his rights according to CPC in such a case (Article 297 paragraphs 1-3 of the CPC RS).
2. The possibility of initiating an investigation is also allowed against an unknown perpetrator.
3. The lowest level of suspicion is sufficient to initiate an investigation - the basis of suspicion, i.e., the same level of suspicion required for the conduct of the police in the pre-investigation procedure.
4. The investigation is preceded by the activities of certain subjects of the pre-investigation procedure led by the public prosecutor who is authorized to take actions to prosecute perpetrators, but may also entrust these actions to the police, which is obliged to perform the entrusted actions and inform the public prosecutor thereto (Article 285 of the CPC RS). In addition to these actions, there is an authorization of the police to take evidentiary actions in the pre-investigation procedure and the evidence obtained by these actions, if carried out according to the law, can be used in the further course of criminal procedure (Article

287, paragraph 2 of the RS CPC). In connection with this content of this provision, the question arises: What is meant by the terms "in the further course of the procedure"? Does this mean the procedure until the issuance of an order to conduct an investigation or the procedure for filing an indictment, i.e., the procedure for passing a verdict.

5. One of the most debatable solutions of this phase of the procedure is the one from Article 301 paragraph 1 of the CPC RS, according to which the suspect and his defence counsel can independently collect evidence and material in favour of the defence, from which some authors conclude that this is not a prosecutorial but a "parallel investigation." In order to exercise this authority, the suspect and his defence counsel have the right: to talk to a person who can provide them with information (with the consent of that person); to enter private premises or premises that are not open to the public, the apartment or premises related to the apartment (with the consent of their holder) and to take items and documents from a natural or legal person and obtain information at their disposal, with his consent.
6. Although the investigation is in principle prosecutorial, the police may be involved in the performance of certain evidentiary actions, provided that the public prosecutor entrusts it to them (Article 299, paragraph 4 of the CPC).
7. In addition to the police, a pre-trial judge may be involved in the investigation if the public prosecutor rejects the motion of the suspect and his defence counsel to take evidentiary action or if he does not decide on the motion within eight days from the day the motion was filed. In that case, the suspect and his defence counsel may submit a motion to the pre-trial judge and if the motion is upheld, the pre-trial judge orders the public prosecutor to take evidentiary action in favour of the defence and sets a deadline for that (Article 302 of the CPC RS).
8. The possibility is provided for the court to be involved in conducting an investigation in certain cases for undertaking certain evidentiary actions, but not in a way to undertake certain evidentiary action itself, but to order the public prosecutor to undertake evidentiary action (Article 302, paragraphs 1-3). According to this solution, the public prosecutor as the head of the investigation is ordered by someone else (court) to take evidentiary action in favour of the defence. The solution is more than debatable.

Given the above features of the new concept of investigation, the inevitable question is: Did the newly adopted concept of investigation contribute to its efficiency and thus to the efficiency of criminal proceedings as a whole? The answer to this question is given by the conducted research which speaks about the relation between the issued orders on conducting the investigation and the indictments filed after the conducted investigation, i.e., after undertaking certain investigative actions before filing the motion to indict as a special indictment of the public prosecutor. There are three key results of the analysis of the collected data of the conducted research.

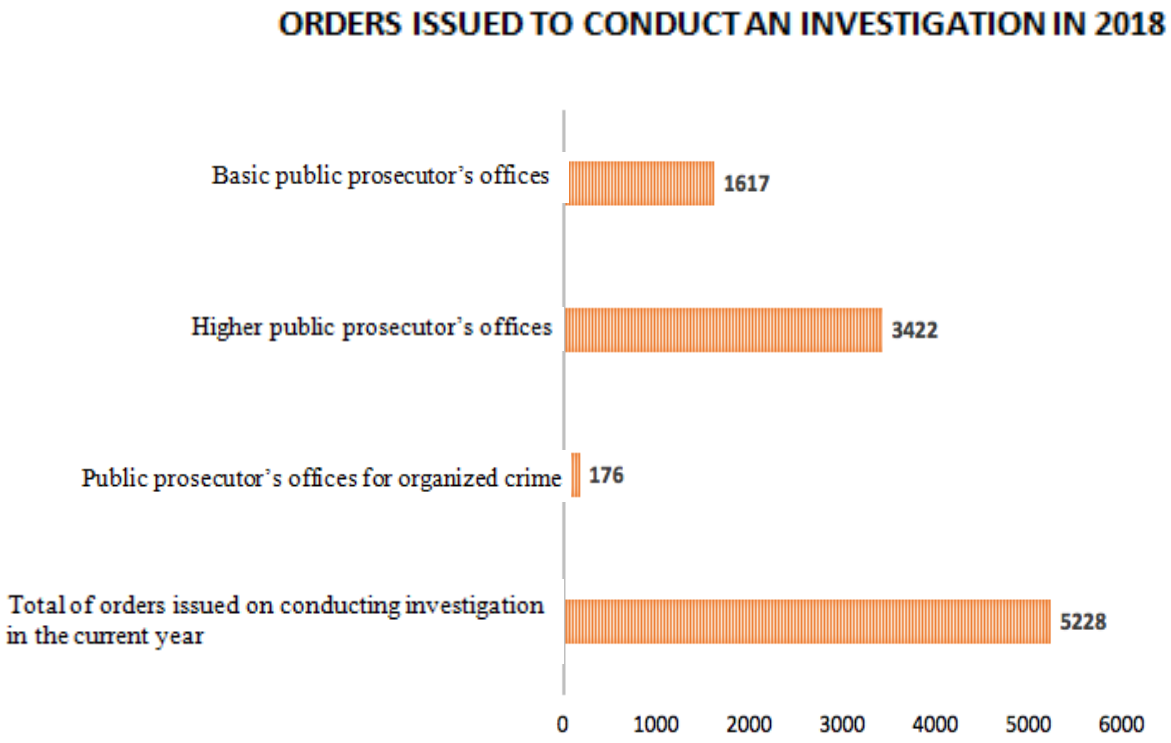
First, a large number of investigations are conducted or certain investigative actions are undertaken before the indictment is submitted to the court by the public prosecutor. Observed by individual years, it ranges from 4577 orders issued to conduct an investigation in 2020 to 5281 in 2019. If we add to this a large number of filed motions to indict (from 10200 in 2020 to 1037 in 2019) in which, as a rule, certain evidentiary actions are taken before the indictment is filed, then that number is significantly higher. Such a large number of orders issued to conduct an investigation is the result of the fact of an extremely wide range of criminal offenses for which an investigation is being conducted. These are all criminal acts for which a general criminal procedure is conducted, i.e., criminal offenses punishable by imprisonment of eight years or more. The exceptions are the cases of direct indictment (Bugarski 2014) in which there is no investigation even if it is a general criminal procedure. In summary criminal proceedings, there is no investigation, but, if necessary, only certain evidential actions can be undertaken or certain evidence collected. In criminal proceedings against juveniles, there is also no investigation, but there are preliminary procedures.

Secondly, the order to conduct an investigation is issued in all public prosecutor's offices in the territory of the Republic of Serbia. Given their actual jurisdiction, the number of orders issued is different. Most orders to conduct investigations are issued by higher public prosecutor's offices (64.3%) and the least by prosecutors for organized crime (3.9% of all orders issued to conduct investigations in the observed three-year period), which is a result of the fact that their jurisdiction covers only the most serious crimes (the case primarily with crimes of organized crime).

Thirdly, observed by individual years, the differences in the received orders on conducting the investigation are minimal, and this is observed both collectively and by individual prosecutor's offices. Collectively, they range from 5,281 in 2019 to 4,577 in 2020. Or observed from the aspect of higher public prosecutor's offices - from 3064 in 2020 to 3584 in 2019, and from the aspect of the prosecutor's office for organized crime from 142 in 2020 to 180 in 2019.

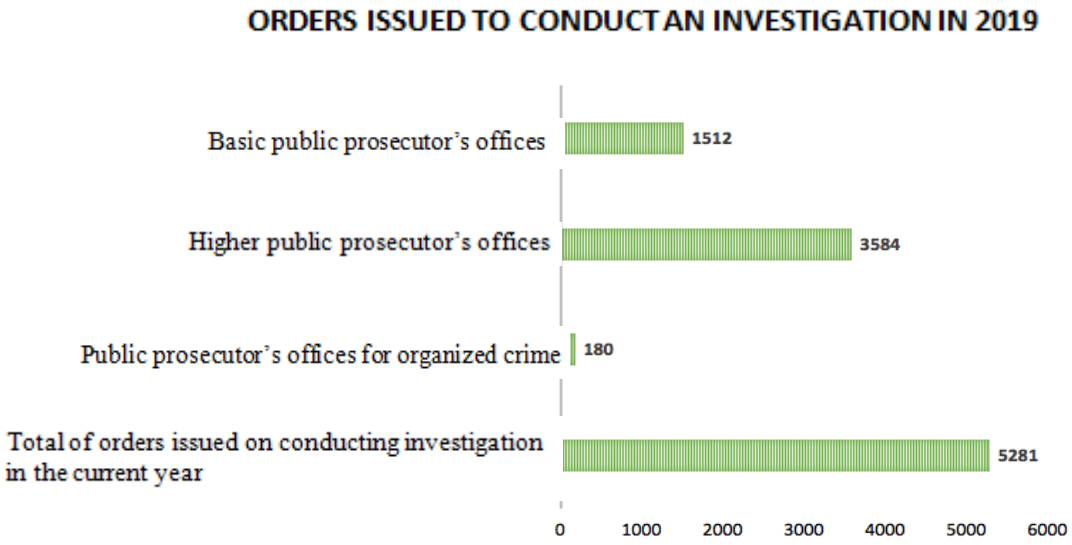
Fourth, the analysis of cases selected by the method of random sampling shows that there is almost no case of conducting an investigation without the involvement of the police, most often at the same time as a subject of undertaking the evidentiary actions entrusted to it and as a subject of providing professional assistance to the public prosecutor.

Chart No. 1.
Orders issued to conduct an investigation in 2018 (Total and by individual public prosecutor's office)



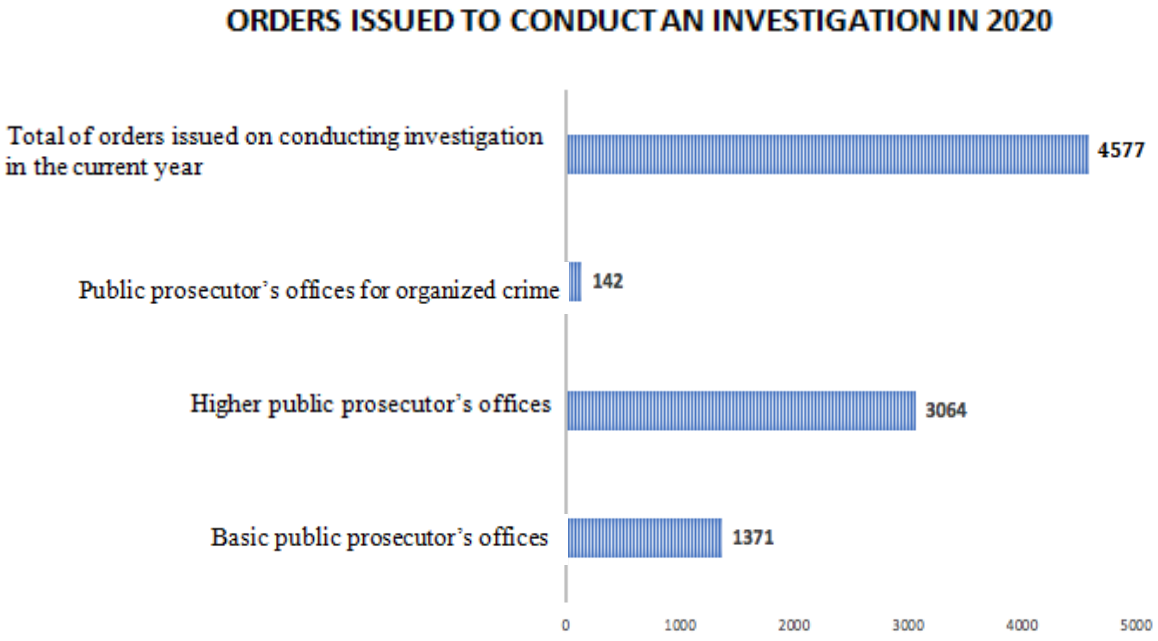
Source: Report of the Republic Public Prosecutor's office

Chart No. 2.
Orders issued to conduct an investigation in 2019 (Total and by individual public prosecutor's offices)



Source: Report of the Republic Public Prosecutor's office

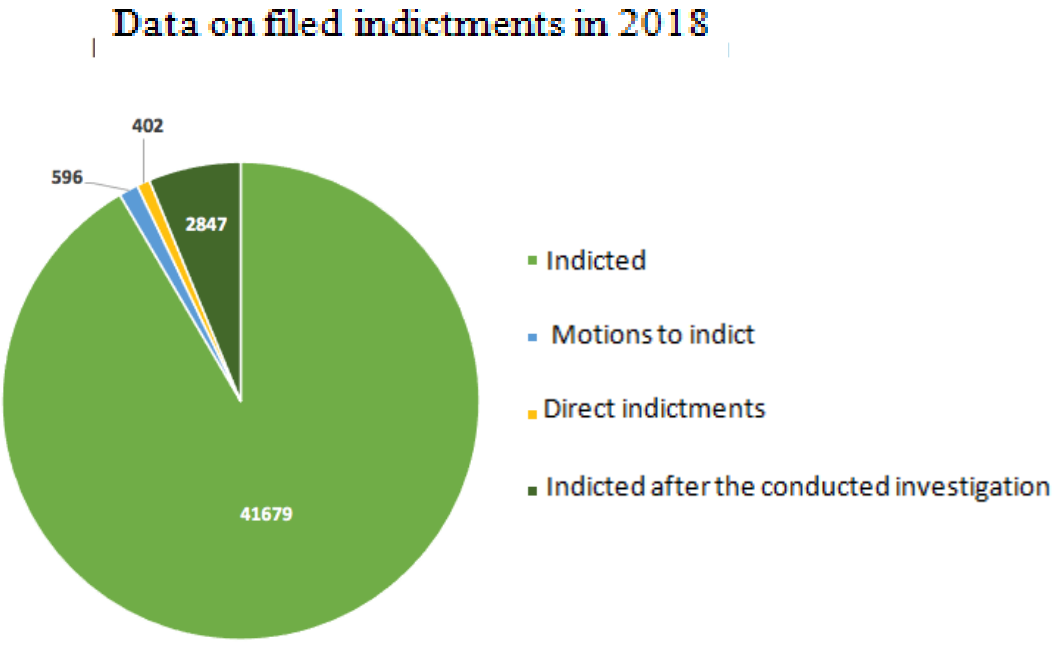
Chart No. 3.
Orders issued to conduct an investigation in 2020 (Total and by individual public prosecutor's offices)



Source: Report of the Republic Public Prosecutor's office

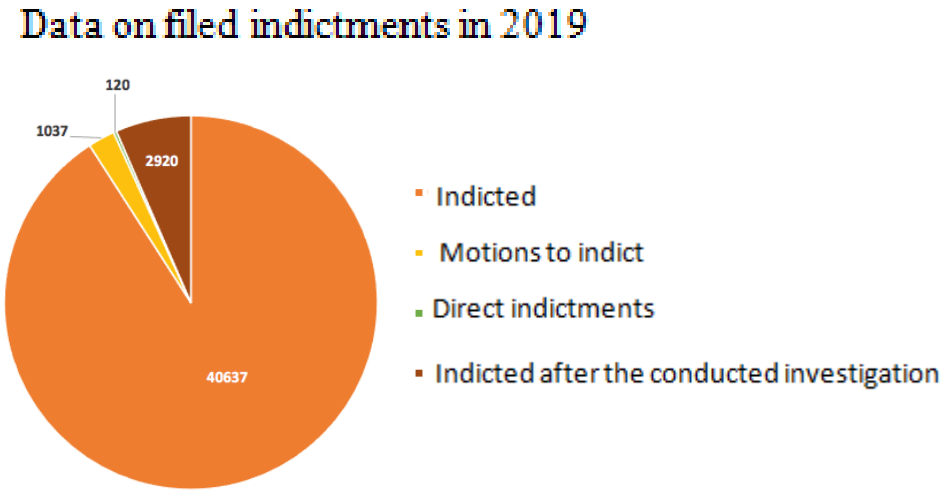
If the previously presented data on the number of initiated investigations are observed together with the data on the number of indictments filed after the conducted investigation (Charts 4, 5 and 6), then a high percentage of indictments can be observed after the conducted investigation. Thus, for example, in 2020, 3735 indictments were filed after the conducted investigation, which represents 81.6% in relation to the total number of issued orders on conducting the investigation. This percentage of indictments filed after the conducted investigation is the result of increased efficiency of the investigation, primarily increased activity of the public prosecutor and the police, which the public prosecutor usually engages in all cases of the investigation. If the data on the filed motions to indict and direct indictments as special indictments of the public prosecutor are added to this, then the stated statement on the activities of the public prosecutor before the indictment is filed becomes even more important. This is all the more so because when it comes to these indictments one should keep in mind the fact that it is possible to take certain evidentiary actions before they are filed by the public prosecutor or the police at his request, which he usually does.

Chart No. 4 Indictments in 2018 (Total and by individual indictments)



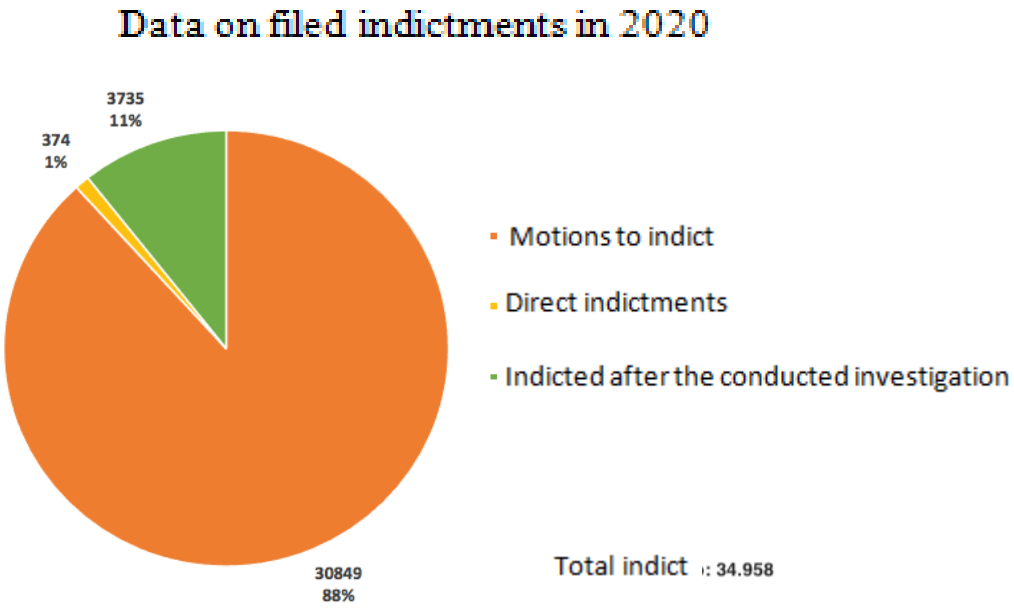
Source: Report of the Republic Public Prosecutor's office

Chart No. 5 Indictments in 2019 (Total and by individual indictments)



Source: Report of the Republic Public Prosecutor's office

Chart No. 6 Indictments in 2020 (Total and by individual indictments)



Source: Report of the Republic Public Prosecutor's office

4. Discussion

Presented issues and not only presented but also some other issues of standardization of the newly adopted concept of investigation in the current CPC RS, despite the results achieved, have been the subject of criticisms of the professional public of Serbia. Among them, the following are of special importance:

1. One of the generally accepted views of both theory and practice when it comes to initiating criminal proceedings, is the view that it must be conditioned by the fulfilment of the material condition concretized in the existence of facts and circumstances of a specific criminal event that reasonably indicate a conclusion that a specific person committed a criminal offense – i.e., that there is the existence of a grounded suspicion, not just grounds for suspicion. Initiation and conduct of criminal proceedings cannot be based on assumptions. It must be based on real - concrete data. The question is: Is it possible to initiate criminal proceedings only on the basis of the grounds for suspicion (as is the case now) or only on the basis of indications, given all its implications? It is our opinion, and not only ours, that the answer is no. If we add to this the fact that the provisions of Article 7 item 1 of the CPC consider the criminal procedure initiated by the issuance of an order to conduct an investigation, the issue becomes even more topical, i.e., the stated position is even more justified.
2. According to Article 295 paragraph 1 item 2 of the CPC, the possibility of initiating an investigation also exists against an "unknown perpetrator when there are grounds for suspicion that a criminal offense has been committed." And this solution seems to justifiably exposed to criticism. As such, not only is there no justification, but it is also in direct contradiction with a large number of generally accepted solutions in criminal substantive and procedural legislation. Thus, for example, it is in conflict with the provision of Article 14 paragraphs 1 and 2 of the Criminal Code of the RS (Bejatović 2013) which clearly states that "there is no criminal offense without guilt", and the issue of guilt can only be viewed in the context of a specific, and not an unknown person. Or, the question of the relationship of this provision with Article 286 paragraph 1 of the CPC, which, quite correctly, prescribes the conduct of the police in the so-called pre-investigation procedure which includes cases "when there are grounds for suspicion that a criminal offense has been committed which is prosecuted ex officio, and the perpetrator of the criminal offense is unknown", etc.
3. Article 301 paragraph 1 of the CPC RS stipulates that "the suspect and his defence counsel may independently collect evidence in favour of the defence." There are three questions regarding this solution. First, in this way, is the criminal procedure legislation of the Republic of Serbia introducing not a prosecutorial model of investigation, but a parallel investigation? Does the position of the person against whom the investigation is conducted depend on his financial status in this way,

i.e., does this make a difference between the persons against whom the investigation is conducted according to the criterion of their financial status? Then there is the question: Is the evidence collected by the suspect and his defence counsel in the function of the task of the investigation from Article 295 paragraph 2 of the CPC of RS, and thus in accordance with the main reason for the transition from judicial to prosecutorial concept of investigation (its efficiency)? The prosecutorial concept of investigation must provide for mechanisms to ensure the collection of evidence both to the detriment and for the benefit of the person against whom the investigation is conducted in a manner that will be consistent with its task and efficiency, which is not the case here.

4. In the prosecutorial concept of investigation, the basic or main function of the investigating judge must be to decide on issues related to the freedoms and rights of the defendant and other subjects of investigation. Undertaking certain investigative actions by the court should be only an exceptional possibility, only when it is reasonably assumed that this action will not be able to be repeated at the main trial or that its performance would be associated with great difficulties, and it is necessary for the proper resolution of a specific criminal matter understood in terms of making a court decision regarding it. In short, the evidentiary actions taken by the court in this proceeding should not be in the function of accomplishing the basic task of the investigation. They should not be in the function of making a decision of the public prosecutor to file an indictment or suspend the proceedings, which is the case here.
5. One of the indispensable features of the prosecutorial concept of investigation should be such a position of the injured party that will enable him to realize his basic rights that appear as a consequence of the criminal act in connection with which the investigation is being conducted. A slightly more serious analysis of the relevant provisions of the CPC RS on this issue shows that this feature of the prosecutorial concept of investigation has not been respected. Article 297 paragraph 3 of the CPC RS as the only provision on this issue is far from desirable. It only obliges the public prosecutor to inform the injured party about the initiation of the investigation and to instruct him on the rights that belong to him in terms of Article 50 paragraph 1 of the CPC RS and nothing more.

Given the above, the key question is: How to normatively develop a prosecutorial concept of investigation so that it would serve the purpose expected of it, and that is efficiency with full respect for freedoms and rights of the defendant and other participants in the investigative procedure which are guaranteed by international acts and national legislation? The question finds its justification in the fact that, despite the achieved results, the efficiency of the investigation is still not at the desired level. The opinion of the author and not only the author of the paper is that the newly adopted prosecutorial concept of investigation in the CPC RS, if it is to be in the function expected of it, must be normatively elaborated with full respect

for the following principles. These are: the public prosecutor as the only authorized subject of initiating the investigation procedure; grounded suspicion as a material condition for initiating an investigation; specifying the conditions under which the police may appear as an active subject of investigation, as well as the types of investigative actions that they may undertake in such capacity; provision of specific mechanisms that ensure adequate cooperation between the public prosecutor and the police in the investigation; accurate and precise prescribing of the conditions under which and in which an investigating judge may appear as an active subject of undertaking evidentiary actions;[23] provision of instruments for legal and efficient conduct of the investigation as well as the manner of conduct of the public prosecutor after the completion of the investigation and the consequences of non-compliance with such norms; protection of the basic rights of the injured party arising from the criminal offense under investigation; provision of mechanisms to ensure the collection of evidence both to the detriment and for the benefit of the person under investigation. Only in the case when the newly adopted concept of investigation is standardized with full respect of the stated principles will it be possible to state that the Republic of Serbia has received a prosecutorial model of investigation and that it is in function of the desired degree of efficiency of investigation and efficiency of criminal procedure as a whole in a qualitative and qualitative sense of meaning, which is not currently the case.

5. Conclusion and suggestions de lege ferenda

There are three basic conclusions of the analysis of the issues that make up the content of the paper. First, the prosecutorial concept of investigation has a number of advantages over the judicial concept and as such has a full legal and political justification, provided that it is normatively elaborated in accordance with the generally accepted principles of this concept of investigation. Only such a normatively elaborated prosecutorial concept of investigation is in function of both its efficiency and the efficiency of the criminal procedure as a whole. In view of this, it can be stated that, in principle, the position of the Republic of Serbia to switch from a judicial to a prosecutorial model of investigation is quite correct. Secondly, in the normative elaboration of a large number of issues of the newly adopted concept of investigation in the valid text of the CPC RS, the generally accepted principles of standardization of the prosecutorial concept of investigation were not respected. There are a lot of examples that speak in favour of the

[23] In the prosecutorial concept of investigation, the basic and main function of the investigating judge must be to decide on issues related to the freedoms and rights of the defendant and other subjects of investigation. Undertaking certain investigative actions by the court should be only an exceptional possibility, only when it is reasonably assumed that this action will not be able to be repeated at the main trial or that its performance would be associated with great difficulties, and it is necessary and very important for the proper resolution of a specific criminal matter understood in terms of making a court decision regarding it. In short, the evidentiary actions taken by the court in this proceeding should not be in the function of accomplishing the basic task of the investigation.

justification of such a statement. The case is, for example, with questions concerning: the degree of suspicion of the commission of a criminal offense as a material precondition for initiating an investigation; a clear delineation of the procedural powers of the subjects of the investigation (primarily the public prosecutor, the police and the pre-trial judge) and thus the exclusion of the possibility of self-will and arbitrariness of any of them, but not only them; ways of providing evidence in favour of the accused; procedural position of the pre-trial judge in the investigation; protection of the rights of a person injured by a criminal offense, etc. In view of this, it is necessary to normatively elaborate the newly adopted concept of investigation in the CPC RS with full respect for the following principles: public prosecutor as the only authorized subject of initiating an investigation procedure; grounded suspicion as a material condition for initiating an investigation; specifying the conditions under which the police may appear as an active subject of investigation, as well as the types of investigative actions that they may undertake in such capacity; provision of specific mechanisms that ensure adequate cooperation between the public prosecutor and the police in the investigation; accurately and precisely prescribing the conditions under which an investigating judge may appear as an active subject of undertaking evidentiary actions; provision of instruments for legal and efficient conduct of the investigation as well as the manner of conduct of the public prosecutor after the completion of the investigation and the consequences of non-compliance with such norms; protection of the basic rights of the injured party arising from the criminal offense under investigation; providing mechanisms to ensure the collection of evidence both to the detriment and for the benefit of the person under investigation. Third, by abandoning the judicial concept of investigation in the Republic of Serbia, there has been an increase in the efficiency of both the investigation and the criminal proceedings as a whole. One of the proofs of the validity of such a statement is the ratio of the number of orders to conduct an investigation and the number of indictments after its conduct.

References

1. Bejatović, S. (2010) Tužilački koncept istrage kao jedno od obeležja savremenog krivičnog procesnog zakonodavstva zemalja bivše SFRJ i u Srbiji, In Bejatović S (ed) Pravo zemalja u regionu, Institut za uporedno pravo, Beograd, str. 242-265.
2. Bejatović, S. (2013) Koncept istrage i novi ZKP RS, In Bejatović S (ed). *Nova rešenja u kaznenom zakonodavstvu Srbije i njihova praktična primena*. Serbian Association for Criminal Theory and Practice, Belgrade, pp. 141- 152
3. Bejatović, S. (2018) Efficiency of criminal procedure as an international legal standard (situation in Serbia and improvement measures). In Bejatović S (ed) *Organization of Judiciary and Efficiency of Judicial Protection (European Standards and Situation in Serbia) - Criminal Legal Aspec*t. Serbian Association for Criminal Theory and Practice, Belgrade, pp. 263- 290
4. Bugarski, T. (2014) Istraga i podizanje optužnice (Odnos tužica i policije), In Bejatović S (ed) Optuženje i drugi krivičnopravni instrumenti državne reakcije na

kriminaitet. Srpsko udruženje za krivičnopravnu teoriju i praksu, str.137- 155
5. Čvorović, D. (2014) Policija kao subjekat tužilačkog koncepta istrage prema Radnoj verziji Zakonika o krivičnom postupku od 2010. god., In Bejatović S (ed) Nova rešenja u krivičnom procesnom zakondavstvu-teroretski i praktični aspect. Srpsko udruženje za krivičnopravnu teoriju i praksu, Beograd, str. 187- 197
6. Čvorović D (2015) The Public Prosecutor as a Powerful Figure of the Modern Criminal Procedural Legislation, Crime and Society of Serbia. Institute for Criminological and Sociological Research, Belgrade, pp. 80- 95
7. Čvorović, D. (2019a) Reform of the criminal procedure legislation of the Republic of Serbia- new challenges, Міжнародної науково-практичної конференції до Дня науки «МОЛОДІЖНИЙ НАУКОВИЙ ЮРИДИЧНИЙ ФОРУМ» Том І 16-17 травня, МІНІСТЕРСТВО ОСВІТИ І НАУКИ УКРАЇНИ НАЦІОНАЛЬНИЙ АВІАЦІЙНИЙ УНІВЕРСИТЕТ НАВЧАЛЬНО-НАУКОВИЙ ЮРИДИЧНИЙ ІНСТИТУТ, Київ, pp. 234- 238
8. Čvorović, D. (2019b) PUBLIC PROSECUTOR AS A SUBJECT FOR THE PROTECTION OF FUNDAMENTAL RIGHTS AND FREEDOMS IN THE CRIMINAL PROCEDURAL LEGISLATION OF THE REPUBLIC OF SERBIA, IX Міжнародної науково-практичної конференції «ЮРИСПРУДЕНЦІЯ В СУЧАСНОМУ ІНФОРМАЦІЙНОМУ ПРОСТОРІ», МІНІСТЕРСТВО ОСВІТИ І НАУКИ УКРАЇНИ НАЦІОНАЛЬНИЙ АВІАЦІЙНИЙ УНІВЕРСИТЕТ, Том І 1 березня, Київ, pp. 270- 273
9. Criminal Procedure Code of the Republic of Serbia, "Official Gazette", No. 72/2011, 101/2011, 121/2012, 32/2013, 45/2013, 55/2014, 35/2019, 27/2021, and 62/2021
10. Criminal Procedure Code of the Republic of Serbia "Official Gazette of the FRY", No. 70/2001, 68/2002 and "Official Gazette of the RS", No. 58/2004, 85/2005, 115/2005, 46/2006, 49/2007, 122/2007 , 20/2009 and 76/2010
11. Dodik, B. (2012) Tužiteljska istraga - Iskustva Bosne i Hercegovine, In Bejatović S (ed) Savremene tendencije krivičnog procesnog prava u Srbiji i regionalna krivičnoprocesna zakonodavstva. OEBS- Misija u Srbiji, Beograd, pp. 212- 234
12. Ilić, G., Banović, B. (2013) Policija i nova rešenja u Zakoniku o krivičnom postupku, In Bejatović S (ed). *Nova rešenja u kaznenom zakonodavstvu Srbije i njihova praktična primena.* Srpsko udruženje za krivičnopravnu teoriju i praksu, Beograd, str. 108- 125
13. Mijalković, S., Čvorović, D., Turanjanin, V. (2019) Efficiency as an International Standard in Criminal Procedural Legislation of the Republic of Serbia- Toward European Union. In: Ilik G (ed) *Towards a better future: Democracy, EU Integration and Criminal Justice.* Faculty of Law, „St. Kliment Ohridski "University- Bitola, Republic of North Macedonia, pp. 134- 147
14. Radulović, D. (2012) Koncepcija istrage u krivičnom postupku u svetlu novog krivičnog procesnog zakonodavstva. In Bejatović S (ed) *Savremene tendencije krivičnog procesnog prava u Srbiji i regionalna krivičnoprocesna zakonodavstva.* OEBS- Misija u Srbiji, Beograd, pp. 18- 28
15. Roxin, C. (2002) *Strafverfahrensrecth, 22.Auflage*. Verlag C.H. Beck, Munchen, pp. 354- 364

16. Škulić, M. (2019) Krivičnoprocesno zakonodavstvo i (ne)adekvatnost državne reakcije na kriminalitet. In Bejatović S (ed) *Izmene u krivičnom zakonodavstvu i statusu nosilaca pravosudnih funkcija i adekvatnost državne reakcije na kriminalitet (Međunarodni pravni standardi i stanje u Srbiji).* Srpsko udruženje za krivičnopravnu teoriju i praksu, Beograd, str. 65- 79
17. Škulić, M., Ilić, G. (2012) Reforma u stilu ``Jedan korak napred-dva koraka nazad. Udruženje javnih tužilaca i zamenika javnih tužilaca Srbije,Beograd
18. Škulić, M. (2011). Osnovi kriminalističke istrage. *Journal of Criminology and Criminal Law,* 1, pp. 12- 24

Scientific Article
UDK 332.14/.15(497.4)
332.14/.15(497.7)

COMPARATIVE STRUCTURAL ANALYSIS OF THE BALANCED REGIONAL DEVELOPMENT IN SLOVENIA AND NORTH MACEDONIA

Assistant Professor. Milka Dimitrovska, Ph.D.,
Ss. Cyril and Methodius University in Skopje, Institute for Sociological, Political and Juridical Research,
milka.dimitrovska@isppi.ukim.edu.mk

Abstract

Today, states and societies need to develop sustainably with all their sub-systems producing long-term, human effects. The aim of this paper was to reach comparative conclusions regarding the functionality of the policies of balanced regional development in Slovenia and North Macedonia, including the possibilities of increased effectiveness of the Macedonian policy by the positive Slovenian examples. All substantial characteristics for functionality of these policies in both countries were both qualitatively and quantitatively analyzed, considering the legislative and institutional structures, the competences of the main subjects, the funding and the general effectiveness of said policies. Despite the similarities of these countries regarding the legislative structure, they significantly differ in the quality of the balanced regional development realization which in Slovenia strives towards results and in North Macedonia lacks *ex ante* principles.

Keywords: Slovenia, North Macedonia, Regional Development, Local Development, EU Cohesion Policy

Introduction

The contemporary history of the economic and political development points to the need of the states and societies to develop sustainably, i.e. all of their sub-systems to produce long-term, harmonized and human effects. Therefore, for the last several decades, the European countries have been making public policies in the direction of providing balanced regional development. In these terms, the European Union's (EU) Regional Policy (today, Cohesion Policy) has significant achievements, especially due to its substantial support of the less developed regions. Currently this policy strives towards sustainable development in line with UN and EU commitments and represents the fundamental mean of the Union for its

realization. The core of the Cohesion Policy financial resources stems from the Structural and Investment Funds and this policy with a profound territorial dimension, currently based on the NUTS classification, is designed and implemented mostly at the NUTS 2 level.

The EU Regional Policy is an imminent part of the regional policy of Slovenia, while the former exerts its influence over the regional policy in North Macedonia as well, by imposing principles, conditionality and concepts related to this policy and by determining the subjects to implement them.

Given the goal of reaching comparative conclusions regarding the functionality of the policies of balanced regional development in Slovenia and North Macedonia, including the possibilities of increased effectiveness of the Macedonian policy, all substantial characteristics for functionality of these policies in both countries would be analyzed. Those characteristics would pertain to the legislative and institutional structures, the competences of the main subjects, the funding and the general effectiveness of said policies.

1. Slovenia

1.1. General features

Several factors had their impact on the conception of the policies in the Republic of Slovenia: national commitments in the public policies, more precisely, Slovenia's own capacities and orientations, next, the European trends and public policies, the global pressures, the development after World War II, the Yugoslav practices and the development after the gained independence. At a global level, Slovenia is characterized with a high level of development, and within the EU both according to GDP and according to some other economic and social indicators, it tends to occupy a middle position, being a little bit below the EU average. Socially, Slovenia is a relatively harmonized country, considering it has a favourable index 15 referring to the sustainable development goals of the UN (SDR 2022), while in respect to the GINI index, i.e. the index of economic equality, Slovenia marks 24,4 in the year 2019 (WB 2022), thus belonging to the group of the best ranked countries in the world. This would indicate that from the viewpoint of sustainable development, compared to the global situation, Slovenia is a country without any large discrepancies among the regions. Slovenia has more balanced regional development in comparison to certain EU countries, such as the ones belonging to the EU south or Central and Eastern Europe.

Slovenia represents a single unit on NUTS 1 level, it includes 2 cohesion regions at NUTS 2 level and 12 statistical or so called development regions at NUTS 3 level. Slovenia has a one-tier local government system with 212 municipalities, among which 11 are urban.

The differences among the regions do exist – Ljubljana and the development region where it is located – Central Slovenia is economically more developed, having GDP per capita of 32,168 EUR in comparison to the national average which is 22,312 EUR GDP per capita, while the least developed region, Zasavska has 12.174 EUR GDP per capita, which imposes the need for Slovenia to carry out the policy of balanced regional and local development (SiStat 2020).

1.2. Legislative and conceptual framework and strategic commitments of the balanced regional and local development

All aspects of the balanced regional and local development, that contain the concept, strategy determination, operational elaboration and institutional structure of this development are included in many Slovenian legislative acts covering the local government acts, Law on the Promotion of Balanced Regional Development, Law on Spatial Planning and others.

Conceptually, the promotion of the balanced regional development in the Republic of Slovenia aims to: "enhance the economic, environmental and social capital in the development regions, as well as its efficacy in terms of economic competitiveness, quality of life and sustainable usage of the natural resources; eliminate structural problems of the regions lagging behind and decrease their developmental delays; effectuate and enhance the developmental potential of the regions in Slovenia through international cooperation" (RS).

In the Slovenian Law on the Promotion of Balanced Regional Development this matter is regulated in detail, starting from the partnership principle (LPBRD 2011, Art. 2) to determining the state and municipalities as responsible actors of the implementation of regional development policy and its programmatic, legislative and time schedule harmonization with EU. The Slovenian Development Strategy 2030, passed in 2017, puts in focus the development goals of Slovenia, compatible with the global sustainable development goals, which are the basis for the implementation of the regional development policy. The above goals pertain mainly to healthy life, reduced risk of poverty, elimination of discrimination, economic stability, competitiveness and social responsibility, reliable legal system and effective governance, inclusive labour market and environmental sustainability (GRS 2017, 21-25).

1.3. Competency and institutional framework of the balanced regional and local development

According to the Law of Local Self-Government a distinction is made between a municipality (implicitly rural) and urban municipality (regulated with Art. 16). In the Article 21 the original municipal competencies are stipulated, the most relevant among which are in the following fields: local economic development, environmental protection, social welfare, land construction, culture and communal activities (LLS 1993).

Additionally, according to Art. 24 of LLS, the state may transfer some of its competencies to the municipality, providing that the latter can perform them in a more rational and efficient way. The urban municipalities have competencies in addition to the above mentioned that are common for all municipalities that include: organizing of public transport, construction of public facilities, management of the institutions in the secondary education and secondary healthcare (LLS 1993, Art. 22). As well, an urban municipality, being a part of a region may perform regional administrative functions, if it is a decision made by all municipalities in the region. The municipal bodies are: the Council with legislative functions, the Mayor with executive functions and the administration.

The development region has its own regular competencies such as preparation, coordination, monitoring, evaluation and implementation of the regional development programme and projects in the region; the region may perform state development competencies of public interest; implementation of the regional financial scheme, implementation of local development co-financed from EU funds, promotion of investments in the region, spatial planning at regional level, etc. (LPBRD 2011, Art. 19). It means that the region covers a wide range of competencies - local, regional and the state ones.

For the performance of the common competencies of the development region, managed by the municipality from where the chairman of the regional council comes from, a regional development directorate is elected, which is a legal entity with staff specialized for performance of the regional development tasks. The supervision over the activities of the Directorate is performed by the regional council and the ministry (LPBRD 2011, Art. 20).

1.4. Financing balanced regional and local development

The Slovenian regional policy financing is based on the concept of endogenous development and includes the special public fund envisioned in the Law on Promotion of Balanced Regional Development (2011), as well as the implementation of the EU finances. However, the more significant concept is the one stipulated in the Law on Financing of Municipalities (LFM 2006), combined with certain parameters given in the LPBRD.

The local matters of public interest are financed by the municipality by own sources, state funds and loans. Municipality's own sources are consisted of: property tax, inheritance and gift tax, tax on profit from gambling, sales tax on real-estate and other taxes stipulated by the Law, (LLS, 1993, Art. 53), and revenues coming from the assets of the municipality. The state ensures additional grants for the municipalities that are incapable to adequately finance local matters, while Art. 55 of the LLS provides the possibility for the municipality to enter into debt.

The Slovenian Law on Financing of Municipalities, in Art. 2 Par. 1, Al. 3 provisions the definition of "appropriate expenditure of municipalities" – as an amount of funds earmarked for the municipality in a fiscal year for the purpose of financing its statuary tasks; Al. 2 defines the "lump sum expenditure" as the appropriate amount of funds established per resident of the country for the purpose of financing the statutory tasks of municipalities, while Al. 6 defines the "solidarity equalisation" entailing the municipality's revenues from personal income tax to which the municipality is entitled, that would be analysed further in the text.

1.4.1. First financial equalization

The fundaments of the first equalization refer to the 54% of personal income tax (PIT) that is allocated to the municipalities. Art. 14 of the LFM stipulates that for the financing of the municipality expenditure, primarily, a specific municipality would get 70% of those 54% of the PIT from that municipality's inhabitants. Should this municipality's revenues be less than their appropriate amount of funds, according to the principle of solidarity equalization, to the municipality will be allotted funds amounting to 30% of the mentioned PIT, along with other funds. Art.

15 stipulates that the municipality which is unable to finance its eligible expenditure in a particular fiscal year shall be allocated financial equalization from the state budget in the extent of the difference between the municipality's eligible expenditure and revenues.

The significance of this type of equalisation is exceptional. Primarily, 54% of PIT is a very high percent dedicated to the local government, which is higher than such percentages even in more developed EU countries. Secondly, these funds are collected at a state level, by which the central-state action is in function of the collecting and evidence of the tax. Lastly, exactly due to the existing a priori established schemes for financial equalisation, the system is provided stability, while the arbitrary and corruptive action is minimized.

1.4.2. Second financial equalization

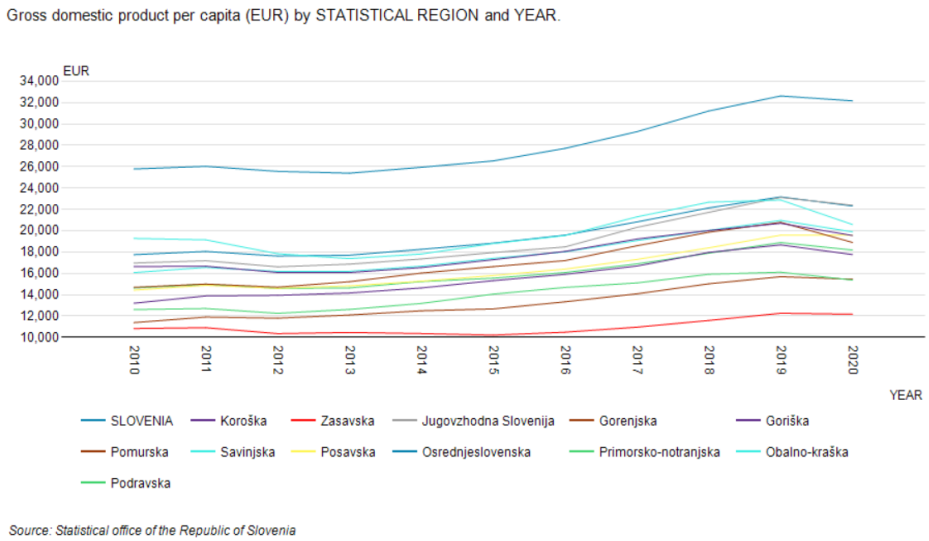
The second type of financing that leads to equalization effects is the co-financing of certain municipal tasks, programmes and investment regulated by the articles 18-27 of LFM. Namely, the central government co-finances local public infrastructure and investments of special importance to satisfy the needs of the municipality residents. These funds are also granted according to a formula that takes into consideration the municipal needs, financial equalization, the quota on municipal roads, protected areas, etc. (LFM 2006, Art. 21, 23).

The developmental level of municipality is the criterion for co-financing of the municipality investments, which means that the less the municipality is developed, the greater the coefficient for granted funds is. By that: if the municipality is at a 90% level of development of the average developmental level of the municipalities in the country, it is assigned 100% of the eligible costs of the investment; if the municipality is at a 100% level of development of the average developmental level of the municipalities of the country, it is assigned 90% of the eligible costs of the investment and so on; and if the municipality is over 140% level of development of the average developmental level of the municipalities in the country, it is assigned 50% of the eligible costs of the investment, excluding value added tax (LFM 2006, Art. 24a).

1.5. Implementation, effects and overview of the policies for balanced regional development of Slovenia

Besides the national funds, Slovenia is a beneficiary of the EU Cohesion Policy funds for regional development, amounting to 3,312 billion EUR for the period 2014-2020, i.e. approximately 470 billion EUR per annum (RS).

Subsequent to the established institutional system, developmental level and financing, from the graph below, according to GDP per capita from 2010 to 2020, it can be seen that the regions in Slovenia mark certain developmental discrepancies, yet all regions are characterized by continuous development and are in the zone of close ratios.



Graph 1. GDP per capita in EUR, by statistical region and year

Source: Republic of Slovenia Statistical Office (https://pxweb.stat.si/SiStatData/pxweb/en/Data/-/H219S.px/chart/chartViewLine/)

Conclusively, Slovenia has established a one-tier system of local government, characterized by a large number of municipalities with smaller capacities which are enhanced under the influence of the national and EU Structural funds. The relations between the central and local government, as well as the institutions and mechanisms for regional and local development are conceptualized in details, including solid legislative systemic paradigm, accompanied by significant finances and multifaceted elaborative principles for financial balancing of the more and less developed municipalities and regions. The established *ex-ante* principles of financing ensure predictability, planning capacities and minimizing of arbitrary and corruptive acting. The Slovenian regional policy brings all regions to relatively stable developmental trends, and it can be assessed as a policy that has ensured moderate and limited, but crucially, positive level of success of the regional and local development on a state scale.

2. North Macedonia

2.1. General features

The Republic of North Macedonia is a medium developed country, with a GINI index of 33, which means that the situation with the internal economic inequalities is in the better half, globally. However, the overall developmental level of the state is not satisfactory, the regions are lagging behind the modern standards of living. In addition, the discrepancies between the level of development of the Skopje Region and the other regions is especially emphasized, while the disparities between the urban and rural areas are substantial as well. That indicates the

necessity from a balanced regional and local development policy. Macedonia represents a single NUTS 1 and NUTS 2 unit, while on NUTS 3, it is divided into 8 statistical regions. The local government is one-tier, consisted of 84 municipalities and the City of Skopje.

2.2. Legislative and conceptual framework and strategic commitments of the regional and local development

All aspects of the balanced regional development are constituted in many legislative acts, including the Constitution of RNM, laws on local government, the Law on Promotion of Balanced Regional Development, Law on Spatial Planning etc.

Conceptually, the current Law on Balanced Regional Development makes the distinction between the regional development and balanced regional development. Namely, "regional development is a process of promoting sustainable economic and social development of the state, realized through identification, stimulation, management and usage of the developmental potentials of the planning regions, the urban areas, areas with specific developmental needs and the villages." The balanced regional development is a process of planning the regional development, directed towards diminishing of the disparities of level of development within and among the planning regions (LBRD 2021, Art. 2).

The basic strategic commitments concerning balanced regional development are stipulated in the Constitution of the Republic of Macedonia (1991) in Art. 57, while the relevant Strategy on Balanced Regional Development 2021-2030 envisages European priorities elaborated in the EU strategic documents, the use of IPA funds, and also entails the domestic strategic commitments. The National Strategy on Sustainable Development of RM 2019-2030 gauges the sustainable development through three dimensions: the economic, environmental and social dimension, yet incorporating all segments of the entire development.

2.3. Competencies and institutional framework concerning balanced regional development

The Macedonian Constitution establishes the local government with the municipality as a central unit, along with its basic competences. The Law on Local Self-government stipulates the specific competences of the municipalities, the most significant being those in the fields of local economic development, environmental protection, social welfare, primary and secondary education, culture, land construction and communal activities. (LLS 2002, Art. 22).

Further, the Law on Balanced Regional Development elaborates in details the basis and actors of such development. Namely, to the end of planning of regional development and realization of specific measures and instruments for its stimulation, areas of specific developmental needs are determined. Thus, there are: border, rural, mountainous and other areas for which, due to their specific features, there is a need of special planning approach and the need for their development to be promoted by the state (LBRD 2021, Art. 7).The new law stipulates that the criteria for determination of areas with specific needs are the geographic, socio-

economic, historical and cultural features of the area (LBRD 2021, Art. 8). As regards the planning regions, the level of their development is calculated upon the index of development.

The competences of the planning regions are overlapping with the municipal competences. Carriers of the policy of balanced regional development on national level are: the Government, The Council for Regional Development, consisted of the ministers of the respective affairs, the Ministry of Local Government, competent for the conducting and coordination of the policy of balanced regional development (LBRD 2021, Art. 17). On the level of the planning regions, the Council for development of each planning region, consisted of mayors of the municipalities within those regions, organizes the monitoring and assessment of the realization of the planning documents for regional development and adopts the regional documents while the Bureau for Regional Development and the Centers of the planning regions partake in the planning of BRD and the realization of the respective planning documents (LBRD 2021, Art. 22, 16).

2.4. Financing balanced regional development

The Law on Local Self-government stipulates that the municipality is financed by own sources of revenue, state grants, loans etc. (LLS 2002, Art. 11,12).

The own sources of revenue are the local taxes including property tax, tax on inheritance and gift, tax on transfer of real-estate, and others; local charges including the communal, administrative ones, etc: fees including those for arrangement of construction land, from utility operations, for spatial and urban plans and others; further more revenues coming from municipal assets, donations, fines, self-contributions and others (LFULS 2004, Art. 4). From the personal income tax collected in the municipality the revenues allocated to the municipality will be 6 % of the personal income tax of the salaries of physical persons permanently living in that municipality and 100% of the personal income tax of physical persons who deal with craftsmanship registered in that municipality (LFULS 2004, Art. 5). The municipal revenues from the value added tax amount 6% of the value added tax collected in the previous fiscal year (LFULS 2004, Art. 9).

State grants intended to local government cover: earmarked grant, for financing specific activity or purpose; capital grant for financing investment projects (such as construction or reconstruction of facilities); block grant for financing local competencies in the fields of culture, social and child care, primary and secondary education and health care.

As concerning the balanced regional development the same sources of revenues exist. In this context, it is prescribed by law annually to be allotted for that purpose at least 1% of the national GDP (ZRRR, 2021, Art. 35).

According to the Law on BRD (2021), the funds for stimulating balanced regional development are distributed for the following purposes: 55% for financing of projects for development of the planning regions and 15% for each of the following objects: development of urban areas and sustainable and urban development; areas with specific developmental needs and village development.

The equalization in this segment is determined by acts of government and can be seen in the allotment of greater finances to the less developed regions in the table below.

Table 1. Participation of the planning regions in the distribution of funds in the period 2008-2012 and 2013-2017

Region	Index of development 2008-2012	Participation in distributed funds 2008-2012 (in %)	Index of development 2013-2017	Participation in distributed funds 2013-2017 (in %)
Northeastern	0,56	16,7	0,63	17,3
Eastern	0,67	14,0	0,96	11,3
Vardar	0,69	13,5	0,70	14,7
Polog	0,72	13,0	0,82	13,2
Southwestern	0,72	13,0	0,98	13,3
Pelagonia	0,73	12,9	0,91	11,9
Southeastern	0,89	10,6	0,97	11,1
Skopje	1,48	6,4	1,51	7,2

Source: Penev, Trenovski, 2017, 34.

The table shows that the most of the total allocated funds for stimulating balanced development are assigned to the least developed region, Northeastern Region – 16.7% of the total funds in the period 2008-2012 and 17.3% in the period 2013-2017, while the Skopje Region, as the most developed one, has gotten 6.4% of the total funds in the period 2008-2012 and 7.2% in the period 2013-2017 (Penev, Trenovski 2017, 34). Still, such distribution is arbitrary and is not based on realistic parameters and on *ex ante* established schemes and principles.

2.5. Implementation, effects and overview of the policies for balanced regional development in Macedonia

As regards the reality of the amount of allocated funds that are legally stipulated as compulsory, in the period 2009-2019 around 10% of the provisioned 1% of GDP had been distributed (Strategy for Regional Development of RNM 2021-2031 2021, 9). Additionally, the EU aid for rural development, which in the period 2014-2020 was 30 million EUR or annually around 4.3 mill. EUR, was used only 40%, by that, was not instrumental for crucial financial change.

The differences in invested funds among regions do not ensure substantial diminishing of regional disparities. Non-existing legally regulated ratios for allocation of funds to the lagging areas, especially the villages, lead to inadequate usage of the available funds. Some rural municipalities had not used any funds at all.

The effectiveness of the policy of BRD in North Macedonia generally cannot be assessed as positive, despite certain positive features. The dominant

positive feature is its normative constellation, including the concept, strategic orientation, basic institutional structure, the identification with the respective EU policies and the commitment for the BRD to be set in the context of the Eurointeration, yet still, the reasons for this policy's non-functionality prevail in the overall assessment of effectiveness.

Primarily, the economic state capacity is insufficient for significant investments. Additionally, there is inadequate education and low professional motivation at all state and local structures involved in this matter (Chatleska 2018, 60-65), as well as high corruption, substandard public investment in BRD and there aren't any *ex ante* standardized principles for distribution of funds for the realization of the goals of the overall and the balanced regional and local development.

Comparative overview and concluding remarks of the concept and realization of the balanced regional development in Slovenia and North Macedonia

Both of the countries that were subject of this research have common background in the similarities of planning of the development in the post-war period, in the strong influence of the Yugoslav contexts, as well as in the fact that both began to experience turbulent processes towards market economy in the 1990s. As well, a commonality is that both are unitary states with a single-tier local government, the entire quantum of competences of the units of local government vastly overlaps, they have similar institutional framework and legal acts referring to the regional development and local government.

Still, these states differ according to many features. In comparison to Macedonia, Slovenia has commenced conducting the policy of balanced regional and local development significantly earlier, is characterized by substantially greater economic capacity on national level, greater expertise and motivation of the professional state and local structures, much better-designed system of ratio between the state, local government and the regions that are not a level of government, and it is at a serious advantage given that it is a beneficiary of vast funding from the EU Structural and Investment Funds.

North Macedonia could improve the situation of conducting balanced regional development by ensuring at least 1% financing of such, which is a realistic expectation. Also, by the example of Slovenia, the schemes of fiscal equalization can be conceptualized, even if they are not replicated in entirety. Additional substantial stepping forward concerning balanced regional development can be expected by the entering of RNM in the EU, i.e. by the possibility for utilization of the Cohesion Policy funds.

Acknowledgement:

This paper stems from a broader comparative research supported by the Integrative Functions of the Ss. Cyril and Methodius University in Skopje. All rights to publish the findings are guaranteed.

References

1. Constitution of the Republic of Macedonia, *Official Gazette of the Republic of Macedonia*, No. 53/91 and Amendments I-XXXII.
2. Government of the Republic of Slovenia (GRS). 2017. *Slovenian Development Strategy 2030*. Ljubljana. https://www.gov.si/assets/vladne-sluzbe/SVRK/Strategija-razvoja-Slovenije-2030/Slovenian-Development-Strategy-2030.pdf
3. Law on Balanced Regional Development (LBRD), *Official Gazette of the Republic of Macedonia*, No. 63/07.
4. Law on Balanced Regional Development (LBRD), *Official Gazette of the Republic of Macedonia*, No. 24/21.
5. Law on Financing of Municipalities (LFM), *Official Gazette of the Republic of Slovenia*, No.123/06.
6. Law on Financing the Units of Local Self-government (LFULS) *Official Gazette of the Republic of Macedonia*, No. 61/04.
7. Law on Local Self-government (LLS), *Official Gazette of the Republic of Macedonia*, No. 5/02.
8. Law on Local Self-government (LLS), *Official Gazette of the Republic of Slovenia*, No.72/93.
9. Law on Promotion of Balanced Regional Development (LPBRD), *Official Gazette of the Republic of Slovenia*, No. 20/11.
10. Penev, Slagjan, and Borce Trenovski. 2017. *Policy of Balanced Regional Development in Macedonia: Goals, Challenges, Trends*. Skopje: Open Society Foundation – Macedonia.
11. Republic of Slovenia (RS). Regional Development. Accessed March 22, 2022. https://www.gov.si/en/policies/state-and-society/local-self-government-and-regional-development/regional-development/
12. Republic of Slovenia Statistical Office (SiStat). 2022. Gross domestic product per capita (EUR), statistical regions, Slovenia, annually. Accessed April 15, 2022. https://pxweb.stat.si/SiStatData/pxweb/en/Data/-/H219S.px/chart/chartViewLine/
13. Strategy for Regional Development of the Republic of North Macedonia 2021-2031. 2021. *Official Gazette of the Republic of North Macedonia* No. 76/2021.
14. Sustainable Development Report (SDR). 2022. Slovenia, SDG Dashboards and Trends. Accessed March 3, 2022. https://dashboards.sdgindex.org/profiles/slovenia
15. World Bank (WB). 2022. Gini index-Slovenia. Accessed March 5, 2022. https://data.worldbank.org/indicator/SI.POV.GINI?locations=SI&view=map
16. Zabijakin Chatleska, Vesna. (Ed.). 2018. *Institutional Support for the Regional Development of the Republic of Macedonia.* Skopje: Institute for Sociological, Political and Juridical Research.

Scientific Article
UDK 351.941(4-672ЕУ)
351.941(497.7)

COMPARATIVE ANALYSES: ASSESSING THE EFFECTIVENESS OF THE EUROPEAN OMBUDSMAN AND THE OMBUDSMAN IN THE REPUBLIC OF NORTH MACEDONIA (PART II)

Mirjana Ristovska, PhD
University St. Kliment Ohridski Bitola, North Macedonia, Faculty of Law, email: mirjana.ristovska@uklo.edu.mk
Elizabeta Spiroska,PhD
International Slavic University Sveti Nikole, North Macedonia, Faculty of Law,
email: e.spiroska979@gmail.com
Svetlana Veljanovska, PhD
University St. Kliment Ohridski Bitola, North Macedonia, Faculty of Law, email: svetlana.veljanoska@uklo.edu.mk
Nikola Tintevski, PhD
University St. Kliment Ohridski Bitola, North Macedonia, Faculty of Law, email: nikola.tuntevski@uklo.edu.mk
Ile Masalkovski, PhD
University St. Kliment Ohridski Bitola, North Macedonia, Faculty of Law, email: ile.masalkovski@uklo.edu.mk

Abstract
This abstract pertains to a scientific research project titled "Functional analysis of the Ombudsman in the Republic of North Macedonia." It is a part of a monograph with the same title, focusing on the historical development, legal framework, and empirical analysis of the Ombudsman institution. The structure of the monograph aligns with the research objectives, covering topics such as the historical context of the Ombudsman, its legal framework within the European Union, the Ombudsman's role in the Republic of North Macedonia, empirical analysis of its functionality, and concluding observations with recommendations.

This paper specifically addresses the legal and organizational aspects of the European Ombudsman within the European Union and the Ombudsman in the Republic of North Macedonia. Additionally, it explores the issue of efficient action in both legal systems.

Keywords: Ombudsman, European Ombudsman, efficiency.

The legal framework governing the Ombudsman institution (the European Ombudsman) within the European Union

The name "Ombudsman" for the EU's Ombudsman was introduced in the Treaty of Maastricht in 1992, while the Treaty on the Functioning of the EU (Lisbon, 2009) officially designates it as the European Ombudsman. The initial provisions defining the legal position, competences, and functioning of the Ombudsman can be found in the Treaty of Maastricht. Notably, Article 8e, paragraph 2, explicitly states that any citizen of the EU can file a complaint with the Ombudsman established under Article 138e.

Furthermore, Article 138e of the Maastricht Treaty lays the groundwork for the Ombudsman institution within the European Union. It states that the European Parliament appoints an Ombudsman authorized to receive complaints from any EU citizen or any natural or legal person residing or having their seat in a Member State. These complaints pertain to cases of abuse within the activities of the EU institutions and bodies, excluding the Court of Justice and the Court of First Instance when acting within their powers.

In accordance with the Maastricht Treaty, the Ombudsman was granted the authority to conduct investigations, either initiated independently or based on complaints received directly or through a Member of the European Parliament. However, investigations were not conducted if the matter was already subject to legal proceedings. If the Ombudsman identified an instance of abuse, they were obliged to refer the matter to the relevant institution, which then had three months to provide their views on the issue. The Ombudsman would subsequently present a report to both the European Parliament and the concerned institution. The complainant was entitled to receive information about the investigation's outcome. Additionally, the Ombudsman was obligated to submit an annual report to the European Parliament, summarizing the results of their investigations.

The Maastricht Agreement outlined that the Ombudsman would be appointed following the conclusion of the European Parliament elections and would serve for the duration of their mandate. The Ombudsman had the option of being reappointed. Additionally, the Maastricht Treaty included a provision regarding the removal of the Ombudsman from their role, stating that the Court of Justice could dismiss them upon the European Parliament's request if they no longer met the necessary requirements for their duties or was guilty of serious misconduct (Article 183e, paragraph 2).

The Ombudsman possessed complete independence in carrying out their responsibilities and was not permitted to seek or receive instructions

from any entity. Furthermore, they were prohibited from engaging in any other paid or unpaid professional activity during their mandate. The European Parliament, through its own initiative regulations, determined the rules and general conditions that governed the Ombudsman's work, following consultation with the Commission and with the consent of the Council.

Although the Treaty of Lisbon enhanced the supranational authority of the EU, particularly in the realm of justice and internal affairs, there were no significant alterations regarding the position, authority, and operation of the Ombudsman. Notably, despite strong efforts to incorporate it into the Union's legal framework, the Ombudsman was once again excluded from Article 13, which specifies the EU institutions.

Article 13 paragraph 1 reads: "The Union has an institutional framework whose purpose is to promote its values, to enhance its objectives, to serve the interests of its citizens and the interests of the member states, and to ensure consistency, effectiveness and continuity of its policies and activities.

The institutions of the Union are:

- European Parliament;
- European Council;
- Advice;
- European Commission (hereinafter "the Commission");
- Court of Justice of the European Union;
- European Central Bank;
- Court of Auditors"

The Treaty of Lisbon brought about a change related to the position of the Ombudsman. According to Article 20 (previously Article 17 of the TEC), which governs EU citizenship, the following provision was included: "Citizens of the Union have the rights and responsibilities established in these agreements. This includes the right to:... (d) submit petitions to the European Parliament, lodge complaints with the European Ombudsman, and address the institutions and advisory bodies of the Union in any language used in the Treaties, with the right to receive a response in the same language" (Article 20, paragraph 2).

Consequently, a modification was made to the title, changing it from Ombudsman to European Ombudsman. Another notable change introduced by the Treaty of Lisbon is the method of selecting the European Ombudsman. Instead of the previous practice of appointment, the Treaty of Lisbon states that the European Ombudsman will be elected by the European Parliament. (Article 228 (previously Article 195 from TEC), paragraph 1 From the Lisbon Treaty). The competences of the European Ombudsman largely remain unchanged. Therefore, the European Ombudsman is empowered to receive complaints from any EU citizen or any individual or

organization residing or having a registered office in a Member State regarding instances of misconduct by EU institutions, bodies, offices, or agencies, excluding the Court of Justice of the EU when exercising its judicial role. The authority of the European Ombudsman is also confirmed by Article 43 of the Charter of Fundamental Rights of the EU, which states: "Every EU citizen and every natural or legal person residing or having its registered office in a member state has the right to bring cases of improper functioning of the Union's institutions, bodies, offices, and agencies, excluding the Court of Justice of the EU in its judicial capacity, to the attention of the European Ombudsman."

The Ombudsman reviews and investigates complaints, providing a report on them. If the Ombudsman find valid reasons, either through their own initiative or based on complaints received directly or through a member of the European Parliament, they conduct an investigation, except in cases that have already been dealt with by the judiciary. Upon identifying cases of wrongdoing, the Ombudsman forwards them to the relevant institution, body, office, or agency, which must respond within three months. The Ombudsman then presents a report to both the European Parliament and the respective entity involved. This complainant is informed of the investigation's outcome.

The Ombudsman submits an annual report to the European Parliament summarizing their investigations. The Ombudsman is elected following each European Parliament election for the duration of the parliament's term and can be re-elected. The European Parliament can request the dismissal of the Ombudsman from the Court of Justice if they no longer meet the required conditions or are guilty of negligence. The Ombudsman operates with complete independence and does not seek or accept instructions from any government, institution, body, office, or entity. During their mandate, the Ombudsman is prohibited from engaging in any other professional activity, whether paid or unpaid. The European Parliament establishes regulations and general conditions governing the ombudsman's work through its own initiative, following a special legislative procedure, which involves seeking the Commission's opinion and obtaining the Council's consent.

A new Regulation (EU, EUROATOM) 2021/1163 was adopted on June 24, 2021, based on Article 228 of the Treaty on the Functioning of the EU (TFEU) and Article 106a of the Treaty establishing the European Atomic Energy Community. This Regulation replaces Decision 94/262/ECSC (EC, EUROATOM) and establishes the rules and conditions governing the European Ombudsman's duties, also known as the Statute of the European Ombudsman. It came into effect on August 5, 2021. Regulation 2021/1163 serves to codify and strengthen the existing working practices of the

European Ombudsman, ensuring a solid legal framework and reinforcing its independence. The key provisions of the Regulation include:

- Complete independence of the European Ombudsman, who should not receive any external instructions;
- The role of the European Ombudsman in identifying and addressing abuse by EU institutions, bodies, offices, and agencies;
- The authority of the European Ombudsman to provide recommendations and propose solutions to resolve issues, when appropriate;
- The limitation that the European Ombudsman cannot challenge the decisions or jurisdiction of any court, including the Court of Justice of the EU;
- The expectation for the European Ombudsman to collaborate with national and EU authorities in carrying out their duties.

EU citizens, as well as natural or legal persons residing in an EU member state, have the right to directly lodge a complaint with the Ombudsman or through a member of the European Parliament. However, appeals from other individuals or authorities are not considered eligible. The complainant must submit their complaint within two years of becoming aware of the grounds on which it is based and must have already approached the relevant organization regarding the matter. The European Ombudsman has the authority to dismiss complaints that fall outside their jurisdiction or are clearly unfounded. When a complaint is deemed admissible, the Ombudsman notifies the relevant institution about it. In the case of complaints from EU employees, they must first exhaust all internal administrative procedures before bringing the matter to the Ombudsman. The European Ombudsman keeps the complainants informed about the actions taken and endeavors to resolve the reported abuse with the concerned institution. If a mutually satisfactory solution is reached between the complainant and the institution, the case is closed. The European Ombudsman has the power to initiate investigations either on their own initiative or in response to a complaint, while keeping the relevant institution informed. When conducting investigations on their own initiative, the focus is primarily on cases of repeated, systemic, or particularly serious abuse that are of public interest. Such investigations may result in recommendations for implementing best practices. Whistleblowers who disclose information to the European Ombudsman, leading to an investigation, are provided protection against reprisals.

The institution is expected to respond to the European Ombudsman within a standard timeframe of three months. Failure to do so results in the closure of the investigation, prompting the European Ombudsman to forward their report to all relevant parties. At the conclusion of each annual session, the European Ombudsman presents a report to the European Parliament,

providing an overview of the investigation outcomes. This report includes an evaluation of compliance with recommendations, suggestions for solutions and improvements, as well as details regarding cases related to harassment, whistle blowing, and conflicts of interest. EU institutions, bodies, offices, agencies, and the pertinent national authorities are obligated to promptly furnish the European Ombudsman with any requested information for the investigation. The information sought, subject to professional confidentiality, encompasses both physical and electronic documents, including confidential EU materials under specific conditions. The European Ombudsman holds the authority to question EU officials regarding facts pertaining to ongoing investigations. The European Ombudsman may submit a request for public access to documents, with the exception of information acquired during an ongoing investigation.

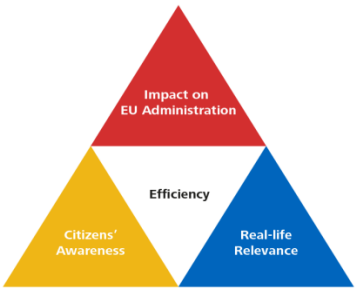
Regulation 2021/1163 establishes the prerequisites for an individual to be eligible for the position of European Ombudsman, which are as follows:

- The person must be a citizen of the European Union, possessing full civil and political rights. They must not be a member of any national or European parliament, nor have been employed by the European Council or the European Commission within two years prior to the call for nominations;
- The individual cannot engage in any other political or administrative duties or occupations, whether paid or unpaid, during their term as European Ombudsman;
- The European Ombudsman receives the same salary, benefits, and pension as a judge in the Court of Justice;
- Sufficient budgetary resources and a secretariat are provided to ensure the independence of the European Ombudsman and enable the proper execution of their responsibilities.

The European Ombudsman's office is located in Strasbourg. Since 1995, a total of three ombudsmen have been elected. In 2020, the Office of the European Ombudsman developed a new strategy titled "Towards 2024," which builds upon the successful "Towards 2019" strategy. The objective of this strategy is to enhance the impact, visibility, and relevance of the office. It emphasizes the European Ombudsman's mission to foster efficient cooperation with EU institutions in order to establish a more transparent, ethical, and effective administration. The strategy also addresses key political challenges facing the EU, such as climate change, the migration crisis, and issues concerning the rule of law within the EU. It underscores the significance of upholding high ethical standards in EU institutions to instill citizens' confidence in forthcoming legal acts. The strategy aims to achieve four primary objectives:

- Establish a lasting positive influence on EU administration: This involves implementing a more systematic and substantial monitoring of the European Ombudsman's work, as well as enhancing cooperation and dialogue with EU institutions;
- Maintain the relevance of the European Ombudsman's work in real-life situations: This includes identifying systemic trends in public administration at both EU and national levels and assessing their implications for European democracy;
- Increase public awareness of the European Ombudsman's activities: This entails adopting a participatory approach with stakeholders and influencers, such as civil society organizations, the media, the business sector, and other relevant entities;
- Enhance the efficiency of the Office's operations: This involves organizing the office's structure, workflow processes, and establishing a flexible and adaptive approach. (https://www.ombudsman.europa.eu/en/our-strategy/home/en).

Figure 1



Source: https://www.ombudsman.europa.eu/en/our-strategy/home/en

The legal framework governing the institution of the Ombudsman in the Republic of North Macedonia

The legal framework governing the institution of the Ombudsman in the Republic of North Macedonia is established by various sources. Primarily, the Constitution of North Macedonia serves as the main legal basis, outlining the Ombudsman's election, mandate, and powers. Additionally, the Law on the Ombudsman further defines these aspects. Furthermore, international conventions and protocols that have been ratified

by North Macedonia in accordance with the Constitution also contribute to the legal framework.

The Ombudsman was granted the status of a constitutional entity when the Constitution of the Republic of Macedonia was adopted in 1991. Although it was not initially included in the draft Constitution, the idea to introduce the Ombudsman emerged during the discussions, inspired by democratic states with a long-standing tradition of safeguarding human rights and freedoms, particularly the Scandinavian countries. Consequently, Article 77 was incorporated into the Constitution, which, in its second paragraph, establishes the Ombudsman as an institution responsible for protecting the constitutional and legal rights of citizens in cases where these rights are violated by state administrative bodies or other entities and organizations possessing public powers.

This constitutional provision effectively terminated the previous system of the Ombudsman of self-government, representing a departure from the prior legal framework.

By adopting the method of electing the Ombudsman through the Assembly of the Republic of North Macedonia, our country has taken inspiration from the Swedish model of a parliamentary ombudsman. This approach ensures that the institution remains independent from political influences, while the election of the Ombudsman by the deputies indirectly derives their authority from the citizens. This emphasizes the Ombudsman's crucial role in promoting, protecting, and advancing the freedoms and rights of the people. According to Paragraph 3 of Article 77 of the Constitution, the Ombudsman is elected for a term of eight years, with the possibility of being re-elected once.

Furthermore, in 2001, as a result of the Ohrid Framework Agreement and subsequent constitutional amendments aimed at ensuring equality for the communities residing in the Republic of North Macedonia, Amendment XI replaced paragraph 1 of Article 77. This Amendment stipulates that the election of the Ombudsman in the North Macedonia Assembly requires a majority vote from the total number of deputies, with a specific requirement of a majority vote from the total number of deputies representing communities that are not in the majority in the Republic of North Macedonia. Additionally, through point 2 of the same amendment, Article 77 of the Constitution was augmented, granting the Ombudsman additional powers in protecting the principles of non-discrimination and fair representation of community members in the bodies of the state government, local self-government units, public establishments, and services.

To regulate the conditions for election and dismissal, the jurisdiction, and the working procedures of the Ombudsman, a specific law needed to be enacted as stipulated in Article 7 of the Constitution of the Republic of North

Macedonia. However, despite the requirement for the law to be passed within six months of the Constitution's promulgation, it took six years for this institution to acquire a concrete legal framework. The first Law on the Ombudsman was finally adopted in 1997, solidifying its position as one of the most significant institutions in our legal system for promoting, protecting, and advancing human freedoms and rights.

Furthermore, the Constitution of the Republic of North Macedonia mentions the Ombudsman in another context, namely in Amendment XII, which amended Article 78 of the Constitution. According to point 1 of this amendment, the North Macedonia Assembly establishes a Committee for Relations between Communities (replacing the previous Council for Inter-National Relations), wherein communities mentioned in the Constitution are ensured the right to be represented by a specific number of parliament members from their respective communities. However, in cases where any of the communities lack parliamentary representation, the Ombudsman, after consulting with the relevant representatives of those communities, proposes additional members for the Committee. This further solidifies the Ombudsman's role in safeguarding the principle of non-discrimination and ensuring appropriate and equitable representation of members from non-majority communities in state and local government bodies, as well as in public institutions and services.

The Ombudsman takes actions and measures to prevent unjustified delays in court proceedings, upholds the principle of timely trials, and addresses negligent and irresponsible performance by judicial services, while respecting the principles of judicial authority's autonomy and independence. In cases where human freedoms and rights need protection, the court may grant the Ombudsman the role of a friend of the court (amicus curiae) upon request from either party or the Ombudsman. However, the Ombudsman refrains from involvement in ongoing court cases, except under the circumstances described in the Law. If the Ombudsman does not initiate proceedings based on a petition as outlined in Article 12 paragraph 1, they are obligated to inform the petitioner within 15 days of receiving the petition. They must provide an explanation for rejecting the petition and, if possible, guide the petitioner on alternative ways to exercise their rights.

As well, The Ombudsman informs the petitioner within 15 days upon receiving the petition when initiating a procedure. If the Ombudsman decides to stop or terminate the procedure based on the complaint, they must promptly notify the petitioner, no later than 15 days from the occurrence of the circumstances that led to the termination. Additionally, they should explain the reasons for stopping or interrupting the procedure and, if possible, provide guidance on how the petitioner can exercise their rights. Authorities mentioned in the Law are required to promptly provide the

Ombudsman with the requested explanations, information, and evidence. They should do so within eight days from receiving the request. In case they encounter valid obstacles preventing them from complying, they must promptly inform the Ombudsman in writing about the reasons for their inability to act. If the Ombudsman deems the reasons acceptable, a new deadline will be set for the submission of the requested materials. Failure to comply with the Ombudsman's requests outlined in the Law is considered an obstruction to the Ombudsman's work.

Article 34 of the Law on the Ombudsman requires the competent authorities to notify the Ombudsman about the actions taken to fulfill his requests, proposals, opinions, recommendations, or instructions within a timeframe specified by the Ombudsman. The deadline for this notification should not exceed 30 days from the day the Ombudsman's request is received.

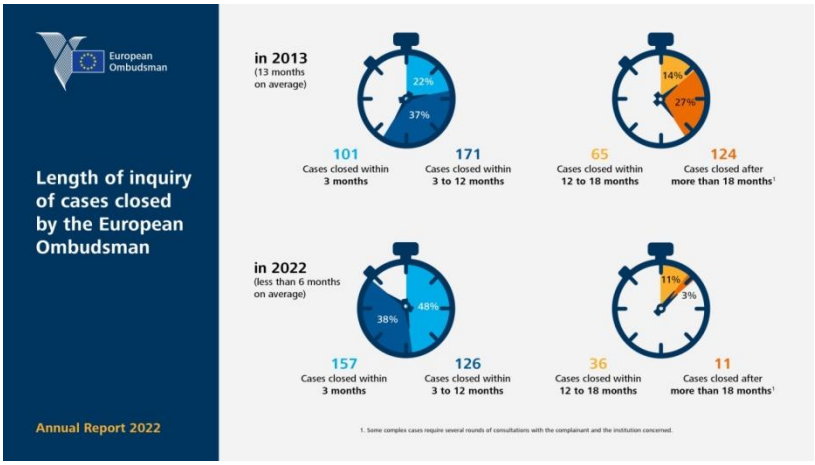
In the case where the Ombudsman determines that the petitioner's constitutional and legal rights have been violated by the authorities, or if other irregularities have occurred, the Ombudsman has the following options:

- Provide recommendations, suggestions, opinions, and instructions on how to address the identified violations;
- Propose the re-implementation of a specific procedure in accordance with the law;
- Initiate disciplinary or misdemeanor proceedings against an official or responsible person;
- Submit a request to the competent public prosecutor to initiate a procedure to establish criminal liability against an official or responsible person. The Ombudsman also has the right to actively participate in this procedure by offering suggestions and opinions.

An analysis presenting a comparation of empirical facts and figures

The Annual report of the European Ombudsman includes a graphical presentation (Figure 2) that visually illustrates the length of the proceeding before the Ombudsman, focusing on the final resolution of specific cases. Based on the presented data, it can be inferred that European Ombudsman successfully concluded the highest number of cases, which amounted to 157, within a timeframe of three months or less. Conversely, the smallest number of cases, specifically 11, was ultimately resolved after a period exceeding 18 months.

Figure 2



Source: https://www.ombudsman.europa.eu/en/doc/annual-report/en/167855

Contradictory to the European Ombudsman' report, the Annual Report of the North Macedonian Ombudsman lacks information regarding the length of proceedings for individual cases before the Ombudsman. Consequently, bellow we will present the perceptions and experiences of North Macedonian citizens regarding this matter.

Using a quantitative approach within the previously mentioned research project, survey questionnaires were employed as a tool in the given framework. These questionnaires consisted of both semi-open and opened-ended questions, organized and structured for two distinct groups of respondents: the non-professional and professional public. The survey questionnaires were distributed electronically to several hundred participants in the Republic of North Macedonia between February and March 2022. The survey guaranteed participant anonymity and voluntary participation, ensuring the confidentiality of personal information. By conducting this survey, relevant data could be swiftly collected, allowing for a deeper understanding of citizen's perspectives, opinions, and knowledge regarding the research topic.

This paper exclusively presents the responses to the question: "What was the duration of the Ombudsman's response to your complaint?" The survey gathered answers from 70 individuals from the non-professional public and 83 individuals from the professional public.

Regarding Chart 1, it pertains to the time taken for the Ombudsman procedure. It is worth noting that 35.7% of the respondents received a response to their complaint within one month. Within three months, 25.7% received a reply. However, it is concerning that even 22.9% had to wait for over a year to receive a response to their complaint submitted to the Ombudsman. It is important to highlight that this data focuses solely on receiving a response and not on the outcome (whether positive or negative) of the complaint.

Chart 1

Chart 2 provides professional public information regarding Ombudsman's response time to the petitions submitted by respondents. According to the chart, 28.9% of the respondents received a response within one month, 21.7% received a response in less than a month, 20.5% received a response after one year or longer, 16.9% received a response within three months, and 6% each received a response within six months or one year.

Chart 2

Conclusion

Considering the legal regulations governing the authority, position, and operations of both the European Ombudsman and the North Macedonian Ombudsman, it is evident that the principle of efficiency is guaranteed as a fundamental aspect from a formal legal perspective. However, based on empirical evidence, it can be inferred that despite the formal-legal principle of efficiency serving as the foundation for the work of both institutions, there are still isolated cases that took a relatively long time, exceeding a year, to resolve. Primarily, the underlying causes for these protracted processes can be attributed to the delayed and untimely actions of the competent authorities.

Therefore, it is recommended that stricter misdemeanor penalties be implemented concerning the failure of competent authorities to act upon the submissions made to the Ombudsman in North Macedonia. Furthermore, we believe that in future Annual Reports of the Ombudsman data regarding the duration and finalization of individual procedures should be included, following the precedent set by the European Ombudsman's Annual Report.

References

1. Amendment X of the Constitution of the Republic of North Macedonia, Official Gazette, no. 91/01, p. 1 and 2
2. Amendment XII of the Constitution of the Republic of North Macedonia, Official Gazette, no. 91/01, p. 1
3. Constitution of the Republic of North Macedonia, Official Gazette, no. 52/91, Article 7
4. Law on the Ombudsman, Official Gazette no. 35/2018

5. https://eur-lex.europa.eu/legal-content/HR/TXT/?uri=CELEX:11992M/TXT
6. https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A12007L%2FTXT
7. https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:12012P/TXT
8. https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32021R1163
9. https://www.ombudsman.europa.eu/en/our-strategy/home/en
10. https://ombudsman.mk/

Professional Article
UDK 332.146.2:355.45
502.131.1:355.45

SUSTAINABLE NATIONAL DEVELOPMENT IN THE GLOBALIZATION PROCESS

Prof. Dr.sc. Tatjana Gerginova, PhD

Faculty of Security-Skopje, University “Sv. Kliment Ohridski”-Bitola, North Macedonia

tatjana.gerginova@uklo.edu.mk

Abstract

To achieve sustainable development, peace and security are needed; and peace and security will be at risk without the existence of sustainable development. In the introductory part of the paper, the author defines the term "sustainable development". In the paper, the author also defines the terms "security" and "national security". Furthermore, the author analyzes the 2030 Agenda and determines the principles through which sustainable development is built. In the final part of the paper, the author states that real sustainable development includes all three pillars of development, economic, social and environmental and is based on an inter sect oral, integrated and comprehensive strategic approach.

The content will be created based on the analysis of foreign literature and using electronic content. In preparing the content of the paper, the author will apply the general scientific methods: the descriptive method, the normative method, the comparative method and the content analysis method as a special scientific method.

Keywords: sustainable development, national security, Agenda 2030

INTRODUCTION

Sustainable development is a continuous process that includes improving the integration of economic, social and environmental aspects. Sustainable development is a continuous process, which requires constant adaption, monitoring and improvement.

Sustainable development implies that society must simultaneously face economic, social and environmental challenges. This development must ensure great individual freedom of action, respect the limitations of nature and the environment and have no negative consequences for human health.

Global Sustainable development envisages a world in which there is economic progress, increased well-being and better environmental protection. Such development benefits everyone, including the less developed and less powerful parts of the world. It implies openness, democracy and respect for human rights.

The World Commission on Environment and Development (known as Brutland Commission) defines sustainable development as: Development that meets the needs of the present generation without compromising the ability of future generations to meet their own needs (See more: https://www.moepp.gov.mk/wp-content/uploads/2014/12/Nacionalna-Strategija-za-Odrzliv-Razvoj-vo-RM-NSSD-Del-1.pdf).

The definition further states: "Essentially, sustainable development is a process of change in which the use of resources, the direction of investment, the orientation of technical development and institutional change are in harmony and increase both present and future potentials in order to meet human needs and aspirations".

Sustainable development includes three interdependent and intertwined dimensions:

Economic dimension (economic resources, development and growth);

Environmental dimension (natural resources, protection and sustainable use of nature and prevention and fight against pollution); and Social dimension (social resources, solidarity and fight against poverty).

DEFINING THE TERM OF NATIONAL SECURITY

To define the term "Sustainable development", we will analyze the scientific definitions of definitions of the terms "security" and "national security". In the scientific literature, there are numerous definitions of the term "national security".

Security is the ability to protect key values (Walter Lippmann, 1944 : 51 according to Ayoob, 1984: 41). Security is a guarantee of future well-being (Lawrence Martin,1983: 12). Security is the absence of vulnerability, implying a pattern in which decreasing security increases vulnerability (Richard Ullman, 1983: 146). Security can be defined as a state of protection that the state tries to either achieve or maintain in order to preserve the various components of the state system from both external and internal threats (Ira Cohen and Andrew Tuttle, 1972: 1).

National security includes traditional defense activities but also non-military activities of the state in order to ensure its survival in order to influence or realize its internal and external goals (Michael Lowe, 1978 according to Buzan, 2007: 17).

According prof. Dr. Tatjana Gerginova, National security means a state of protection, of free, stable and certain functioning and development of a state (country), i.e. a state in which there are no serious threats and dangers to the survival of a state, its independence, territorial integrity and constitutional-legal order, as well as for the life, rights and freedoms of its citizens and a healthy environment (state of non-threat and safety) (Gerginova 2015).

The modern concept of national security, in addition to the security of the state and the citizen, also includes "participation of states in the realization of international and global security, participation of the state and non-state security sectors, participation of citizens and non-governmental organizations in the realization of internal, economic, social, societal, environmental, traffic, energy, information security etc.

The modern concept of national security makes a huge contribution to the promotion of national, regional and global security, to the development of democracy and the rule of law, respect for the sovereignty and territorial integrity of states, as well as the promotion of their cooperation with the most influential entities of the international community.

The term "national security" means a state of social, economic and political stability which is necessary for the survival and development of the Republic of North Macedonia as a sovereign, democratic, independent and social state, as well as for the maintenance of the constitutional order, a state of undisturbed realization of the basic freedoms and rights of man and citizen in accordance with the Constitution of the Republic of North Macedonia

(According to Article 3 of the Law on Coordination of the Security-Intelligence Community in the Republic of North Macedonia, (Official Gazette of the Republic of Macedonia No. 108/2019 of 28/05/2019), p.2.

Hewed interprets national security as "the function of national states, which in accordance with their own capabilities now and in the future, respecting global changes and development in the world, protect their own identity, survival and interests (Hewed 1989, 16). Croatian professor Bozidar Javorovic, on the other hand, sees national security as the global security of the political community and as a special security within the international community. By national security he means the internal and external security of the state, that is the security of the state in relation to external and internal threats (Јаворовиђ 1997, 16). "By national security we mean the state's ability to protect the vital values and interests of society, independently or in cooperation with other states or organizations, from external and internal forms of threats and thereby ensure general conditions for unhindered political, economic, social and cultural development of society and welfare of its citizens" (Стајиђ, Гаћиновиђ 2007, 44).

Historically, national security is inextricably linked to the state and its security sector. However, national security is gradually taking over the political, economic, social and cultural spheres. Defense against external attack remains a central problem of national security, but practice has unequivocally confirmed that the state can also be threatened by internal turmoil, economic and social disruptions, especially in communities that lack a sense of identity and social cohesion (Avramov 2001, 423).

The absence of war and military conflicts alone does not ensure peace, stability and security in society. Non-military sources, especially instability in the economic, social, humanitarian and environmental spheres, have become a greater threat to the peace, stability and security of many countries (See: UN - Doc. S/PV 3946, 31 Jannuaru 1992, available on https://www.securitycouncilreport.org/monthly_forecast/2023-08).

The systematic approach is the most important in defining the term national security and they use the argument in defining the term national security and they use the argument that the development of human society takes place in the necessary security conditions, determined by political, economic, social, moral, cultural and other factors (Гаћиновић 2009, 197).

According to other authors, national security is defined as "the effort of national states to provide all members of society with security from outside threats (interventions, attacks, occupations, blockades…) and security within society (threats under the law) and order, crime, etc.)" (Grisold 1998, 23).

Some authors in international relations define national security as "the absence of any fear of attacks, threats to interests or threats from another state or states" (Bourguin M 1934, 473).

By analyzing the definitions of security, it can be concluded that national security is manifested through three dimensions of state and social life: human, economic and security dimensions (Gerginova 2015).

The human dimension is tied to the realization of the protection of human rights, realizing the protection of the rights of direct and indirect victims or potential and actual victims of global threats such as organized crime, terrorism, corruption, political and economic crime, high-tech crime, etc.

The economic dimension refers to the protection of the economic order and the standard of living of the people and to reduction of the effects that further deepen the unfavorable factors of the economic transition, disregard of market laws, increase in poverty, uneven economic development of countries.

The security dimension refers to endangering national security by slowing down the democratization process of the so-called "transitional communities", by destroying or undermining democratic institutions and the rule of law and by creating numerous socioeconomic problems. Weak and corrupt state institutions and inadequate legal legislation weaken the potential of governments to successfully confront this problem, which threatens national security from within and without.

Important the basic condition and goal of any state policy is the survival of the state while the condition for the survival of the state is its national security. It essentially represents a framework of the security policy that has the task of building a methodology for establishing a complementary relationship between the mechanisms and means by which national security is built and sustainable development of national security is achieved.

SUSTAINABLE DEVELOPMENT AND AGEDA 2030

According to the 2020 Agenda, in order to achieve sustainable development, peace and security are needed; and peace and security will be at risk without the existence of sustainable development (See: https://www.seesac.org/f/docs/Gender-and-Security/Policy-Brief-2030-Agenda_.pdf).

At the Sustainable Development Summit, which took place in New York from September 25-27, 2015, the Sustainable Development Agenda entitled "Transforming Our World: The 2030 Agenda for Sustainable Development", was adopted (See: https://www.seesac.org/f/docs/Gender-and-Security/Policy-Brief-2030-Agenda_.pdf).

The 2030 Agenda is the product of the largest consultative process in the history of the United Nations, where a large number of civil society organizations, the private sector and the academic community participated. This agenda, adopted by 193 member states of the United Nations in September 2015, consists of a Declaration, 17 Sustainable Development Goals (SDGs), as well as 169 targets and 232 indicators.

The 2030 Agenda integrates all three dimensions of sustainable development (economic, social and environmental), and this represents a major shift from a more fragmented parallel process approach to a comprehensive and universal agenda for population, planet and prosperity in general, based on peace, inclusiveness, strong and committed governance and global partnership. The agenda establishes 17 sustainable development goals that are interconnected, interdependent.

The 2030 Agenda for Sustainable Development is a call for transformative action by all countries to achieve peace and prosperity for all people and protect the planet.

After the adoption of the 2030 Agenda, the countries have an obligation to implement it through "localization" of the agenda at the national level and its integration with the national development plans and targets. At the core of the seventeen sustainable development goals lies the thesis that the eradication of poverty and inequalities, the creation of inclusive economic growth and the preservation of the planet are inextricably linked, not only to each other, but also to the health of the population; and that the relationships between each of these elements are dynamic and reciprocal.

The Sustainable Development Goals (SDGs) address global challenges related to poverty, gender inequality, climate, environmental degradation, injustice and violence.

SDG 16 is the central pillar of the 2030 Agenda's approach to peace and security; it aims to "Promote peaceful and inclusive societies for sustainable development, ensure access to justice for all and build effective, accountable and inclusive institutions at all levels".

The adoption of SDG 16, which officially links development to peace and security, was hailed as a transformational process.

Previous approaches to "peace" within the UN system have mostly focused on humanitarian operations, ceasefires, peacekeeping missions and disarmament, while not taking into account economic and social forms of development.

Agenda 2030 has a vision for promoting peaceful and inclusive societies for sustainable development, which ensure equal access to justice for all based on respect for human rights, effective rule of law and good governance at all levels and building effective, accountable and inclusive institutions at all levels (See: https://www.seesac.org/f/docs/Gender-and-Security/Policy-Brief-2030-Agenda_.pdf).

The Agenda recognizes inequality and poor governance as causes of violence, insecurity and injustice.

The specific goals of SDG 16 include reducing violence, ending violence against children, equal access to justice for all and effective, accountable and

transparent institutions. The concept of good governance, when applied within the framework of the security and justice sector, implies the existence of accountable security and justice institutions that ensure security and justice as a public good through established and transparent policies and practices and in accordance with a normative framework consistent with human rights and the rule of law.

SDG 16 is an explicit recognition of the importance of good governance in the security sector in support of development and peace building.

PRINCIPLES THROUGH WHICH SUSTAINABLE DEVELOPMENT IS BUILT

A basic prerequisite for making changes in a country and society in the direction of sustainable development is the understanding and acceptance of the concept and principles of sustainable development.

We can define as principles for achieving Sustainable Development:

-To develop awareness, understanding and commitment to sustainable development;

-Full commitment to membership in the European Union at the national level;

-To promote the natural and cultural heritage;

-High unemployment rate the need to increase the employment rate;

-Need for significant improvement and strategic direction of the health sector;

-Need for significant improvement and strategic direction of the education sector.

-Need for strategic redirection in certain segments in the field of energy, agriculture and forestry.

-Need for structured strategic operation and planning in tourism which represents a sector with great potential.

-Need for industrial development, especially the development of small and medium-sized enterprises that have a significant role and for which there is a need for strategic redirection.

-Need for strategic focus in the field of road planning and construction.

-Need for comprehensive organizational development and institutional strengthening in all spheres of public life, including policy making, preparation of legal and regulatory framework, strategic planning, administration, monitoring and enforcement.

ADOPTION OF THE 2030 AGENDA AT THE NEW YORK SUMMIT

The 2023 SDG – Summit on Sustainable Development will take place on 18-19 September 2023 in New York. At this summit, countries will officially adopt the historic new agenda, titled “Transforming Our World: The 2030 Agenda for Sustainable Development”, which was agreed by 193 United Nations member states and includes 17 Sustainable Development Goals (SDGs) (See: https://www.un.org/en/conferences/SDGSummit2023).

This summit will mark the beginning of a new phase of accelerated progress towards the Sustainable Development Goals with high-level political leadership for

transformative and accelerated action by 2030 (According to Global Sustainable Development Report 6 2023 7 8 9 10 Advance, Unedited Version 11 14 June 2023 - See:
https://sdgs.un.org/sites/default/files/202306/Advance%20unedited%20GSDR%2014June2023.pdf).

The summit will address the impact of the multiple and interlocking crises facing the world and is expected to reignite a sense of hope, optimism, and enthusiasm for the 2030 Agenda.

The new agenda is people-centered, universal, transformative and integrated. It calls for action by all countries for all people over the next 15 years in five areas of critical importance: people, planet, prosperity, peace and partnership. The agenda recognizes that ending poverty must go hand in hand with a plan that builds economic growth and addresses a range of social needs while also tackling climate change.

It is planned at the Summit, to realize six interactive dialogues around the following topics; ending poverty and hunger, tackling inequalities, empowering women and girls, encouraging sustainable economic growth, transformation and promoting sustainable consumption and production delivering a revitalized global partnership building, effective, responsible and inclusive institutions to achieve sustainable development and protect our planet and combat climate change. During the Summit, the short film series "The Story You Shape", produced by HUMAN, related to each of the topics of the interactive dialogues will be premiered.

Since the 1992 UN Conference on Environment and Development – the Earth Summit – in Rio de Janeiro, Brazil, the world has engaged in a process of a new path to human well-being or the path of sustainable development. The concept of sustainable development, presented in Agenda 21, recognized that economic development must be balanced with growth that meets the needs of current generations and protects the environment, without compromising the ability of future generations to meet their own needs.

The Global Sustainable Development Report (GSDR) originates in "The Future We Want", the outcome of the Rio+20 Conference on Sustainable Development when Member States laid the groundwork for the 2030 Agenda for Sustainable Development and the 17 accompanying Sustainable Development Goals development (SDGs). Negotiators recognized the power of science to understand and drive the relationships between social, environmental and economic development goals and therefore called for a report to strengthen the science-policy interface. The 2019 Global Sustainable Development Report, the Future is Now: The Science of Achieving Sustainable Development, was the first report prepared by an Independent Panel of Scientists appointed by the Secretary-general of the United Nations.

CONCLUSION

In the end, we can state that real sustainable development covers all three pillars of development, economic, social and environmental and is based on an inter sect oral, integrated and comprehensive strategic approach.

The Concept of Sustainable Development, presented in Agenda 21, recognized that economic development must be balanced with growth that meets the

needs of current generations and protects the environment, without compromising the ability of future generations to meet their own needs.

In order to realize Sustainable Development in continuity, the analyzes show that it is necessary to realize the following strategic determinations:

Membership in the European Union and compliance with the EU Sustainable Development Strategy; Increasing awareness and commitment to sustainable development, covering all spheres of life in the nation-state; The introduction of E-governance as a powerful tool to support and implement sustainable development; Directing the public sector through organizational development and institutional strengthening based on the concepts and principles of sustainable development, as well as intersect oral and integrated strategic and participatory work; Directing the banking and financial sector to provide funds for financing projects and activities for sustainable development; Directing the private sector towards development that is based on the principles of sustainable development; Realization of demonstration and pilot projects in the early phase of implementation of the Strategy for Sustainable Development of the European Union.

The considerations go in the direction that it is necessary to establish a time frame during which priority will be given to projects that can be easily implemented and have a quick effect on sustainable development.

REFERENCES

1. Avramov, S.: Bezbednost u XXI veku, Zbornik radova SIMVON 2001., Beograd, str. 423.
2. Bourguin M., Le probleme de la securite internationale, Recuil des Cours da L`Academie de driot International, 1934. godine, t. 49., str. 473
3. Gerginova, Tatjana., (2015). Global security (Basic textbook), University "St.Kliment Ohridski" – Bitola, Faculty of Security, Skopje
4. Гаћиновић, Радослав., Стратегија националне безбедности стратешки документ државе, Национални интерес бр. 3/2009, стр. 197.
5. Grisold, Anton., (1998). European Security, Faculty of Political Science, Gubana, p. 23.
6. Јаворовић, Божидар., Тероризам, Полиција и сигурност, бр. 1-2. Министарство унутарњих послова Републике Хрватске, Загреб, сијечањ-травањ 1997, стр. 6.
7. Law on Coordination of the Security-Intelligence Community in the Republic of North Macedonia, (Official Gazette of the Republic of Macedonia No. 108/2019 of 28/05/2019), p.2.
8. Стајић, Љ., Гаћиновић, Р., „Увод у студије безбедности", Драслар партнер, Београд, 2007, стр. 44.
9. Hewed. A. Militarization and Security in the Middle East, Printer Publishers, London, 1989, p.16.

10. UN - Doc. S/PV 3946, 31 Jannuaru 1992, p. 142-143 available on
11. https://www.securitycouncilreport.org/monthly_forecast/2023-08 accessed on 14.08.2023
12. https://www.moepp.gov.mk/wp-content/uploads/2014/12/Nacionalna-Strategija-za-Odrzliv-Razvoj-vo-RM-NSSD-Del-1.pdf
13. https://www.seesac.org/f/docs/Gender-and-Security/Policy-Brief-2030-Agenda_.pdf
14. https://www.un.org/en/conferences/SDGSummit2023
15. Global Sustainable Development Report 6 2023 7 8 9 10 Advance, Unedited Version 11 14 June 2023
16. See: https://sdgs.un.org/sites/default/files/2023-06/Advance%20unedited%20GSDR%2014June2023.pdf

Professional Article
UDK 343.98(439)
343.98:341.24(944.1)

CRIMINALISTICS, FORENSIC SCIENCE, AND THE SYDNEY DECLARATION

David Petretei
Head of Department, Department of Latent Prints,
Hungarian Institute for Forensic Sciences
Chairperson, Scene of Crime Expert Working Group,
European Network of Forensic Science Institutes
petreteid@nszkk.gov.hu, petretei.david@uni-nke.hu

Abstract
This paper is on the different concepts of criminalistics and forensic science in Hungary and in the international literature, under the light of the Sydney Declaration. The Declaration is an undoubted milestone of forensic science, which will affect the whole world, though, some of its concepts have already been recognized in the Hungarian literature. Criminalistics and forensic science have prominent roles in combatting crime and serving the jurisdiction.

Keywords: forensic science, criminalistics, Sydney Declaration, criminal justice, interpretation

Criminalistics in Hungary

The word „criminalistics" comes from the landmark handbook of Hans Groß, the „Handbuch für Untersuchungsrichter als System der Kriminalistik" („Handbook for Investigating Judges, or the System of Criminalistics") published in Graz, the Habsburg Empire (today: Austria), 1893 (Sabitzer 2015). Just four years later the Handbook was translated into Hungarian and almost fully rewritten, adapted to the contemporary Hungarian circumstances (Endrody 1897). The concept of „criminalistics" as the art or science of criminal investigation, has started its career.

During the last 125 years, criminalistics has had its organic development. Recently, criminalistics can be studied in three different senses: as science, as practice, and as learning material. As a science, criminalistics is a multi-disciplinary science in the jurisdiction system, which develops and applies tools and methods for detecting, proofing, and preventing crimes and other relevant incidents. As a practice, criminalistics is a scientific cognition, in a legal framework (between legal limitations), for legal purposes. Fact-finding for every type of legal case, supporting the legal decisions. And last but not least, criminalistics is learning material in most law schools and law enforcement education.

Recently, criminalistics has been divided into branches (Ballane 2019, 15):

- Criminal techniques concerning the scientific, technical, and engineering

tools and methods, like fingerprints, shoeprints, and other pattern evidence; handwriting, questioned documents, firearms; trace evidence; body fluids, and other sources of DNA; forensic photography and video, drones, 3D scanning, and photogrammetry, ground penetrating radar, etc.

- Criminal tactics concerning the different investigative tools and methods, like questioning, interrogation, surveillance, home searching, crime scene investigation, OSINT, data mining, profiling, etc.

- Some author thinks criminal intelligence is a separate branch, concerning secret intelligence methods, like wire-tapping, bugs and hidden cameras, buying information, and other HUMINT and TECHINT tools.

- Criminal proceedings concerning the specific investigation techniques and methods for different types of specific crimes, or incidents, like homicide investigation, burglary investigation, investigation of tax fraud, investigation of missing people, investigation of road accidents, investigation of suicide, investigation of armed robbery, investigation of environmental crimes, etc.

- Criminal strategy concerning the organizational, legislative, and predictive aspects of combatting crime; it stands very close to some branches of criminology (Meszaros 2018).

- Cyber criminalistics is emerging, previously undoubtedly part of the criminal techniques, recently it is becoming irrespective. Concerning clues and traces in cyberspace, extracting and analyzing data from smart devices, gathering investigative information from social media or the „Internet of Things" (IoT), etc. (Petretei 2022).

- Theoretical criminalistics contains the definition and concepts of criminalistics, the history of criminalistics, and the so-called criminal methodology: the most comprehensive and fundamental theories of criminalistics. These fundamental theories are the theory of traces, the theory of identification, the theory of proofing, and the theory of cognition.

Notably, the fundamental and comprehensive theories are universal. Theory of traces concerning the activities and presence, which are producing traces. But traces in this meaning can not only be physical, but digital or psychical as well. Theory of identification concerning the different types of identification, individualization, comparison, and reconstruction. But again, it also concerns the identification, made by laymen, for example, identity parade, or police line-up, or when a questioned witness needs to observe presented photos and talk about them. The theory of cognition, or the synonym: cognitive criminalistics concerns criminalistics as a cognitive effort. Usually, cognition is done by an investigator, prosecutor, or judge, but also when dealing with psychological evidence. Intuition, and empathy, are two notable parts of the investigative mindset, which can be relevant during witness questioning, or interrogating an accused. It can be a banality, but an investigator does not need to possess a bachelor's degree in psychology to be able to obtain relevant testimony or confession. But need to have strong communication skills, perfect empathy, good sense for non-verbal signs, etc.

Also notably, despite the alleged objective nature of the physical evidence, a significant amount of criminal cases are still solved solely by psychological evidence, like witness testimonies. Furthermore, other investigative tools, covered

by the above-mentioned criminal tactics: are police reports on surveillance, OSINT, home searching, etc.

The Sydney Declaration and the Forensic Sciences

The Sydney Declaration may be the most important, relevant, and forward-looking milestone of the forensic sciences. It contains a definition of forensic science and seven principles of it (URL 1). The content of the short Declaration is comprehensively explained in a paper (Roux et al. 2022).

According to the Declaration, forensic science is a case-based, research-oriented endeavor using the principles of science to study and understand traces – the remnants of past activities – through their detection, recognition, examination, and interpretation to understand anomalous events of public interest.

The principles are the following:

1. Activity and presence produce traces that are fundamental vectors of information
2. Scene investigation is a scientific and diagnostic endeavor requiring scientific expertise
3. Forensic science is case-based and reliant on scientific knowledge, investigative methodology, and logical reasoning
4. Forensic science is an assessment of findings in context due to time asymmetry
5. Forensic science deals with a continuum of uncertainties
6. Forensic science has multi-dimensional purposes and contributions
7. Forensic science findings acquire meaning in context

Despite acknowledging the relevancy of the Declaration, the concept of forensic science seems to be a bit incomplete. Criminalistics, forensic science, and traceology are three categories, which are almost synonyms but can have little differences (Ristenbatt et al. 2022). The Organization of Scientific Area Committees (OSAC) of the National Institute of Standards and Technology (NIST) of the United States has a lexicon for forensic-related definitions (URL 2). According to the OSAC lexicon: forensic science is an application of scientific principles and techniques to matters of criminal justice, especially as relating to the collection, examination, and analysis of physical evidence. On the other hand, criminalistics is a branch of forensic science concerned with the examination and interpretation of physical evidence to aid forensic investigations including drug analysis, crime scene reconstruction, firearms and tool marks, fire debris analysis, molecular biology, photography, and trace evidence analysis.

These definitions seem to be unilateral: do neither cover the investigative data, nor the psychological evidence. Even the Declaration mentions memory-based evidence only one time when discussing the importance of time between the event and the investigation. This is the only time when the Declaration states the three basic types of evidence: physical, digital, and psychological.

The OSAC lexicon definition has another fundamental problem: if „forensic science” deals only with physical evidence, how can forensic psychology, forensic

psychiatry, or forensic accounting even exist? Moreover, on the other hand: why the „forensic" is connected solely to criminal justice, and not the other fields of jurisdiction? During a paternity lawsuit, if DNA analysis and comparison were used, could not it be called „forensic" genetics?

In Hungary, the above-mentioned definitions of criminalistics are used. Even though the definitions are wide enough, many expert fields are not part of it. Forensic medicine, forensic chemistry, forensic physics, etc., are obviously existing and intensively used to solve crimes or civil cases. (For example, forensic medicine is frequently used in insurance cases, and forensic psychology in child custody cases, outside of the criminal justice territory.) All of these forensic expert fields are not part of the criminal techniques, although they are connected and affect each other in multiple ways. The term „criminalistics" can be considered as a collective term, but more precisely the whole verticum should be addressed as „criminalistics and the forensic sciences". In this approach, criminalistics can be considered as the framework of the investigation and the forensic sciences. This approach is very close to the second principle of the Declaration, which states the lynchpin role of the generalist forensic scientist. In the Hungarian approach the „generalist forensic scientist" should be the one, who reviews and manages the investigation, under the light of different forensic expert reports, and always applies the recommendations of the criminalistics.

The Declaration does not state explicitly but from the sixth principle can be derived that forensic scientists should not work in the ivory tower. The work of the forensic scientist is a contribution to the whole crime-combatting and crime-preventing endeavor. Equilibrium should be found between independent truth-seeking and contributing the crime-combatting. Furthermore, forensic science is able to assist intelligence-led policing or problem-oriented policing as well.

The uncertainties and the dialectic approach

In Hungary, like in the whole eastern part of Europe, after the Second World War, the Soviet scientific approach strongly influenced every field of science. After the regime change in 1989, the previous Soviet-based approach became passe or old-fashioned, which was started to be considered not relevant anymore. Actually, without the ideological layers, the epistemology of the so-called dialect materialism seems still to be relevant.

The dialectic materialism states that reality is material, the (human) consciousness is a result of the material world, and the consciousness is the function of the brain, as a biological organ. The dialectic approach means that the world can be studied only when the constant moving of its elements is also considered. A central category of the dialectic approach is antagonism, which means that the antagonist objects usually can be the opposite side of the same bigger object.

Every object of the real world is constantly moving, this is one of the fundamental principles of dialectic materialism. Every cognition, that wants to be regarded as scientific sound, should consider this constant moving, constant changing. The obvious result of the constant change is the basic uncertainties of every scientific cognition. The Authors of the cited paper (Roux et al. 2022) are from Australia, Canada, Finland, Switzerland, the US, and the UK. Neither of these

countries was forced to apply dialectic materialism, however, without the political-ideological layers, the ontology of this philosophy seems to be useful for modern forensic sciences. The Declaration does not mention „dialectic materialism", but mentions the fundamental relevancy of uncertainties.

Declaring that uncertainties exist at every step of the investigation or the forensic process, is rather a philosophical statement than a scientific theorem, yet has paramount relevancy in practice. The uncertainties can not be eliminated or avoided, however, bearing in mind that, they can be identified and practically managed. It will be a future challenge to sensitize the non-forensic stakeholders, like judges, prosecutors, and law enforcement personnel, to bear in mind the uncertain nature of forensic evidence. Stakeholders should be aware that uncertainty does not mean that the evidence is not reliable, sound, or robust. On the other hand, a superb testimony from a self-confident witness is not necessarily the truth.

The CSI and the Sydney Declaration

The second principle of the Sydney Declaration is on the crime scene processing activity, which states that is a scientific and diagnostic endeavor. Perhaps this is one of the most important points of the whole declaration.

In the Hungarian literature, the same concept can be found. The crime scene investigation is a planned, organized, well-managed, and conscious activity, between legal limitations, and a kind of proofing process. It aims to cognize the scene to gather information from it, to be able to form hypotheses on the past incident. Another aim is to detect, document, preserve, and collect every piece of physical evidence. Finally, to synthesize all of the above, which is an analyzing and interpretation activity. So, crime scene processing is not only to document the scene and collect evidence but a much more complex semiotic interpretation of findings (Petretei 2018).

Unfortunately, in practice, this concept is rarely followed. In Hungary, the crime scene processing is to make more and more photos, using fancy arrows and numbering, using double labels for every piece of evidence. Validating alternate light sources on different body fluids, on different background surfaces, and under different light conditions is rarely an issue. Interpretation, forming hypotheses to answer the main questions (what happened? how happened? when happened? etc.) is forbidden. Referring personal experience of the crime scene analyst is also forbidden, despite the paramount role of personal training and experience in the investigative mindset. If using personal experience is prohibited, why the crime scene investigation is not done by regular law enforcement personnel, police cadets, or even laymen? This is not a rhetorical question, but the root of the problem.

The situation is not unique to Hungary. According to the Scene of Crime Expert Working Group (SoC EWG) of the European Network of Forensic Science Institutes (ENFSI), where the Author is the chairperson, the prohibition of the crime scene interpretation exists in many of the European police agencies. The Sydney Declaration hopefully brings a breakthrough in this. The concept, that crime scene processing is the very first step of lab analysis, has recently been widely accepted. The ongoing efforts for accreditation are undoubtedly serving this concept. But this is only for the proper documentation, and the searching, preserving, and collecting

of the pieces of physical evidence. Despite the approved prominent role of crime scene processing in the crime-combatting endeavor, the interpretative activity is still not part of it. The Sydney Declaration hopefully brings a breakthrough in this.

REFERENCES

1. Angyal, Miklos (ed., 2019): Cognitive Criminalistics (Kognitív kriminalisztika. In Hungarian). Dialog Campus, Budapest. ISBN 978-615-6020-06-2
2. Ballane Fuszter, Erzsebet (2019): Criminal Technique (Krimináltechnika. In Hungarian). Dialog Campus Kiado, Budapest. ISBN 978-615-5945-99-1
3. Endrődy Géza (1897): Handbook of Criminal Investigation. (A bűnügyi nyomozás kézikönyve. In Hungarian). Kármán-féle Könyvnyomda, Losonc, 1897.
4. Meszaros, Bence (2018): Criminal Strategy Becoming Irrespective (A kriminálstartégia önállósodása. In Hungarian). Belügyi Szemle 2018/11. 65-70 pp. DOI: 10.38146/BSZ.2018.11.6
5. Petretei, David (2018): The Crime Scene Under the Light of the Standardization Tendencies, and the Novel Act of Criminal Process (A bűnügyi helyszín a szabványosítási tendenciák és az új Be. tükrében. In Hungarian). Rendőrségi Tanulmányok 2018/3. 4-48 pp.
6. Petretei, David (2022): Theoretical Issues of the Trace and Pattern Evidences in the 21st Century (Nyomelmélet és nyomtan a 21. században. In Hungarian). Belügyi Szemle, 2022/5. 961–981 pp. https://doi.org/10.38146/BSZ.2022.5.5
7. Ristenbatt, Ralph R. – Hietpas, Jack – De Forest, Peter R. – Margot, Pierre A. (2022): Traceology, Criminalistics, and Forensic Science. Journal of Forensic Science 2022 (67) 28-32 pp. DOI: 10.1111/1556-4029.14860
8. Roux, Claude – Bucht, Rebecca – Crispino, Frank – De Forest, Peter – Lennard, Chris – Margot, Pierre – Miranda, Michelle D. – NicDaeid, Niamh – Ribaux, Olivier – Ross, Alastair – Willis, Sheila: The Sydney declaration – Revisiting the essence of forensic science through its fundamental principles. Forensic Science International 332 (2022) https://doi.org/10.1016/j.forsciint.2022.111182
9. Sabitzer, Walter (2015): Altmeister der Kriminalistik. URL: https://www.bmi.gv.at/magazinfiles/2015/11_12/files/geschichte_der_kriminalistik.pdf (2023. 08. 29.)
10. URL 1: https://iafs2023.com.au/cms/wp-content/uploads/IAFS-2023-Sydney-Declaration-18-May-2021.pdf (2023. 08. 30.)
11. URL 2: https://lexicon.forensicosac.org (2023. 08. 30.)

Scientfic Article
UDK 342.72/.73:343.261-052]:341.24
342.72/.73:343.261-052(497.7)
343.255:343.81(497.7)

INDIRECT FORMS OF TORTURE IN PRISONS: THE CASE OF NORTH MACEDONIA

Assoc. Prof. Dr.sc Angelina Stanojoska
Faculty of Law, University "St. Kliment Ohridski" – Bitola, North Macedonia
angelina.stanojoska@uklo.edu.mk

Assoc. Prof. Dr.sc Ice Ilijevski
Faculty of Law, University "St. Kliment Ohridski" – Bitola, North Macedonia

Ass. Prof. Dr.sc Ivona Shushak Lozanovska
Faculty of Law, University "St. Kliment Ohridski" – Bitola, North Macedonia

Purpose

The purpose of the paper is to analyze the material conditions in Macedonian penitentiary institutions, and to detect the ongoing problems, which are not new. Also, the detected problems will be connected to international documents from the area, and possible solutions will be recommended.

Design/Methods/Approach

For the goals of the research, we've used analysis of content (the reports of CPT, the National Preventive Mechanism, and the Helsinki Committee for Human Rights), and the comparative method (comparing the progress or regress of the material conditions and respect of the rights of incarcerated population in penitentiary institutions in North Macedonia).

Findings

Although there is certain progress in improvement of prison's conditions, still most of Macedonian penitentiary institutions have wards with inhumane conditions contrary to international basic standards.

Originality/Value

Although the paper includes content analysis of published reports by international and national organizations, and also NGO's, it still has an importance, because it makes synthesis of the most notable and important reports regarding the situation in North Macedonia's prison system.

Keywords: CPT, material conditions, North Macedonia, penitentiary institutions, torture.

Introduction

With the affirmation of the human rights and freedoms concept, as the best value of the modern democratic society, and also, because of the sensitivity of the imprisonment as punishment, today we have many international documents that regulate the treatment of the incarcerated population in direction for better conditions and treatment that will result in successful resocialization.

The rights of incarcerated people can be limited, but only as necessary for the execution of the sanctions, and in a way that will secure respect of human dignity, and in accordance to the law. Although, the rights of prisoners are regulated by many legal acts, still in everyday practice we are witnessing that in many cases prisoners' rights are not respected, and that many of them even do not know which their rights are.

On international and regional level, the most important documents are those brought by the United Nations (UN) and the Council of Europe (CoE).

In 1984, UN adopted the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, which has entered into force on 1987 (UNCAT). This Convention is the most important document about torture of incarcerated population. With it, the Committee against Torture (CAT) was formed. The mandate of this body is to makes visits in signature countries, and after the first report which they submit after a year of the signature, the other ones are submitted on every four years.

In 2002, UN opened for signatures the Optional Protocol of UNCAT, which North Macedonia signed in 2006, and ratified in 2008. With this Protocol, the Subcommittee for prevention of torture was formed, and the signatories had the obligations to form and organized a National Preventive Mechanism that will undertake regular and ad hoc announced and unannounced visits of institutions where people are deprived of their freedom (also penitentiary institutions).

The United Nations Standard Minimum Rules for the Treatment of Prisoners were adopted in 1955, because the Universal Declaration of human rights (1948) did not guarantee the rights of prisoners. They were revised in 2015 and called the Nelson Mandela rules. With the revision, the use of solitary confinement is limited even more, and that the medical help for prisoners is the obligation of the state.

Afterwards, in 1990 also the UN, brought the Tokyo rules which are the United Nations Standard Minimum Rules for Non-custodial Measures; and the Riyadh guidelines - United Nations Guidelines for the Prevention of Juvenile Delinquency. Before that, in 1985, United Nations Standard Minimum Rules for the Administration of Juvenile Justice, also known as the Beijing Rules.

Crucially important are the Bangkok rules from 2010, which are the United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders. Why this document is especially important? Women in general, and the incarcerated women in particular, have special needs and necessities which are different of those of males, and in many cases have been victimized before they committed a crime.

The Council of Europe in the last years have developed many standards about the rights of the prisoners. All of it resulted in many recommendations which regulate different aspects of the execution of the imprisonment. Those recommendations, which are legally bonding, were unanimously adopted by the Committee of Ministers in CoE, and are very important and of crucial importance for the European penitentiary system.

At first, we must mention the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment adopted in 1987 and entered into force in 1989. With it the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) which has its own standards and on a period of time works on reports about the conditions and the progress of state signatories in respecting and fulfilling those standards.

The European Prison Rules were adopted in 2006, and revised in 2020. The revised version included different way of keeping the prisoners' files, the have implemented different treatment for incarcerated women and foreign citizens, the use of solitary confinement has been limited, and also, the use of handcuffs.

The situation in the penitentiary institutions in North Macedonia, has been theme of many reports, especially the ones of CPT, the National Preventive Mechanism, and the Helsinki Committee.

The purpose of the paper is to analyze the material conditions in Macedonian penitentiary institutions, and to detect the ongoing problems, which are not new. Also, the detected problems will be connected to international documents from the area, and possible solutions will be recommended.

Methodology

We have focused the research on the indirect forms of torture, which mostly are the material conditions inside penitentiary institutions. For the purposes of this research, we have been using content analysis and comparative method of the CPT reports for North Macedonia (2017, 2019 and 2020).

Results and Discussion

The ***European Committee for prevention of torture, inhuman or degrading treatment or punishment*** was formed with the European Convention for prevention of torture, inhuman or degrading treatment or punishment in 1989. CPT has its own standards, and periodically publishes reports for states' improvement in fulfilling those in places where people are deprived of their liberty.

CPT organizes visits in places where people are deprived of their liberty in member states and analyzes the treatment and conditions in such places. These visits are done by CPT delegations consisting of member of the Committee, employess of the Committee's Secretariat, experst, and translators. Before coming to the member

state and starting the visit, CPT informs the member state, and after it can visit the chosen institutions.

The main principles of the visits are cooperation and confidentiality. Cooperation is important as well as confidentiality, because the CPT mandate is not to judge member states, but to protect the rights people who are deprivated of liberty. On the other hand, confidentiality is important, as the reports are confidential, but the Government has the right to ask CPT to publish the report.

North Macedonia has ratified the European Convention for prevention of torture, inhuman or degrading treatment or punishment in 1997, and the first CPT visit has been in 1998 (17.05.1998 - 27.05.1998). Since that year, until today, CPT has been in North Macedonia for 15 times, and had seven periodical and eight ad hoc visits. For all these visits, the CPT reports and the Government's responses are published at the CPT website.

One of the last reports of an ad hoc visit is the one from 2017 (the visit was from 06.12.2016 until 09.12.2016). The main goal of the visit was to check the conditions in KPD Idrizovo.

At the beginning of the report, CPT concluded that there has not been progress from 2014, and even the situation has been worse than before. There has been no implementation of the recommendations from the present Law on execution of sanctions.

CPT even in 2006 indicated the lack of policies for managing the penitentiary institutions which are complex institutions, also inappropriate system of reporting and supervision, and inappropriate managing and inefficiency of the personnel.

At the time of the visit in 2016, in KPD Idrizovo, in an official capacity of 900 people, there have been accommodated 1840 incarcerated individuals, with 75 of them women. Every building has been used for accommodation, including the school and the resocialization sector's offices.

This report notes cases of intentional phisycal maltreatment of incarcerated population, which in many cases has been used for disciplinary purposes, such as unofficial punishment for having prohibited items (in most cases mobile phones), and conflicts between incarcerated individuals or as a reaction to their complaints.

Also, KPD Idrizovo has longtime problem in corruption among personnel, starting with police officers, till management officers and directors, and the resocialization sector. Prisoners complained to CPT that they pay 2000 euros for them to be accommodated in cells from collective accommodation, and 400 euros for home leave. There were mobile phones in the prisons, with 300 euros for smartphones, additionally small amounts to prison police officers, for them "to look on the other side". Here CPT makes a conclusion that maybe one of the factors for having mobile phones in prisons is the fact that "public" phones were not working.

Another problem is the small number of professionals in the resocialization sector, which results in rare meetings with prisoners.

The 2019 Report (the visit was between 02.12.2019 and 10.12.2019) notes that the Government has adopted many strategic documents from the area of prevention of torture and interprisoner violence, for integrity, training and

professionalization of prison personnel, measures for suppression of corruption. All of these were in direction of incorporating into the system the measures from the Strategy for development of the penitentiary institution in North Macedonia.

CPT recommends that the number of prisoners should not be decreased through amnesty, but on principles which are sustainable and contained. The most important tool is probation as effective transition between prison and community reintegration.

Conditions in KPD Idrizovo are bettern with the opening of the new open and semi open ward in November 2018.

But the practice of torture from prison police officers, and "welcoming beating" are still present. One of the factors is the insufficient number of police officers. This is why CPT recommends increase of the number of prison police officers, trainings for managing complex situations and use of force, progressive inclusion of the concept of dynamic security, wider video surveillance, and development and use of treatment plans for violent and aggressive incarcerated people.

In relation to the material conditions in KPD Idrizovo, CPT notes that the open and semi open ward, which are new, the rest of the incarcerated population are accommodated in conditions of poor hygiene, overcrowding, problems with water supply, insects, and broken toilets.

The last published report in 2021 has also been related to an ad hoc visit in 2020 (07.12.2020 – 09.12.2020). The primary goal of this visit was KPD Idrizovo and Prison Skopje, connected to previous conditions detected in seven prevouos visits, and the 2019 conclusion about the lack of action for making things better.

One of the conclusions in this report is that the realization of the project about reconstruction and building of the closed ward of KPD Idrizovo is late, because of which the functioning of the new part of the open ward with 476 places will not be working before 2025.

Furthermore, one of the key problems is still the political affiliation of directors and deputy directors of penitentiary institutions, which further undermines the efforts to build a penitentiary system that is functional, protects prisoners, works on their resocialization, and at the same time gives more opportunities for corruption, especially in KPD Idrizovo.

Although the Directorate for execution of sanctions has adopted several strategies for development of the penitenatiary system, most of them were more indicative in actions, than oriented towards solving the more important problems. CPT received the information that the new Strategy (2021 – 2025) has been based on the main factors for the lack of implementation of many elements of the previous strategies, includind the standards from the new Law on execution of sanctions.

Material conditions in KPD Idrizovo, apart from the open and semi-open ward, as well as the women's ward which generally meets the living conditions, furniture and equipment, and hygiene conditions, the closed ward which operates with six wings and three smaller units on the ground floor, still has several shortcomings. The the rooms are overcrowded, the furniture and sanitary facilities are old, in some rooms there is visible missing electrical installation, the appearance

of insects is frequent. There were complaints about rare access to hot water, as well as a situation where five people were accommodated in a $9m^2$ room, and often two convicts had to share one bed. Ambulanta, which is still overcrowded, with very poor material conditions, is still a very big problem. Very suprising for CPT was the situation that in the old semi open ward 91 prisoner has been accomodated in 14 rooms (it was overcrowded), although it should have been demolished after the new one start to be operative.

The general reccomendations of CPT from this report were directed towards provision of adequate material conditions in certain wings of KPD Idrizovo until the reconstruction of facilities is completed to enable the relocation of prisoners, then a strict system of sanctioning corrupt personnel, as well as an efficient system of appeals in such cases, increasing the number of staff who are professional and sufficiently trained with constant training activities and trainings, improvement of the prison regime and inclusion of prisoners in work and other types of activities, ensuring full, unconditional and responsible functioning of the system for health care of prisoners which is now within the Ministry of Health, ensuring a functioning penitentiary system, transparency in the selection of the directors of penitenatiary institutions, as well as a functional hierarchical system between the directors of the KPD Idrizovo and the Director of the Directorate for the Execution of Sanctions.

CPT had another periodical visit in 2023 (02.10.2023 – 12.10.2023), and the report is expected to be published in 2024.

In accordance with the CPT reports, and the legislation in North Macedonia, we could conclude that these are the most important recommendations now which could lead to a better penitentiary system.

- Continuation of projects for the construction of new facilities that will replace the old ones, as well as the reconstruction of existing ones - only in this way can we talk about the first step towards successful treatment and resocialization of prisoners;

- Reduction of the rate of incarcerated population through a greater participation of alternative measures in the total number of imposed criminal sanctions - amendments to the legal regulations in the area will be necessary to expand the applicability of certain alternative measures;

- Complete use of the opportunities offered by probation - putting into operation all the foreseen probation offices and staffing them with professional staff;

- Increasing of the number of employees in the resocialization departments at the penitentiary institutions – in this way, greater opportunities are opened for better treatment, comprehensive treatment programs, frequent communication between employees and prisoners, which would result in successful resocialization = reducing the rate of recidivism;

- More and better opportunities for work engagement of prisoners - greater cooperation is needed with legal entities and state institutions that would provide places for work engagement for some of the prisoners, which would increase the quality of treatment, would give convicted persons the opportunity to acquire or improving their professional knowledge which would mean greater opportunities for employment after serving the prison sentence;

- Active and full involvement of the Ministry of Education and Science in the process of continuing education and/or opportunities for professional training of prisoners - education is one of the key general treatment measures and together with work engagement during successful implementation enable easier reintegration into the community of the prisoners after their dismissal from penitentiary institutions;

- The Ministry of Health must take measures to ensure quality health care for both the physical and mental health of prisoners – penitentiary institutions must have regularly employed doctors who will be available for the health needs of convicted persons, as well as solving the problem of health insurance for convicted persons;

- Permanent professional programs for the treatment and rehabilitation of vulnerable categories of prisoners;

- Practical fulfillment of the tasks of the Centers for social work in the process of post-penal assistance to prisoners, which includes not only one-time financial assistance, but also the provision of other social services such as assistance with employment, accommodation, etc.;

- Increasing the number of officers of the prison police through new hires and investing in their equipment - in this way, the level of security in the penitentiary institutions would increase and the level of interpersonal violence would decrease;

- Sanctioning of the members of the prison police, whenever they act outside their authority granted by the Law on execution on sanctions and the by-laws;

- Sanctioning of employees who are involved in corrupt actions and preventive actions in the direction of such developments;

- Professionalization of the prison staff and its permanent upgrading and training of the same, which is already being undertaken in part through the activities of the Training Center in Idrizovo.

REFERENCES

1. Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment;
2. Арнаудовски, Љ., Груевска-Дракулевска, А., Пенологија, прв дел, Правен факултет, 2013;
3. Закон за извршување санкции („Службен весник на Република Северна Македонија“ бр. 99/2019 и 220/2019);

4. Правилник за куќен ред за осудените лица кои издржуваат казна затвор во казнено-поправна установа, јуни, 2020 година;
5. Упатство за определување на видовите и начините на третман на осудените лица, (Службен весник на РСМ бр. 133/2020);
6. CPT Reports, available at https://www.coe.int/en/web/cpt/north-macedonia

Scientfic Article
UDK 347.91/.95:340.142(81)
342.7.037:340.142(81)

CONVERGENCE OF LEGAL SYSTEMS: JUDICIAL PRECEDENTS IN BRAZILIAN CIVIL PROCEDURE CODE AND THEIR IMPACT ON FUNDAMENTAL RIGHTS

Deilton Ribeiro Brasil
University of Itaúna (UIT), Brazil, South America.
Orcid: https://orcid.org/0000-0001-7268-8009
deiltonribeiro@uit.br

Abstract: This study examines the convergence of Civil Law and Common Law systems, specifically focusing on judicial precedents within the Brazilian Civil Procedure Code and their implications on fundamental rights. Using a hypothetical-deductive research method, the study aims to understand how the incorporation of precedents from Common Law influences legal certainty, interpretation of norms in Brazil. The research involves analyzing doctrinal, jurisprudential, and legislative sources to identify relevant precedents and examine their impact on the judicial decisions. The findings will contribute to a deeper understanding of the interplay between Civil Law and Common Law, the role of precedents, and their effects on the consistency and fairness of legal application while safeguarding fundamental rights. The study's results will provide valuable insights into the convergence of legal systems and its implications for the Brazilian context.

Keywords: Convergence, Judicial precedents, Civil Procedure Code, Legal systems, Judicial decisions, Fundamental Rights.

1. Introduction

Brazil presented, until the advent of Law N. 13.105 on March 16, 2015, which instituted the Code of Civil Procedure, a weak model of judicial precedents. It has no tradition in creating precedents, the brazilian Courts are careful to only judge the appeals that are directed to them, rendering a decision that denies or grants that specific appeal, being concerned only with the solution of the case, without any prospective view, therefore not aiming to create a precedent for the solution of future correlated cases. However, the correct thing to do would be that the time and resources spent in solving the individual conflict were also used for the gradual formation of a pattern of conduct (Santos 2012, 189).

It is part of the legal landscape to live with conflicting decisions on the same subject, or rather, decisions involving the interpretation and application of the law to the same factual hypothesis. This disparity is common and accepted by the legal community. Based on the principle that the judge's freedom of conviction and decision should be preserved to the greatest extent possible, divergences are seen and accepted at most as a collateral effect of the dynamics of the civil law tradition. That is, the reign of rules established by the Legislative Power (Santos 2010, 40).

The procedural system does provide mechanisms for standardizing case law, but these tools have either fallen into disuse (such as the incident of uniformity of case law) or have been practically hindered by the disorderly profusion of disparate case law manifestations on the same subject. Not even the higher courts, which have the constitutional vocation to standardize the interpretation of the law for the entire country, achieve this goal (Santos 2010, 41).

In the Brazilian tradition adhering to civil law, one can observe the absence of a culture that allows for a correct understanding of common law institutions and the absorption of the phenomenon of binding judicial precedents. The mandatory application of judicial precedents implies a connection between civil law and common law in order to broaden hermeneutical horizons and emphasize the creative force of the adjudicatory function as judge-made law. However, mechanisms such as summary statements, the sampling of appeals, and the incident of repetitive demands are techniques based on the German model of procedure, not on the common law.

In this way, precedents are not equivalent to judicial decisions. Precedents are formed based on judicial decisions. And because they derive from decisions, precedents essentially work on relevant legal facts that make up the case examined by the judiciary and that determined the issuance of the judicial decision. Precedents are generalizable reasons that can be extracted from the justification of decisions and exclusively emanate from the Supreme Courts, and they are always mandatory, that is, binding. Law n. 13.105 of March 16, 2015, which instituted the Code of Civil Procedure, mistakenly determines that precedents originate only from summaries (Article 927, II and IV), repetitive appeals, assumption of competence (Article 927, III), and plenary or special body guidelines (Article 927, I and V).

Taruffo (2011, 142-143) also warns that a distinction must be made between precedent and case law. When speaking of precedent, reference is usually made to a decision concerning a specific case, whereas when speaking of case law, reference is usually made to a plurality, often quite broad, concerning various and diverse concrete cases. In general, the decision that is considered a precedent is a single one, making it easy to identify which decision becomes a precedent. On the contrary, in systems that refer to case law, reference is usually made to many decisions, sometimes dozens or even hundreds. Moreover, there are problems arising from the difficulty of establishing which decision is truly relevant or deciding how many decisions are necessary to say that there is a well-established and consistent case law regarding a particular interpretation of the law.

The precedent provides a rule (generalizable) that can be applied as a criterion for deciding the next concrete case based on the identity or analogy between the facts of the first case and the facts of the second case. Naturally, the

analogy between the two concrete cases is not given in re ipsa and will be affirmed or refuted by the judge of the subsequent case, depending on whether they consider the elements of identity or the elements of difference between the facts of the two cases to prevail. It is therefore the judge of the subsequent case who determines whether there is a precedent or not and, so to speak, *creates* the precedent (Taruffo 2014, 4).

In addition to this aspect, it is clear that the fundamental structure of the reasoning that leads the judge to apply the precedent to the next case is based on an analysis of the facts. If this analysis justifies the application in the second case of the *ratio decidendi* applied in the first case, the precedent is effective and can determine the decision in the second case. It should be noted that, when these conditions are met, a single precedent is sufficient to justify the decision in the subsequent case (Taruffo 2014, 4).

The method used to carry out the study was hypothetical-deductive, with the approach of categories considered fundamental for the development of the theme - such as the legal framework that underlies the theory of judicial precedents in the brazilian Code of Civil Procedure. The technical procedures used in the research for data collection were bibliographic, doctrinal, and documentary research.

The bibliographic survey provided the theoretical and doctrinal foundations from books and texts by renowned authors, both national and foreign. While the bibliographic framework relies on authors' foundations on a subject, the documentary research articulates materials that have not yet received proper analytical treatment. The primary source of the research is the bibliographic research that guided the analysis of constitutional and infraconstitutional legislation, as well as the doctrine that informs the concepts of dogmatic order.

2. The convergence of the legal systems of Common Law and Civil Law

It is important to differentiate convergence and hybridization between the two legal traditions. Convergence refers to the incorporation of institutions from another tradition to solve practical problems more efficiently within the local legal system, without losing the characteristics of the original tradition. On the other hand, hybridization involves the deliberate mixing of structural elements from both traditions, resulting in a mixed tradition without the predominance of either one. What we have observed is not a trend towards hybridization but rather convergence between the two legal families. This convergence has two generic causes: the first being globalization.

As known, globalization is a process that emerged in the late 20th century, involving social, cultural, economic, and political integration among countries. To facilitate global business transactions, globalization calls for legal systems across countries to have more common aspects than differences. The second cause stems from the search for solutions undertaken by every country to address deficiencies in its legal system. This search takes place internally and externally, with the observation of models and experiences from other countries, especially those with a different legal tradition. Based on this observation, a country may incorporate

institutions from another legal tradition that are considered more efficient in solving specific local problems (Cramer 2016, 29-30).

In Brazil, the movement towards convergence with common law has specific causes. The first cause is the loss of centrality of codes. In civil law, originally, codes were like oracles that provided ready answers to all societal demands. The judiciary was a mere applier of the text of the law, which already contained the norm clearly expressed, leaving little room for interpretation. However, the social changes that have become more frequent and rapid since the mid-20th century have required legislation that is more open and flexible than codes. The second specific cause relates to post-positivism. This legal ideology distinguishes principles from rules and establishes the primacy of principles over rules. Since principles are not ready-made norms and their understanding depends on how judges apply them to specific cases, judicial decisions on principles have become references for the interpretation of this normative species. The third cause is the advent of constitutionalism. In civil law countries, the Constitution has evolved from being a legal instrument for organizing the state to becoming the highest law of the legal system, containing the principles by which all other norms should be interpreted. With the predominance of the Constitution, Supreme Courts have assumed a leading role in local systems, and their decisions have been seen as references for the validity and interpretation of the law. Moreover, the importance of the new role of Supreme Courts has led to the adoption of concentrated control of constitutionality or unconstitutionality of norms, giving civil law systems features of another legal tradition (Cramer 2016, 31-32).

According to Barreiros (2016, p. 194), the observed convergence between the Romano-Germanic and Anglo-Saxon legal traditions significantly contributes to the exchange of legal institutions between legal systems belonging to different legal families. However, the importation of these institutions cannot be done without considering the cultural peculiarities of each system, which often leads to their partial reception or transformation into entirely different institutions, in order to adapt to the cultural reality of the receiving social group.

A first noticeable deformation in the use of precedents in Brazil is the invocation of a precedent in a specific case solely by citing its headnote. Frequently, judicial decisions state that they are applying a certain precedent, but they only mention the headnote without the concern of making the necessary factual comparison to ascertain whether the case to be judged aligns or not with the reasoning of the precedent's *ratio decidendi*. Different cases are thus grouped together as if they were the same (Barreiros 2016, 198).

Even more common is the use of a binding precedent's enunciation (which constitutes normative text that specifies the *ratio decidendi* of precedents repeatedly applied in constitutional matters) as if it were a legal text, disregarding the fact that its creation is not detached from concrete cases that possess factual substrates to be considered when applying the summary enunciation (Barreiros 2016, 199).

3. Judicial precedents in the Brazilian Civil Procedure Code and the protection of Fundamental Rights

With the enactment of Law no. 13,105 on March 16, 2015, which established the Brazilian Civil Procedure Code, the conducive context was created for the regulation and systematization of a theory of judicial precedents. The Article 926 establishes the obligation for jurisprudence to remain stable, integral, and coherent, which constitutes one of the key points of the stare decisis of common law. Paragraph 2 of Article 926 states that *when issuing precedents, courts must adhere to the factual circumstances of the precedents that motivated their creation*. Thus, Article 927 creates the system of judicial binding by determining that judges and courts observe the provisions of item II, which refers to *binding precedent statements*, and item III, which refers to *decisions in cases of assumption of competence or resolution of repetitive demands, as well as in judgments of repetitive extraordinary and special appeals*.

Furthermore, the heading of Article 927 establishes the binding effect of judicial precedents, both vertically (item IV) and horizontally (item V). Additionally, Paragraph 1 of Article 927 establishes the indispensability of reasoned decision-making by stating that decisions applying judicial precedents must comply with Article 10, which concerns the prohibition of surprise decisions. This demonstrates that, even in the application of judicial precedents, the guarantee of adversarial proceedings (Article 5, LV, Federal Constitution of 1988) and the legal requirements of decision-making justification must be observed.

Hence, Paragraph 1 of Article 489 states that *any judicial decision, whether interlocutory, final judgment, or appellate decision*, is not considered reasoned if it *item V - merely invokes a precedent or a precedent statement without identifying its determinative grounds or demonstrating that the case under judgment fits within those grounds*, or item VI - *fails to follow a precedent, case law, or invoked precedent without demonstrating the existence of a distinction in the case under judgment or the overruling of the understanding*.

Moreover, the cases of distinguishing and overruling, as mentioned in Paragraph 4 of Article 927, depend on *adequate and specific justification, considering the principles of legal certainty, protection of trust, and equality*. It should also be noted that Paragraph 2 of Article 927 allows for *the alteration of legal doctrine adopted in a precedent statement or in the judgment of repetitive cases*, opening up the possibility of holding *public hearings and the participation of individuals, organizations, or entities that can contribute to the reevaluation of the doctrine*.

Regarding the alteration of precedents, it is possible for the Supreme Court or the Superior Court of Justice to modify their precedents, which can also lead to a crisis of stability in the meaning of a particular legislative statement. Hence, there arises the need to reconcile, on one hand, the necessity for change in the law, and on the other hand, the protection of legal planning carried out and acted upon based on knowledge of a particular precedent. In this case, it is necessary to recognize the precedent as an element of cognizability and protect the trust placed in it, especially safeguarding acts of disposition undertaken in reliance on the revoked precedent as an exercise of the right to freedom. The alteration of a precedent cannot have retroactive effect; it is effective only for the future. This necessitates the inclusion of

provisions that safeguard legal certainty to protect individuals in the face of a precedent's alteration (Mitidiero 2017, 118-119).

What the Brazilian Civil Procedure Code of 2015 seeks, apart from the creation of binding judicial precedents, is the guarantee of equality and predictability, so that future cases can be judged based on precedents with the same legal matter, thus guaranteeing greater security to the legal relations and isonomy in the solutions of conflict, with respect to the motto *treat like cases alike* (Panutto 2021, 371).

It is no longer possible to conceive full autonomy in the interpretation provided by the judge when rendering the decision, disregarding the precedents of his own Court and superior bodies. The judge must *maintain consistency and watch over the respectability and credibility of the Judiciary. Moreover, it should not transform its own decision, in the eyes of the court, into a 'nothingness'*, forcing the defeated party to bring an appeal to establish an understanding of the already defined legal matter in precedent (Marinoni 2009, 207), (Panutto 2017, 65).

A different solution to correlated cases, besides generating legal uncertainty, disrespects the principle of equality, since, as standards must be applied in a uniform and impersonal way, citizens who are in an equivalent situation must receive equal treatment (Ávila 2012, 229-230), (Panutto 2021, 371).

The need to maintain a stable, complete and coherent jurisprudence demonstrates that there are not only institutional reasons for respecting precedents but also moral reasons, demanding the law is reinterpreted based on the conception of the political morality of society, establishing the Court's necessity to create and maintain morally justifiable precedents (Bustamante 2012, 251-255), (Panutto 2021, 368)

4. Final Remarks

Precedent provides a universalizable rule with binding force for successive cases based on the factual identity between the precedent case and the current case. On the other hand, jurisprudence is represented by abstract legal rules mentioned in headnotes, often without considering the facts that led to the adopted legal solution. However, the Brazilian Civil Procedure Code works with some hypotheses in which jurisprudence can have binding force. This is the case with legal precedents known as biding *summulas*. *Summulas* are statements that seek to externalize the determinative grounds of a given precedent, and they can also serve as summaries that fulfill the function of disseminating the decision made in specific cases (Pereira 2016, 669).

It is important to note that judicial precedents should not be confused with jurisprudential law understood as the repetition of repeated decisions, even though this law can be considered influential or persuasive in practice. Likewise, they should not be confused with individual judicial decisions. This is because judicial decisions, even if rendered by higher courts or supreme courts, may not constitute precedents (Zaneti Júnior 2016, 304-308).

In this regard, two reasons can be indicated for not every judicial decision being a precedent: a) a decision that applies a non-controversial law will not be a

precedent. In other words, a decision that merely reflects the interpretation given to a binding legal norm by the force of the law itself does not generate a precedent, as the general rule is a determinative reason and does not depend on the force of the precedent to be binding; b) a decision may cite a previous decision without making any new specification to the case, and therefore, the binding effect derives from the previous precedent case, not from the decision in the current case. It is worth noting that only a decision that has normative legal effects for future cases will be a precedent. A decision that simply applies an existing precedent case or a decision that does not have the content of enunciating a universalizable legal rule or principle is not a precedent. Similarly, a decision that merely indicates the subsumption of facts to the legal text without presenting relevant interpretive content for the current case and future cases is not a precedent (Zaneti Júnior 2016, 309); the aplication judicial precedents enables the delivery of judicial assistance more speedy and, consequently, with greater propensity to effectiveness, it collaborates for the optimization of the implied Fundamental Rights of access to justice, effectiveness and reasonable duration of the process as it arises from the very concept of the rule of law (Krebs 2015, p. 336).

Bibliography

1. Barreiros, L. M. S. 2016. "Estruturação de um sistema de precedentes no brasil e concretização da igualdade: Desafios no contexto de uma sociedade multicultural." In *Coleção grandes temas do novo CPC*, organizado por Fredie Didier Júnior et al, 183–211. Vol. 3 de *Precedentes*. 2ª ed. Salvador: JusPodivm.
2. Brasil. 1988. *Constituição da República Federativa do Brasil de 1988*. *Diário Oficial da União*, Brasília, 05 out. 1988. http://www.planalto.gov.br/ccivil_03/constituicao/constituicaocompilado.htm.
3. Brasil. 2015. *Código de Processo Civil*. Lei 13.105. Aprovado em 16 de março de 2015. *Diário Oficial da União*, 17 de março de 2015. http://www.planalto.gov.br/ccivil_03/_ato2015-2018/2015/lei/l13105.htm.
4. Bustamante, T. R. 2012. *Teoria do precedente judicial*. São Paulo: Noeses.
5. Cramer, R. 2016. *Precedentes judiciais: teoria e dinâmica*. Rio de Janeiro: Forense.
6. Krebs, H. R. D. 2015. "A importância dos direitos fundamentais para o sistema de precedentes." Dissertação de Mestrado, Universidade Federal de Santa Catarina. https://repositorio.ufsc.br/bitstream/handle/123456789/135144/334392.pdf?sequence=1&isAllowed=y.
7. Marinoni, L. G. 2009. "Aproximação crítica entre as jurisdições de civil law e common law e a necessidade de respeito aos precedentes no Brasil". *Revista da Faculdade de Direito-UFPR*, n.º 47, 29–64. https://revistas.ufpr.br/direito/article/viewFile/17031/11238.
8. Mitidiero, D. 2017. *Precedentes: da persuação à vinculação*. 2ª ed. São Paulo: Revista dos Tribunais.

9. Panutto, P. 2017. *Precedentes judiciais vinculantes: o sistema jurídico-processual brasileiro antes e depois do Código de Processo Civil de 2015 (Lei n. 13.105, de 16 de março de 2015).* Florianópolis: Empório do Direito.
10. Panutto, P. 2021. "A full deliberation of the brazilian Supreme Court for the effective creation of binding precedents: a view of the deliberative procedureof the US Supreme Court". *Revista da Faculdade de Direito do Sul de Minas*, Vol. 37, n.º 2, 363-381.
11. Pereira, C. F. B. 2016. "Fundamentação das decisões judiciais com base em precedentes no processo civil cooperativo." In *Coleção grandes temas do novo CPC*, organizado por Fredie Didier Júnior et al, 663-680. Vol. 3 de *Precedentes*. 2ª ed. Salvador: JusPodivm.
12. Santos, E. A. 2010. "Sobre a importância e os riscos que hoje corre a criatividade jurisprudencial." *Revista de Processo - RePro*, nº 181, ano 35.
13. Santos, E. A. 2012. "Em torno do conceito e da formação do precedente judicial." In *Direito jurisprudencial*, organizado por T. A. A. Wambier. São Paulo: Revista dos Tribunais.
14. Taruffo, M. 2011. Precedentes e Jurisprudência. *Revista de Processo – RePRO*, Vol. 199, São Paulo: Revista dos Tribunais.
15. Taruffo, M. 2014. Precedente e jurisprudência. Translator Chiara de Teffé. *Civilistica.com.*, ano 3, n.º 2, 2014. http://civilistica.com/precedente-ejurisprudencia.
16. Zaneti Júnior, H. 2016. *O valor vinculante dos precedentes: teoria dos precedentes normativos formalmente vinculantes.* 2ª ed. Salvador: JusPodivm.

Scientfic Article
UDK 342.722(497.7)
347.96/.99.047:005.21(497.7)"2017/2022"

TOWARDS BUILDING A STRONG JUDICIARY AND PROVIDING ACCESS TO JUSTICE FOR ALL IN NORTH MACEDONIA

Vesna Stefanovska, PhD
Legal researcher, Institute for Human Rights
Associate Editor of Legal Dialogue

Abstract
The 16th Sustainable Development Goal (SDG16) entitled as "To promote peaceful and inclusive societies for sustainable development, provide access to justice for all and build effective, accountable and inclusive institutions for all" contains core elements necessary for democratic societies. The rule of law, good governance, reducing corruption, providing access to justice for all and reducing violence are essential prerequisites for functioning of states. This paper will focus on the Goal 16.3 which refers to promoting the rule of law and ensuring equal access to justice for all with reference to North Macedonia. Furthermore, the paper will analyze the implementation of the Strategy for the Reform of the Judicial Sector 2017-2022 and the perception of public regarding the access to justice in the country. As a closure, the paper will give recommendations for the new Strategy as well as how to improve the trust in the judiciary and the access to justice in North Macedonia.

Keywords: rule of law, judiciary, access to justice, strategy, good governance and justice.

INTRODUCTION

SDG16 is a cornerstone for achieving the 2030 Agenda as a whole because it contains 12 targets and 24 indicators with many of them linked to the aspiration of peace, justice and strong institutions. Since the pandemic, it has been demonstrated that substantial progress is still needed in order to achieve these targets and especially difficult is to measure the fulfilment of the indicators. The SDG16 which refers mainly to providing access to justice emphasizes that it is quite complex to measure the trust in the courts or in the judiciary because it relies on the perception of citizens and the current situation in political, legal and social context.

In the 2012 Declaration of the High-level Meeting of the UN General Assembly on the Rule of Law (UN and the Rule of Law 2012), the UN member states stated that the rule of law and development are strongly interrelated and mutually reinforcing, and that the advancement of the rule of law at the national and international levels is essential for sustained and inclusive economic growth, sustainable development, the eradication of poverty and hunger and the full

realization of all human rights and fundamental freedoms, including the right to development, all of which in turn reinforce the rule of law. A fundamental principle of the rule of law is access to justice (EP 2022). The importance of access to justice for all has been broadly recognized with the adoption of the UN Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems (UNODC 2012, 67/187) – the first international instrument in this area. Respect for the rule of law contributes to reinforcing the respect of human rights, transparent, accountable and efficient state institutions, high rate of access to justice and trust in the judiciary.

This paper will focus on the aspect of providing access to justice for all and measuring the trust of citizens in the judiciary with special emphasis to North Macedonia. First of all, the paper will give general overview to the Strategy for Reform of the Judicial Sector (Strategy) and afterwards will focus on the implementation of the measures prescribed in the Strategy. Finally, it will elaborate the issue related to access to justice in the country, through statistical analysis of conducted surveys. The point is to show that low level trust of citizens in the judiciary and courts demonstrates the distrust of the public in exercising their rights and providing access to justice. Challenges limiting access to justice for marginalized and vulnerable groups of people (people with low income, persons with disabilities, asylum seekers, women – victims of domestic violence, Roma people, single parents etc.) cannot be solved only with the implementation of the Law on Free Legal Aid. Systematic reforms are needed and implementation of certain laws in order to enable these people to exercise their rights before courts and state institutions.

THE LEVEL OF IMPLEMENTATION OF THE STRATEGY FOR THE REFORM OF THE JUDICIAL SECTOR 2017-2022

The development of a system of autonomous, independent and impartial judiciary and institutions that gravitate towards the achievement of its function of effective, quality and equitable justice is a central postulate of the principle of the rule of law and the humane and sustainable development of the Macedonian society. (Ministry of Justice 2017). This wording arises from the Strategy as a result of the European Commission's assessments in its progress reports of the Republic of North Macedonia and the Recommendations from the Senior Experts 'Group on Systematic Rule of Law. The intention of the Strategy was to give instructions, directions for improving the judicial system by overcoming the existing normative and institutional deficiencies permeating throughout the system, but above all, to take into account the main issue with the interference of the executive power into judiciary. The outcome of the Strategy should be competent, independent, impartial, efficient and transparent judiciary through postulation of legal framework that will guarantee the implementation of these standards.

The Strategy foresees 227 activities and according to the Annual Report of the Ministry of Justice on the implementation of the Strategy, 140 activities have been fully implemented, 18 activities are in progress, 14 are delayed in implementation, 43 activities are implemented continuously, 6 activities depend on the previous adoption of constitutional amendments. while 6 activities are

incomparable due to a change in approach (Ministry of Justice 2022). A significant part of the strategic goals for the reform of the judiciary have been realized in terms of independence, impartiality and quality. In the area of independence and impartiality, it should be noted that a new Law on managing the case flow in the courts was prepared and adopted and the implementation of the process of digitalization in the judiciary began in the past year. However, the problem with the independence of the court budget remains unsolved. In respect of quality, the measure for clear and reasoned decisions of the Judicial Council for the selection and promotion of judges has been met (Abazi Imeri et.al. 2022, p.7). The Council of Public Prosecutors started to publish the name of the candidates for public prosecutors and from which public prosecutor's office they come and how long they have been acting as public prosecutors. For the first time, judges were given the opportunity to directly submit a request for the initiation of a procedure for disciplinary responsibility of a member of the Judicial Council whom they elected, but so far, no request has been submitted.

If we analyze the Strategy in terms of non-completion of some of the measures, it is evident that there is not progress in the establishment of investigative centres in the public prosecutor's offices. Moreover, the system for electronic distribution of cases in the public prosecutor's offices and in the Council of Public Prosecutors has not been established. Additionally, some of the measures are not completed due to the fact that the laws or amendments to certain laws were not adopted by the Assembly. This confirms that fact that the Assembly is the biggest obstacle for implementation of some of the measures determined in the Strategy.

In respect to access to justice, the legal framework has been set and several laws have been prepared some of them adopted, while the other are in process. The Law on Free Legal Aid has been adopted in 2019 which prescribes giving of primary and secondary legal aid. Primary legal aid is provided by the regional departments for free legal aid within the Ministry of Justice, registered citizens associations and legal clinic. The secondary legal aid is provided by the lawyers registered for giving secondary legal aid. Since 2019, the general impression is that the public is familiar with the possibility to ask for free legal aid and knows where to seek for primary legal aid. However, the law limits the possibility for acquiring a representation of a lawyer by the Ministry of Justice in certain procedures such as: criminal cases, public and communal services, most of the enforcement cases etc. The Law on Attorneys has not been adopted yet and at the moment, we cannot discuss about the results of its implementation.

The State Audit Office prepared an audit report, the purpose of which was to provide an answer as to whether the measures and activities defined in the Action Plan contribute to the achievement of the goals of the Strategy. The audit concluded that out of 130 measures, only 52% were fully implemented, 34% were partially implemented and 14% were not implemented. According to the findings of the State Audit Office, from the financial aspect, a total of about 74 million denars, or 20%, have been realized. If we analyze the low level of spent financial resources from the Budget, it is due to two capital investments, i.e., construction of new spatial conditions and spatial arrangement and separation of the public prosecution from the courts (State Audit Office 2022). It is not easy to fulfill these two measures and

obviously it takes more time that the prescribed in the Strategy. Thus, its is for sure that these measures will be provided in the next Strategy which is in process of preparation.

The new Strategy for the forthcoming period (2023-2027) should include the measures which were not implemented in the previous Strategy and should focus on the independence, impartiality and quality of the judiciary. This means that judges and public prosecutors should continue to be transparent, accountable, efficient and impartial in performing their duties. In light of the last negative developments in the Judicial Council, it should be considered for amendments to the Law on Judicial Council in respect of dismissal of the members of the Judicial Council for flagrant violations of the laws. Similar amendments should be done for the Council of Public Prosecutors. Transparency of the public prosecutor's offices is essential for enforcement of their functions. Integrity and implementation of the laws should be of utmost importance for selection of judges and public prosecutors (those who come from the Academy of Judges and Public Prosecutors and for those who will apply for promotion).

CITIZENS' PERCEPTION ABOUT ACCESS TO JUSTICE IN NORTH MACEDONIA

Access to justice as a basic principle of the rule of law and established standard, it is quite difficult to define in one sentence, because the meaning is broad and refers to many aspects. For example, it is mostly related to the right to access to court, legal representation, but also contains segments which point to many other areas of what means access to justice. This refers to the right to free legal aid, exercising rights in different procedures, combating discrimination and protection of the guaranteed human rights. Although these rights are not identified clearly as an access to justice, the international conventions and declarations contain provisions which guarantee the right to access to justice in different forms.

For example, the European Convention on Human Rights (ETS 5, 1953) as the most important regional human rights instrument for Europe, guarantees the right to a fair trial in Article 5 as well as the right to an effective remedy and submission of individual application before the European Court of Human Rights. Charter of Fundamental Rights of the European Union (2016) guarantees the right to an effective remedy and to a fair trial, including legal aid to those who lack sufficient resources. At the same time, access to justice is also an enabling right that allows those who perceive their rights as having been violated to enforce them and seek redress.

The Constitution of North Macedonia (Official Gazette of RM no.52/1991) does not explicitly recognize the right to access to justice, but if we analyze some of the provisions, it is undoubtedly clear that access to justice is guaranteed. The Amendment XX (2005) which is an Addendum to Article 13 from the Constitution guarantees *"court protection against final verdict for an offence, under conditions and procedure determined by law"*. Furthermore, the Amendment XXI to the Constitution (2005) which replaced Article 15 from the Constitution, prescribes that *"the right to appeal against decisions in first instance proceedings by a court is*

guaranteed". Moreover, this right is determined by law. Furthermore, Article 5 from the Constitution guarantees the right to every citizen to seek protection of his rights and freedoms before regular courts as well as before the Constitutional Court. Additionally, judicial protection of the legality of individual acts of state administration as well as of other institutions carrying out public mandates, is guaranteed.

Although the wording of the Constitution indirectly guarantees the right to access to justice, and separate laws explicitly provide access to justice, the situation in practice is quite different. Unfortunately, the citizens' perception about the possibility to exercise this right is quite low and this distrust is a result to many problems related to the judiciary and personal opinion of each citizen related to his or her direct experience with access to justice, or a perception because the majority has created some opinion without being able to be directly involved with some legal problem or an issue of this kind.

In 2022, the Institute for Human Rights engaged a company to conduct a telephone survey to determine the public opinion and citizens' perception with regard to access to justice in North Macedonia. The aim of the survey was to explore citizens' awareness of their experience with access to justice in the country, as well as the problems and challenges they encounter in exercising their rights before state authorities (DeSo Survey, 2022). A small number of people responded that they had a certain legal problem and they asked for some kind of legal aid. When the results were cross-compared by gender, age, education and place of residence, they shown that all citizens are equally to have legal problem regarding of gender, ethnicity, age and etc. (IHR Report 2022, p.14). The worrying finding from the survey is the fact that citizens do not believe that they can be protected by the Constitution and by the laws in the country. A vast majority of the surveyed citizens believe that Constitution and laws do not protect them at all or that they only protect them a little. These opinions lead to a closure that if citizens do not people believe in the Constitution and laws that guarantee the access to justice, the rule of law and good governance, then the obvious answer is that access to justice cannot be obtained in the country, or sometimes very rarely. Another intriguing observance is that as respondents become older their confidence in access to justice in the country declines. Young people are more willing to say that there is generally justice or that it can be obtained in most of the cases. They are at the same time less inclined to say that justice can never be obtained. Thus, it means that pessimism and mistrust grow with age (ibid, p.17). If we analyze, this perception can be result of two possibles reasons. The first one implies that when people become older their mistrust in access to justice is bigger if they had some legal problem that did not end in their favour. The second possibility is when people become older are aware of the situation in their country from political, legal, social or other aspect. In that case their mistrust is bigger as a result of their perception and how they experience events and political situations that surrounds them in everyday living. It is usual for younger people to be more optimistic and to have more faith in the legal system and greater expectation when they had not faced with certain legal problem, or are not familiar with the current situation in the country from different aspects. However, the survey shows that all branches of power (legislature, executive and judiciary)

should be devoted to regain the trust of the citizens, to emphasize that access to justice must be guaranteed to everyone regardless of the outcome of the legal dispute or some other issue in question.

The practice shows that if it is hard to achieve access to justice, how can we guarantee access to justice for all? Vulnerable and marginalized groups of people are faced with the biggest obstacles to achieve justice. The statistics show that beneficiaries of the welfare system, low-income persons, persons with disabilities, Roma people and many more face big difficulties in accessing justice. We must change the approach to access to justice because societies cannot be inclusive without equal justice for all. The Law on Free Legal Aid is just one aspect of gaining access to justice. We must work on raising awareness that all people have right to access to justice regardless of their gender, race, national and social origin, religion etc. After all, the Constitution prescribes that citizens are equal before the Constitution and the laws. If they are qual, it means that they have same rights and obligations, thus they must have an opportunity to exercise these rights and fulfill the obligations. For that, they must have equal access to justice.

HOW TO IMPROVE THE TRUST IN THE JUDICIARY?

Trust in the judiciary and especially in the courts is a main aspect of the rule of law. Without trust we cannot speak about rule of law or good governance. Effective implementation of the rule of law requires transparency and legitimacy. This means that institutions should demonstrate to the citizens its rightful possession of power and in the same time to be trustworthy and emphasize that they possess legitimate authority (Jackson et al. 2011, 268).

In the society governed by the rule of law, the courts and judiciary are accorded institutional responsibility to interpret and apply the law. Unlike the legislative and executive branches of government, the judiciary has no independent force to compel individuals to comply with its application of legal principle, so perceptions of its legitimacy are even more important because its authority depends upon public acceptance of its role (Wallace and Goodman-Delahunty 2021, 2).

In this connotation, it is quite difficult to discuss how to improve the trust in the judiciary, when it is complex to measure which can be done in different ways. The trust may be subjective, i.e., may depend on specific current situation in the country which may affect the perception of citizens' trust in the judiciary. Particular judgment delivered about specific case of high profile or important for the public, may create opinion which is general and expressed in given circumstances. Van Dijk (2021) points out that institutional trust can be further distinguished between its diffuse form (trust in an institution in general) and specific form (trust in an institution to do something specific such as uphold the law).

Increasing trust in the judiciary has proven to be a difficult task for judicial and prosecutorial authorities in North Macedonia. This is due to the fact that in the past years and even decades since the independence of the country, the judicial power has not succeeded in becoming the third power in the division of power between the branches. As the reports of the European Union and other international institutions show that the judicial power is dependent and strongly influenced by the

executive power. In recent years, serious reforms have been made by amending and adopting new laws that affect the judiciary and the public prosecutor's office. Although the legal regulation is well established, there is still lack of implementation in practice.

The non-completion of cases of high corruption that were in the public focus and the obsolescence of some of them, lead to the impossibility of access to justice for all citizens in the exercise of their rights before the courts and prosecutor's offices and destroyed the trust in the judiciary. But that does not mean that there are no good judges and prosecutors who work in accordance with the Constitution and laws and possess integrity to perform their duties. However, they should dare to stand up and change the perception that citizens have about the judiciary, even though they may never have faced the judicial or prosecution institutions, but they built that attitude as a result of the information they receive from political parties, the media and the activities undertaken by civil society organizations.

If we look at the analysis conducted on behalf of the Center for Insights in Survey Research (CISR 2022) by Brima market research company, which was presented to the public, it shows that only 4% of the citizens declared that they have complete trust in the courts, i.e. in the judiciary, 19% have somewhat trust, 20% have somewhat distrust and 52% have distrust a great deal. However, it must be noted that the ideal percentage of citizens' trust would be 50% because when it comes to a legal problem in the judiciary or in the prosecutor's office, one side will always not be satisfied with the outcome of the procedure. Although the total confidence of the citizens according to the survey is low, it does not mean that only such a percentage of the citizens have faith in the judiciary.

Increasing trust in the judiciary is necessary, but at the moment it is very difficult to achieve. This is because all bodies in the judiciary and in the public prosecutor's office need to be united in fulfilling their legal responsibilities. The Judicial Council and the Council of Public Prosecutors, as authorities that are competent for appointing and dismissing judges and prosecutors, in addition to other competences, need to be at the level of the task they have. This especially applies to the Judicial Council due to the recent events with the illegal dismissal of the president of this body. As soon as possible, the Judicial Council needs to restore its legitimacy before the citizens, to carry out its competences in accordance with the Law on the Judicial Council and to be the pivot of the judiciary, a body in which, first of all, the judges, and then the citizens, will have confidence. Citizens' trust in the judiciary means efficient access to justice and good governance. If these elements are fulfilled, then we can talk about a democratic state that has a strong judicial power that can be up to its competences just as the legislative and executive power.

CONCLUDING REMARKS

How do we increase the access to justice and the rule of law in a way that benefits to all, but mostly to the marginalized and vulnerable groups of people? How can we create inclusive society in North Macedonia in which the rule of law and human rights are respected? It is quite difficult to give answers to these

questions in the current legal, social and political context in the country. Although the legal framework has been changed and new laws have been drafted and adopted, still we fail in the full implementation of the laws and consequently to the measures prescribed in the Strategy. As already written in this paper, in order to maintain the rule of law and to regain the trust in the judiciary, judges and public prosecutors should be persons with integrity who will respect the principles of transparency, accountability, efficiency, impartiality in conducting their duties. For that reason, we need strong and independent members of the Council of Public Prosecutors and the Judicial Council. The latter has shown that it lost its legitimacy and, in this composition, it is quite difficult to perform its competencies or to deliver decisions which will not be questionable to the general public. Challenges will always exist when we talk about rule of law and access to justice, but these two are mutually dependent. We cannot have access to justice without rule of law and at the same time we cannot speak about rule of law without access to justice and to courts for all citizens. Sometimes the issue related to access to justice may be the lost trust in the courts, personal opinion related to lost court case, or inability to address to court for people with disabilities. These obstacles must be overcome and courts should become places where people will be able to address their legal problem and to expect to receive judgment based on facts and proofs.

REFERENCES:

1. Amendment XX to the Constitution of the RNM. Official Gazette no.107/2005.
2. Amendment XXI to the Constitution of the RNM. Official Gazette no.107/2005.
3. Abazi Imeri, Ardita, Avramovski, Darko, Zagar, beba, Kocevski, Goce, Kadric, Jelena, Kareva, Tona, Pirovska, Uranija, Hadji-Zafirov, Zharko. 2022. *Analysis: Comprehensive assessment of the implementation of the Strategy for the Reforms of the Justice System (2017-2022).* Institute for European Policy – EPI. ANALYSIS_COMPREHENSIVE-ASSESSMENT-OF-THE-IMPLEMENTATION-OF-THE-STRATEGY-FOR-THE-REFORM-OF-THE-JUSTICE-SYSTEM-2017-–-2022.pdf (epi.org.mk)
4. Center for Insights in Survey Research. 2022. "National Poll of North Macedonia". https://www.iri.org/resources/national-poll-of-north-macedonia-september-october-2022/
5. Constitution of the RNM. Official Gazette no.52/1991.
6. Council of Europe. European Convention on Human Rights. ETS 5, 1953.
7. Development Solutions (DeSo). 2022. "Survey-Access to justice in North Macedonia". *Institute for Human Rights.*
8. European Union: Council of the European Union, *Charter of Fundamental Rights of the European Union (2007/C 303/01).*
9. European Parliament. 2022. *"Peace, justice and strong institutions: EU support for implementing SDG16 worldwide"* https://www.europarl.europa.eu/thinktank/en/document/EPRS_BRI(2020)646156
10. Institute for Human Rights.2022. "Report- Access to justice".
11. Jackson, Jonathan, Bradford, Ben, Hough, Mike, Kuha, Jouni, Stares, Sally, Widdop, Sally, Fitzgerald, Rory, Yordanova, Maria, Galev, Todor. 2011.

"Developing European Indicators of Trust in Justice". *European Journal of Criminology 8(4)*.
12.Ministry of Justice. 2017. "Strategy for Reform of the Judicial Sector for the Period 2017-2022 with An Action Plan".
13.Ministry of Justice. 2022. "Yearly report about the implementation of the Strategy for Reform of the Judicial Sector 2017-2022".
14.State Audit Office. 2022. "*Final report for successful revision on the effectiveness of the implementation of the Strategy for the Reform of the Judicial Sector 2017-2022 and implementation of the Action Plan*". https://dzr.mk/sites/default/files/2023-01/169_RU_Efektivnost_od_sproveduvanje_Strategija_za_reformi_vo_pravosudniot_sistem_2022.pdf
15.van Dijk, Frans. 2021. *Perceptions of the Independence of Judges in Europe: Congruence of Society and Judiciary*, Palgrave MacMillan, Switzerland.
16.United Nations and the Rule of Law. 2012. *"Declaration of the High level meeting on the Rule of Law"*. https://www.un.org/ruleoflaw/high-level-meeting-on-the-rule-of-law-2012/
17.United Nations Office on Drugs and Crime (UNODC). 2012. *"United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems 67/187"* https://www.unodc.org/documents/justice-and-prison-reform/UN_principles_and_guidlines_on_access_to_legal_aid.pdf
18.Wallace, Anne and Goodman-Delahunty, Jane. 2021. "Measuring Trust and Confidence in Courts". *International Journal for Court Administration 12(3)* *https://doi.org/10.36745/ijca.418*

Scientfic Article
UDK 341.33/.34:355.48(477)

RESPECT FOR INTERNATIONAL HUMANITARIAN LAW IN THE MILITARY CONFLICT IN UKRAINE

Prof. Dr. Svetlana Veljanovska
Faculty of Law - Kicevo
svetlana.veljanoska@uklo.edu.mk
MA Arjana Shala
PhD student Faculty of Law – Kicevo
aarjana.shala@gmail.com

Abstract:
International humanitarian law (IHL) is a system of rules that govern the relations between states as belligerents in the event of war or another type of armed conflict. The rules that make up the system of IHL are applied from the beginning of the armed conflict until its end and until the consequences of that armed conflict continue. The main objective of IHL is to make armed conflicts as inhumane as possible by preventing excessive casualties, human suffering and material destruction that are not in service of the achievement of the military objective.

This paper aims, by elaborating on the situation with the military actions in Ukraine, to show whether and to what extent IHL is respected by both parties involved in the conflict. The intention will be to consider the human dimension of IHL and what can be achieved by balancing military needs with the needs of humanity.

Keywords: humanitarian law, armed conflict, humanity, conflict, victims.

1. Introduction

The basic goal of international humanitarian law can be represented through four basic principles. The first is the **principle of humanity** and signifies the obligation to respect human life and dignity and the prohibition of inhumane treatment and any kind of torture. Humanity obliges those who fight or participate in war to distinguish between the civilian population and members of the armed forces when taking military action. The second is the **principle of military necessity,** according to which the warring parties should have freedom in conducting military operations, in choosing and using the means and methods of warfare, but only to the extent and in the manner necessary to achieve the military objective. **The principle of proportionality** is the third in IHL and it prohibits the use of means and methods of warfare that cause excessive injury or unnecessary suffering that are not commensurate with military necessity. The principle of proportionality obliges the warring parties to use only means and methods of warfare that are in function of the military objective. The fourth is the **principle of limitation** according to which the warring parties do not have an unlimited right to choose the means and methods of

warfare. This implies that each of the parties in an armed conflict, it is obliged to comply with the prohibitions on the use of specifically determined means and methods of warfare.

These fundamental principles are the obligation of the states which signed the Geneva Convention, their protocols and other modern international legal instruments. States have an obligation in any situation of international or non-international armed conflict to respect the rules of IHL, and to ensure the respect of those rules by their authorities and by the persons under their authority. Every state must also respect the customary rules of IHL and cannot be freed from that obligation with the excuse that it does not accept those rules.

After elaborating the basic principles of IHL, we come to the specific conflict that will be discussed in our scientific paper. Whether and how IHL is respected in the military conflict that has been taking place for more than a year on the soil of Europe formally between two states: Russia as the aggressor and Ukraine as the country on whose territory the military actions are taking place.

2. Why did the war start in Ukraine?

With the declaration of its independence in 1991, Ukraine began its journey as an independent and sovereign state. Until its independence, it was part of the USSR with all the characteristics and social organization of the state to which it belonged in the previous period. In the period that followed, Ukraine increasingly oriented itself towards the European Union and NATO, and in 2013 the signing of an agreement with the EU was imminent, however, it was prevented due to the pressure from Russia by the former President of Ukraine, Viktor Yanukovych. The consequence of that was the annexation of the Crimean peninsula by Russia, and according to numerous analysts, the beginning of the military conflict in Ukraine or as Russia calls the "special military operation" can be located here. In the following years, apparently, NATO member states and Russia as their opponent were preparing for the conflict that had its beginning in February 2022.(Modern War Institute 2023)

The formal military activities or special military operation as Russia calls it was announced by its President Vladimir Putin, stating that: ***"circumstances require firm and urgent actions from us. I have decided to conduct a special military operation, the purpose of which is to protect the people who have been suffering from abuse and genocide by the Kiev regime for eight years. Whoever tries to stop us and create additional threats to our country, our people, should know that Russia's response will be immediate and lead to consequences that you have never faced. We are ready for all outcomes."***(DW Report 22.02.2022)

Despite the fact that Ukraine expected the attack from Russia, it was caught by the attacks in the first moment. The civilian population evacuated to the parts of the country where there was no conflict, but a large number of women and children left the country, trying to take with them only the most necessary things. Almost eight million refugees from Ukraine arrived in the countries of Europe. According to the report from the UN High Commissioner for Refugees (UNHCR), the exact number of people who left Ukraine since the beginning of the war is 7,977,980. The most people sought refuge in Russia, i.e. 2,852,395, then in Poland 1,563,386

people, in Germany 1,021,667 people, in the Czech Republic 482,049 people, in Italy 167,925, in Spain 161,012, and in Great Britain 155,500 people.

The army was stationed in the eastern regions of Donetsk and Luhansk, where the activities of the Russian armed forces were greatest.

The West mobilized immediately and stood in support of Ukraine. Financial means for warfare, weapons, food and other types of aid came from all countries in Europe and the USA, and at the same time reception centers were opened to shelter the numerous refugees from Ukraine.

3. The attitude of the countries of Western Europe and the USA towards the conflict

The relations between the European Union and Russia were built on the foundations of the agreements concluded in the nineties. Based on them, EU-Russia conferences were held and gradually Russia adapted to the demands of the Union. In 2014, due to the events in Ukraine, sanctions were imposed on Russia. The Minsk Agreement (February 12, 2015) aimed to bring peace to the territories of eastern Ukraine through a package of measures[1]. In the first moments after the signing of the Minsk 1 and Minsk 2 agreements, the situation became stable at that moment, however, as we see from today's perspective, it never ended completely and the provisions of the agreement were never fully implemented. The sanctions that have been imposed on Russia have proven to dissuade it from complying with European demands.

The member countries of the EU, USA, Canada and Great Britain stood behind the defense of the territorial integrity of Ukraine. Although the country is not a member of either the EU or NATO, military equipment and weapons are donated daily by them, and the information that Ukrainian soldiers are being trained to handle the donated equipment is not a secret either.

Also these democracies are making efforts to control Russia's economic resources by freezing the assets of the Russian National Bank, excluding major Russian banks from the SWIFT payments network, banning the use of Russian oil and gas, closing their own airspace for overflight of Russian planes. Numerous sanctions have also been imposed on Russian politicians such as President Vladimir Putin, Foreign Minister Sergey Lavrov and numerous other prominent figures from Russia.

Already with the Minsk Agreements 1 and 2, Russia advocates that the nuclear weapons possessed by the USA must not be stationed outside its territories. Negotiations to limit the use of short- and medium-range missiles and intercontinental missiles are still in doubt, and as the situation is unfolding, they are unlikely to be on the agenda any time soon.

The USA, Great Britain and the EU are unanimous that Ukraine must have their full support and that the data regarding the armaments of the two countries in

[1] This agreement consists of a package of measures: a ceasefire, the withdrawal of heavy weapons from the front line, the release of prisoners of war, a constitutional reform in Ukraine granting self-government to certain regions of the Donbas, and the return of control of the country's state border from side of the Ukrainian government.

conflict, Ukraine and Russia, give them the right to help the side that, in their opinion, is in the right. According to the data from 2022 (source Military balance 2022) Ukraine has about 200,000 active and 900,000 soldiers in reserve compared to Russia's 900,000 active and about 2,000,000 soldiers in reserve.In terms of weapons of war, Russia is also proportionately dominant, so in the same data it can be read that it has 3417 battle tanks, 1391 combat aircraft, 7272 armored vehicles, 5899 artillery weapons and 407 offensive helicopters. In terms of weapons, Ukraine has 987 tanks, 124 aircraft, 831 armored vehicles, 1818 artillery pieces and 57 helicopters. In the meantime, Western countries and NATO members have delivered large amounts of weapons to Ukraine as well as funds to support defense activities in the territories of Donetsk and Lugansk in Ukraine.

Given the fact that Ukraine is not a member of NATO, the member states can only support it in the ways they have at their disposal now. The option of sending NATO troops to Ukraine or directly defending the country would mean expanding the conflict and giving Russia the legitimacy to intervene militarily in each of the member countries. It is not an option and the leaders of the countries know it, also it is well known fact to the countries that are members of NATO and above all the United States, as the leading force of this military organization.

However, this does not mean that NATO remained a passive observer of what is happening in Ukraine. For the first time since their admission to NATO, they deployed troops in Estonia, Latvia, Lithuania, Poland and Romania and extended the protection over the airspace over the Baltic and Eastern states in Europe, in order to intercept Russian planes that would cross the borders of NATO member states.

Such measures caused a reaction from Russia, which demanded these forces to be withdrawn from the states that are close to its borders. NATO members are unanimous that Russia must face consequences for its military actions in Ukraine. For now, they are reduced to packages of sanctions in the economic and political spheres. They are still restrained in military actions because they are aware that if the military units of NATO and Russia clash, it will mean the start of a military conflict on the global scale (NATO’s founding treaty-Article 5).

4. The attitude of the UN towards the conflict

Since the beginning of the conflict in Ukraine, the United Nations (UN) through its bodies and organs has been involved in attempts to overcome the situation with the military conflict in Ukraine. The place where it should be discussed and possibly find a solution to this conflict is the Security Council. It is actually the body in which a solution should be found to stop the armed conflicts that occur on the territories of the UN member states or between the member states. The way to resolve the conflicts that have arisen is to find a diplomatic solution, to achieve a cessation of armed conflicts, hiring people who will try to sit the warring parties at a common table and convince them that they should reach a mutually acceptable solution.

In this case, things are a little more delicate because Russia is a country that has the right to veto all decisions of the Security Council, and for now there is no way to overcome this situation. In particular, all commitments by Ukraine to pass a resolution on a ceasefire by Russia cannot be processed before the Council, because

Russia is a permanent member there and its vote will always be against. And the reason for that is the fact that for Russia there is no military conflict, but as they defined it, it is a "special military operation".

A few years ago there was an attempt to regulate the right to use the veto. France and Mexico as proponents managed to secure the support of more than 100 UN member states that the right of veto does not apply to cases where "mass atrocities" are concerned. At the same time, Spain advocates the complete abolition of the right of veto. But these proposals, although they are from 2013 (Veto code of conduct 2013), have not yet been processed and everything comes down to the conclusion that the UN Security Council acts after the problem arises and not preventively even in situations where it could be assumed that it would there has been an escalation of conflicts and that there will be consequences, for instance the genocide in Rwanda in 1994, the bombing in Yugoslavia in 1999 or the invasion of Iran in 2003 and similar events.

The conditions in Ukraine are not new and it could be assumed that after 2014 with the annexation of Crimea, Russia will continue with its efforts to "liberate" the territories where the Russian population lives in Ukraine. But the UN, through its bodies such as the Office of the UN High Commissioner for Human Rights (OHCHR), deals with statistical records of civilian deaths and injuries after they occur. So it recently announced that it recorded 8,490 dead and 14,244 injured civilians from the beginning of the invasion on February 24, 2022 to April 2023. Of course, the fears of the OHCHR are justified, it fears that the number of victims is much higher due to the limited access to the war zones. Most of the deaths were registered in the territory controlled by the Ukrainian government, including 3,927 people from Donetsk and Luhansk regions. (UNHCR march-december 2022)

5. Russia's attitude towards the conflict

The special military operation on the territory of Ukraine was launched by Russia with several demands: to recognize Crimea as part of Russia, to recognize the independence of the eastern regions of Luhansk and Donetsk as territories with majority Russian population, and to make constitutional changes in Ukraine that would make the entry of this state into NATO and EU impossible. From the point of view of Russia, the demands are legitimate because it believes that the establishment of NATO troops on its borders will lead to violation of the international agreements created by the collapse of the Warsaw Pact in 1991. Russia's insistence on a neutral and demilitarized Ukraine as a guarantor of its security is not in accordance with the actual situation of its environment, since the Baltic countries which are on the north-west border of Ukraina: Estonia, Latvia and Lithuania, as well as Turkey on the south, are NATO members.

Regarding the aid that NATO and the EU countries, together with Great Britain and Canada, deliver to Ukraine, Russia considers that it is a destructive activity that contributes to increasing tension in the region and reduces the possibilities for a political solution to the problem between the two neighboring countries. The reasons that Russia says that it was necessary for it to undertake 'the special military operation' in the eastern parts of Ukraine is the discrimination against people who speak Russian outside the borders of Russia. According to them,

Russophobia is a phenomenon that is the first step towards the genocide of the Russian population outside the home country. With arguments in this direction, they justify all subsequent actions on the territory of Ukraine, that is, from the annexation of Crimea to what is happening in the area of the Eastern regions of Donetsk and Luhansk.

6. Humanitarian consequences for the population of Ukraine

The United Nations Human Rights Council is establishing an investigative body dealing with war crimes committed on the Russian invasion of Ukraine. This commission has the task to investigate, document and report on human rights violations and international crimes committed against the people of Ukraine.

According to their reports so far, certain actions on the part of Russia can be qualified as a crime against humanity. The commission determined that around 16,000 children were illegally transferred and deported from Ukraine, citing figures from the Ukrainian government. Russia denies the allegations, saying it voluntarily evacuated people from Ukraine.

This body has no legally binding powers, but discussions within it can trigger investigations that then submit evidence to national and international courts.(Report No 27, 30 april 2023)

The UN High Commissioner for Refugees (UNHCR) has already released data that about 8 million people have left Ukraine and are being treated as refugees in the countries where they have found refuge. Most of them, more than 2.8 million are in Russia and 1.5 million in Poland. Other European countries have sheltered hundreds of thousands of refugees each, with the exception of the Czech Republic, which has received about half a million refugees from Ukraine.

The humanitarian consequences of the Russian aggression against Ukraine have been discussed many times this year by UN bodies and organs. The need for an **"immediate cessation of hostilities by Russia against Ukraine, especially all attacks on civilians and civilian infrastructure and the withdrawal of armed forces from Ukraine"** is initiated at each such meeting. (Refuges from Ukraine recorded across Europe)

People evicted from Ukraine suffer emotional and physical consequences. But what is more worrying from the point of view of IHL is the fact that even after more than a year there are no announcements that the situation in Ukraine is moving in the direction of improvement for the civilian population and the creation of conditions for return to the regions affected by the armed conflict. The reports from this area are still that the military actions are taking place continuously, that homes, infrastructure, state and private buildings are being destroyed. All this says that there will be no possibility to return to normal life in these regions soon, regardless of whether in the near future the hostilities will stop and through negotiations some kind of peace will be reached.

7. Concluding observations

The main objective of IHL is to make armed conflicts as inhumane as possible by preventing excessive casualties, human suffering and material destruction that are not in service of the achievement of the military objective.

Does this apply to Ukraine and all that is happening there in the past period? No! The principles we mentioned at the beginning of the paper: *humanity, military necessity, proportionality and limitation* are not only not respected, but have also been violated many times and are still being violated even though both warring parties as well as those who help them are signatories to the Geneva Conventions.

The war in Ukraine is becoming more complicated. Expectations that after the western allies, especially the United States, will be involved in it (with advice, tactics, training, equipment, weapons) Russia will have to surrender and stop its military actions, for the time being are shown as unfounded.

The public is increasingly concerned that with the prolongation of military activities, the United States will gradually lose interest in supporting Ukraine, and although they sympathize with the suffering of this country, the citizens of the United States will begin to react to the outflow of financial resources. However, the voters of the leaders of every country, including the United States, choose them to solve problems at home. World peace should be a matter for which the UN is in charge.

The post-covid situations in the world have shown that the lack of food, energy, medicines and other things necessary for the life of citizens is a serious problem that needs to be solved systematically and for which large financial resources are needed. This means that a possible long and expensive war between Ukraine and Russia is not in the interest of other countries that now still give open support to the country whose territory is attacked, which is Ukraine.

International humanitarian law is of the opinion that non-compliance with the Geneva Conventions, their protocols and other binding international documents that constitute the legislative basis of IHL entails responsibility for states and individuals. In terms of locating responsibility for non-compliance with IHL, as well as in terms of bringing charges against individuals, the concerned state has the primary responsibility. In this sense, international justice can only complement those efforts when states are unwilling or unable to investigate and prosecute perpetrators of violations of IHL rules.

When the state does not apply the rules of IHL, it can be called to responsibility which can be political and responsibility for the damage caused. The sanctions that are taken in the case of established political responsibility of the state consist of political or diplomatic blockades expressed through exclusion or refusal of membership of that state in a certain international organization, termination of diplomatic relations or public condemnation by the authorities of an international organization. The state can also be sanctioned through economic blockades expressed through an embargo on imports, cancellation of exports or similar sanctioning measures.

All or most of these measures are already being taken against Russia. The purpose of the sanctions is to force the state to publicly apologize for an international crime committed, to withdraw from the occupied territory, to return the benefit obtained from the aggression, to take some administrative measures and especially punitive measures against the persons under its control who have acted contrary to the norms of international law.

In case of political responsibility of the state and if it is evaluated as a

necessary course of action, with a decision of the UN Security Council, military force can be used against the state if it is necessary to preserve or restore peace in a certain region. There is still no possibility for this to be implemented due to Russia's right to veto in the Security Council of this organization.

What we can now propose, as a possible solution, is to sit down at the negotiating table. The leaders of the two warring parties are still of the opinion that the advantage is on their side and that the opponent must obey their demands. Russia considers it the autonomy of the regions where the Russian people are represented in large numbers. For Ukraine, losing territory that has been its own since 1991 is not an option.

Tough decisions have to be made. Ukrainians are fighting, dying, emigrating, losing their homes, and in my opinion, they are the ones who should decide if, when and how the war should end. It should be clear to the leaders of the country as well as to the people that the aid by the other countries has limits. The assessment of how they should proceed is based on a realistic assessment of their own capacities: money, people, weapons, infrastructure, preparedness for victims and material damages. Victory is imperative, but is it at any cost?

Russia is a nuclear power and thus poses a threat not only to Europe but also to the whole world. Victory over Russia, according to previous experiences, will not come on the battlefields, but at the negotiating table.

Diplomacy is the most likely way to resolve this conflict, whatever it is called.

It will be a victory for Ukraine to get back the occupied territories of Crimea and Donbas, to receive payment of reparations for the damage done and to present the leaders of Russia (primarily President Vladimir Putin and the generals) before the international court as war criminals.

For Russia, the victory is likely to show the West that they still have the men and equipment to fight with it through the Ukrainian territory. The large number of Ukrainians who have requested temporary residence in Russia lends credence to the arguments that the Russian community in Ukraine has had their human rights threatened. According to Russia, Ukraine will have to recognize the annexation of Crimea and four Ukrainian regions as a "new geopolitical reality".

8. References

1. Convention (I) for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field. Geneva, 12 August 1949.
2. Convention (II) for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea. Geneva, 12 August 1949.
3. Convention (IV) relative to the Protection of Civilian Persons in Time of War. Geneva, 12 August 1949.
4. Modern War Institute: What is Russiaʼs Strategy in Ukraine, 2023
5. Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), 8 June 1977.
6. Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II), 8

June 1977.
7. UNHCR : Refuges from Ukraine recorded across Europe, maj 2023 (visited on 06/07/2023)
8. UNICEF: Ukraine Humanitarian situation Report No 21, 1 january - 24 april 2023 (visited on 06/15/2023)
9. UNICEF: Ukraine Humanitarian situation Report No 26, 31 march 2023(visited on 06/15/2023)
10. UNICEF: Ukraine Humanitarian situation Report No 27, 30 april 2023 (visited on 06/15/2023)
11. UNHCR: Ukraine Sutuation Regional Refugee Response Plan march-december 2022 visited on 06/07/2023)
12. https://data.unhcr.org/en/situations/ukraine (visited on 06/15/2023)
13. https://www.dw.com/sr/putinova-objava-rata/a-60868682
14. https://www.unian.info/war/10391709-almost-entire-grey-zone-in-donbas-liberated-by-ukraine-without-minsk-deal-breach-adviser.html (visited on 05/20/2023)
15. https://una.org.uk/ (visited 20.05.2023)

Original Scientfic Article
UDK 336.71-043.86(100)
334.72.012.63/.64:336.71(100)
332.146.2:[334.72.012.63/.64:336.71(100)

INNOVATIVE AND EFFECTIVE DEVELOPMENT FINANCE INSTITUTIONS FOR SUSTAINABLE DEVELOPMENT[2]

Ivana Ostojić, PhD, Research Associate
Institute of Social Sciences, Belgrade, iostojic@idn.org.rs
Predrag Petrović, PhD, Principal Research Fellow
Institute of Social Sciences, Belgrade, ppetrovic@idn.org.rs
Predrag Jovanović, PhD, Principal Research Fellow
Institute of Social Sciences, Belgrade, pjovanovic@idn.org.rs

Abstract

With effective and strong policy guidance and sufficient resources, development finance institutions have the capacity to effectively and innovatively foster sustainable development. Development finance institutions have several objectives related to investing in private sector sustainable development projects, maximizing development impact, achieving long-term financial sustainability and mobilizing private finance. Private investments are crucial for sustainable development and development finance institutions are becoming increasingly important actors in the development finance landscape. The paper analyzes the concept of development finance institutions, reasons that influenced governments to establish them, as well as their involvement in the political scene. The subject of research is their role in private finance mobilization and financing development, eliminating the undercapitalization of small and medium enterprises, creating new job opportunities, increasing employment, as well as mitigating negative consequences of the crisis.

Key words: *development finance institutions, sustainable economic growth, private finance mobilization, investments, small and medium enterprises, employment, jobs opportunities*

INTRODUCTION

[2]The paper was written as part of the 2023 Research Program of the Institute of Social Sciences with the support of the Ministry of Science, Technological Development and Innovation of the Republic of Serbia.

After the United Nations Conference on Environment and Development held in Rio de Janeiro in 1992, and then the Third International Conference on Financing for Development held in 2015 which enabled adoption of The Addis Ababa Action Agenda, countries express their political commitment to the development of a green economy in the context of sustainable development. This includes the achievement of numerous objectives such as the eradication of poverty and hunger, equality in education, inclusive green economic growth, full employment, strong institutions that promote the rule of law, reduced economic, social, environmental inequalities, adaptation to climate change and mitigation of its negative effects consequence, sustainable production and consumption, rational use of natural resources, reduction of the carbon footprint, etc. The green transition is crucial to reconcile and make these social economic and environmental dimensions of sustainable development achievable. Institutions that were founded with the aim of investing in sustainable development projects and thereby encouraging the aforementioned green transition process are development finance institutions. To analyze their development potential, it is important to define their roles, operations and effectiveness. In the following, the concept of development finance institutions will be explained, as well as the reasons for their establishment. Their political activity, role and mandates will also be the subject of analysis. Finally, the influence of development finance institutions on the acceleration of sustainable economic growth through the mobilization of private finance will be discussed. The importance of development finance institutions' investments in the sector of small and medium-sized enterprises for the growth of job opportunities and employment will be pointed out.

THE EMERGENCE OF DEVELOPMENT FINANCE INSTITUTIONS

Development finance institutions were originally established with the aim of providing financial support to underdeveloped regions of the world. The role of the Multilateral Development Banks (MDBs), which were established to deal with market failure in long-term capital flows to post-conflict Europe, was particularly prominent after the Second World War. Their activities for more than five decades have been based on combining financial assistance and technical know-how in post-conflict reconstruction, promoting growth, reducing poverty and accelerating the process of industrialization. (Center for Global Development 2016). That was the initial role of development finance institutions. As sustainable development became a generally accepted concept of development and as its goals corresponded to the development finance institutions' objectives, their position also changed and became very important among institutions that provide development finance (Ostojić 2022).
Development finance institutions are public financial institutions launched by governments in order to achieve public policy goals. Fernández-Arias, Hausmann and Panizza (2020) define development banks “as government-owned financial institutions that have the objective of fostering economic or social development by financing activities with high social returns”. As potentially useful policy instruments for fixing market failures, the authors suggest that development banks should target market failures identified by policymakers and provide adequate financial support, but without distorting the market by unfair competition with

efficient private banks.

Gutierrez et al., (2011) explore the arguments that justify state interventions in the financial system through state financial institutions and development banks. If there are defined market failures, the financial resources of development banks are the best option and the most efficient way to solve that problem. In addition, the inclusion of a development bank does not necessarily lead to crowding out the private sector, as well as to competition between the government and commercial banks, which can discourage new investments and, therefore, economic development. Also, one of the arguments is certainly the financial sustainability of the development banks, their operations on a sound economic basis and the provision of sufficient financial resources without burdening the state.

Development finance institutions are specialized development organizations that invest in private sector projects in underdeveloped countries creating new jobs, promoting sustainable economic growth, as well as environmental and social responsibility. Xu and Marodon (2021) concludes that development finance institutions are "mandated to fill financial gaps where private capital markets and commercial banks are unwilling or unable to offer financial support". The main business orientation of commercial banks is profit maximization. On the other hand, according to Jones (2021), one of the notable roles of development finance institutions is filling the financial gap between public assistance and private investments, so a comparison between development finance institutions and aid agencies should be made. What they both have in common is their orientation towards sustainable development. However, unlike aid agencies, development finance institutions support profitable investments because they operate in accordance with market rules and are profitable for donor countries.

Ferraz (2023) characterizes this type of institution as a legally independent multi-purpose institution, most of which are publicly owned or have a relatively stable funding base that is supported by governments and operate with a medium and long-term perspective, using numerous financial instruments - grants, direct loans, guarantees, loans through commercial banks, equity through investment funds, direct shares in public or private companies.

Garmendia and Olszewski (2014) in their research consider the roles of development finance institutions in the international impact investment ecosystem. As a market catalyst, they play a pioneering role in opening up the market for other investors as well.

Certain geographic and market segments do not have capacities to attract investments with the potential for high social impact. As institution builders, development finance institutions focus on building missing capacities, thereby solving the aforementioned problem. As the main investors, they indicate to other investors the propulsive development markets, mitigate risks, exchange experiences and accumulated knowledge, thereby generating investments that have a significant social impact. As deal generators, development finance institutions find and create investment opportunities, bear and reduce the transaction costs of certain deals, which is important for potential investors.

Development banks have been a major feature of the development finance architecture for many years (UNCTAD 2018). After the Second World War and from

the very beginning of its work and establishment, the World Bank and regional development banks played a fundamental role in the long-term financing of developing countries. The most significant growth in the number of multinational development finance institutions was in the 1970s, while the largest growth of national development finance institutions was recorded in the early 1990s after the collapse of the Soviet Union (Xu, Ren and Wu 2019). However, their development potential was not fully utilized during the twentieth century. Most underdeveloped countries had a centrally planned economies. After the 1980s and 1990s crises, countries liberalized their economies and opened markets, introducing more efficient market-oriented institutions and policies. With an emphasis on the development of the private sector, development finance institutions became more important and began to develop progressively.

THE POLITICAL ROLE OF DEVELOPMENT FINANCE INSTITUTIONS

As policy-based financial institutions, development finance institutions have roles and mandates that are directly related to the national development goals of the country, which confirms the establishment of some development finance institutions with specific purposes to promote the development of precisely defined sectors such as export expansion, reduction of financial inclusion, strengthening of the micro, small and medium enterprises through microfinance, building production capacities, etc. Development finance institutions with their project activities help companies to become competitive, achieve expansive growth and secure their market position. They invest in high-risk projects in which other investors lose interest. Giving credibility to the investments, they positively influence other investors to follow their example by transferring their knowledge and experience achieving catalytic effects and investing in projects that, in addition to financial ones, also have significant development potential. They adopt environmental and social standards for their investments and play a key role as intermediaries between stakeholders from the public and private sectors for large-scale investments, enabling their connection and long-term cooperation.

The relationship between development finance institutions and the state and other institutions is based on a political dialogue that defines their mission, vision, strategy, development policy, financial instruments, risk appetite, underdeveloped regions for investment and priority sectors. This information is contained in the founding statute. On the other hand, development finance institutions are established by governments, and therefore their freedom of decision-making is to a certain extent limited by compliance with prescribed laws and policies (Laplane, Herder and Schmidt 2020). The final decision on whether a specific project will be supported by these institutions is not made by the shareholders, i.e. aid agencies or some of the policymakers, but by apolitical bodies such as the Board of Investment Committee or the Board of Directors (Savoy, Carter and Lemma 2016).

Development finance institutions are faced with pressures from various spheres of interest such as shareholders, non-governmental organizations and policymakers. Shareholders believe that these institutions should support more investments that have direct implications for global development goals, as well as riskier investments in order to achieve development results in frontier markets. On

the other hand, non-governmental organizations and policymakers believe that development finance institutions should be more similar to aid agencies with greater political responsibility in the investment decision-making process. Also, the application of stricter tax standards as well as more socially responsible corporate behavior is suggested (Paiva-Silva, 2021).

Development finance institutions through their investments achieve specific goals of foreign policy and international security. During the war between Georgia and Russia in 2008, after the bombing of Georgia by Russia, the USA, through its development finance institution and a powerful force in mobilizing private capital for investments in developing markets - Overseas Private Investment Corporation (OPIC), supported Georgia and provided it with the financial assistance of 176 million dollars. The war against Georgia led to the suspension of domestic borrowing, while the mortgage market suffered the most severe consequences. Total US aid to Georgia was one billion dollars, while funds through the financial development institution OPIC were used to support the local mortgage market (Nichol 2009). OPIC also had a policy response to the Arab Spring and civil wars that led to greater economic and political freedoms and the overthrow of entrenched authoritarian regimes in 2011, providing $2 billion in aid to the Middle East and North Africa for private investment that will contribute to economic recovery and growth. Financial assistance was directed towards investments in consumer goods sectors, manufacturing, financial services, as well as financial guarantees for investments in infrastructure and small and medium enterprises in Egypt and Jordan (OPIC 2011).

In support of the mentioned political influence, there is an example of the initiative of the development finance institution from Great Britain CDC Group, one of the oldest founded in 1948, and Standard Chartered Bank to increase lending to small and medium enterprises in Sierra Leone. After a year of fighting against ebola, the implementation of the economic recovery plan began with financial support of 50 million dollars. The pandemic has led to interruptions in supply chains and a lack of basic products, a reduction in production in the mining sector, which also affected the reduction of the gross domestic product growth rate from the planned 11% to only 4% (CDC, 2020). When the situation in the country stabilized, the problem of small and medium-sized enterprises starting investment activities in a country that is on the road to economic recovery arose, which created capital pressures on domestic banks. Standard Chartered Bank has reduced this pressure by increasing the number of approved credit lines to Sierra Leonean companies, while the CDC Group has committed to share with it the default risk of newly approved loans worth $50 million. In this way, despite the crisis, companies were able to continue their operations, maintain daily liquidity and achieve growth. The development finance institution CDC Group indirectly affects the suppression of the crisis caused by the ebola pandemic (CDC 2020).

It can be clearly seen that the role of development finance institutions is particularly important in countries affected by war and political conflict and internal unrest. These are mostly extremely poor countries that lack capital access and need a sustainable economic recovery led by a strong private sector. Investments by development finance institutions can play a key role in creating jobs and providing

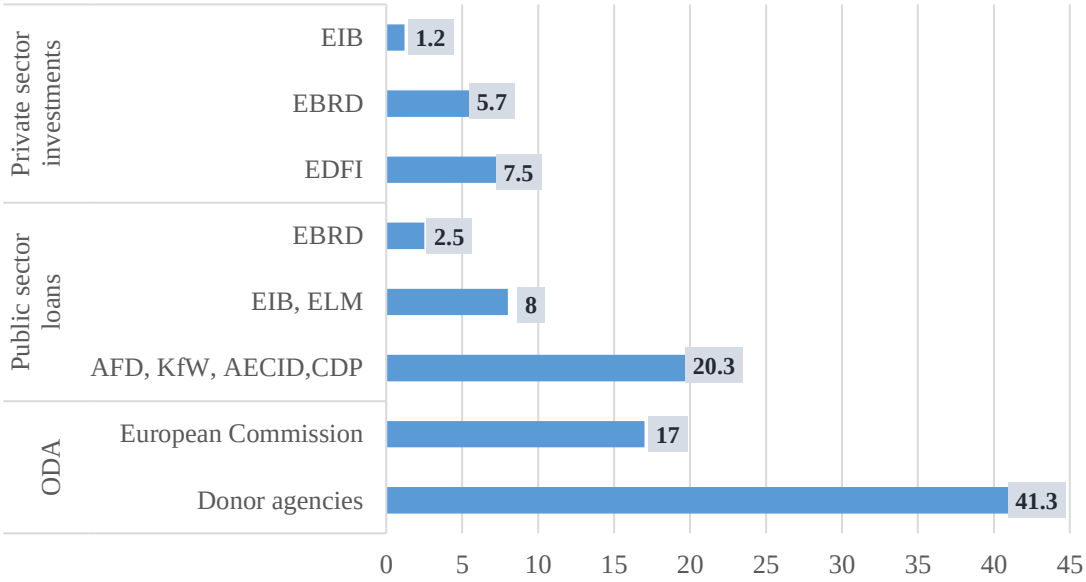
infrastructure that will enable economic progress and mitigate the negative effects of political instability. However, this is difficult to realize, because doing business in countries with conflicts is very risky and makes it impossible to attract private investments, which consequently cannot contribute to economic growth, and therefore do not affect poverty reduction (IDFC, 2020). Development finance institutions alone cannot solve this problem, but without their investments, the economic recovery of the affected countries would be much slower.

Development finance institutions have been investing in underdeveloped and developing countries for years, supporting development projects related to renewable energy sources. The reason for the development institutions' interest in renewable energy sources is certainly a response to political pressure to adapt to climate change and mitigate its negative consequences, but only partially. Even without political suggestions and interventions, these institutions recognized the true importance and financial potential of the commercialization of projects in the field of renewable energy sources. It is the only area where there is complete alignment between the business models of development finance institutions and political principles (Savoy, Carter and Lemma 2016).

THE IMPACT OF DEVELOPMENT FINANCE INSTITUTIONS ON ACCELERATING SUSTAINABLE ECONOMIC GROWTH THROUGH PRIVATE FINANCE MOBILIZATION

One research indicates that an increase in the gross domestic product of 1% leads to an increase in energy consumption of 0.48% and that the modernization and "greening" of the energy sector with a focus on environmentally acceptable energy sources is necessary (Petrović 2022). It has also been confirmed that the growth of population, gross domestic product per capita and energy intensity lead to an increase in CO_2 emissions (Petrović, Nikolić and Ostojić 2018). The new path of development is based on inclusive green economic growth, which enables the achievement of environmental, security, health and social benefits in addition to economic ones and development finance institutions are certainly the initiators of this new concept of development and transition to a greener economy.

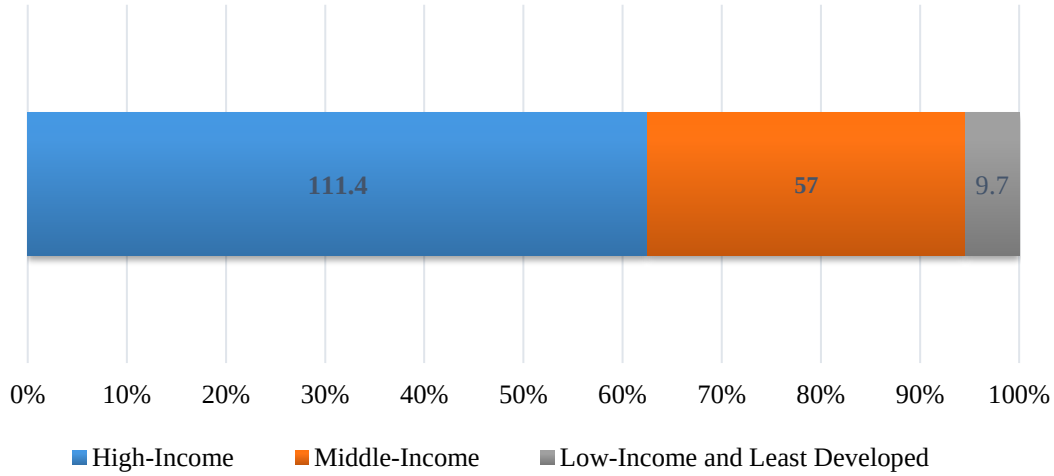
Development finance institutions are important not only for economic growth but also in the context of the theory of tripartite green economy and reform of the economic system that also includes the social component of development and active action against environmental and social degradation, inequality, and poverty (Ostojić, Jovanović and Matijević 2022). Although most development finance institutions have developed their own environmental and social risk management frameworks, a comparison of them shows that they are similar to each other due to the fact that they originally derive from the IFC Performance Standards (Laplane, Herder and Schmidt 2020).



Graph 1: European development finance landscape, by instrument and institution, 2020, EUR billion

Source: Gavas and Perez 2022

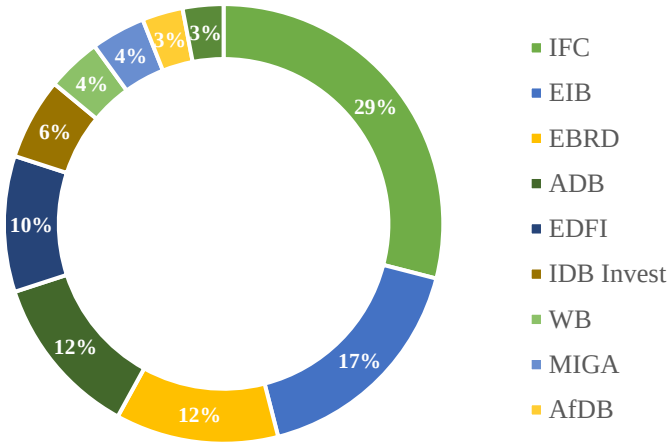
To achieve ambitiously set development goals on a global level, it is necessary to mobilize finance from all sources, and the emphasis is on the private sector. For this reason, development finance institutions are increasingly important actors in the development finance landscape. The European Union is the world's biggest donor of development assistance. The EU Instrument for Neighbourhood, Development and International Cooperation – Global Europe provides a strategic framework for increasing investments for the realization of the sustainable development goals, prosperity, peace and stability with the support of a budget of 79.5 billion euros until 2027. The promotion of investments is carried out through European Fund for Sustainable Development Plus (EFSD+) (Eoropean Commission 2021). At the European level, the main providers of development aid are the European Investment Bank (EIB), the European Bank for Reconstruction and Development (EBRD) and the European Commission, while at the national level the German development finance institution (KfW) and the French development finance institution (AFD) stand out. The Association of Bilateral European Development Finance Institutions (EDFIs) consists of 15 national development finance institutions focused on private sector investments. These institutions provide different types of financing options that include: official development assistance (ODA), public sector loans as well as private sector investments (Gavas and Perez 2022).



Graph 2: Total private mobilization, high income, middle income, low income and last developed countries, US$, billions, 2019

Source: Group of Multilateral Development Banks 2021

Development finance institutions have several objectives related to investing in private sector sustainable development projects, maximizing development impact, achieving long-term financial sustainability and mobilizing private finance. Private investment is crucial for sustainable development. The amount of private investment mobilized by multilateral development banks and other development finance institutions in lower-income countries increased by 21% from 2018, and for least developed countries by 35%, while the amount of private investment mobilized in middle-income countries decreased by 11% (Group of Multilateral Development Banks 2021). The greater mobilization is consistent with a greater reduction of poverty and living standard improvement. According to the latest available data, multilateral development banks and other development finance institutions accumulated $178 billion in development funds from private investors through their indirect or direct actions. The largest share was achieved in developed countries ($111.4 billion), followed by middle-income countries ($57 billion) and the smallest share in low-income and last developed countries ($9.7 billion). The largest share in total private mobilization is recorded by International Finance Corporation (almost one-third), followed by European Investment Bank (17%) and European Bank for Reconstruction and Development (12%).



Graph 3: Mobilization of private finance by development finance institution type, middle-income countries and lower-income countries, 2019

Source: Group of Multilateral Development Banks 2021

Full employment is possible only if there are competitive companies that contribute to strengthening employee performance (Maksimović and Zvezdanović Lobanova 2022). Development finance institutions mobilize funds for small and medium-sized enterprises, promoting their growth and development, which is reflected in the generation of new jobs and the employment of labor, the construction and addition of new production capacities, the purchase of raw materials for the fulfillment of international and regional contracts, enabling local companies to manage currency and payment risk in cross-border transactions, as well as their full inclusion in international supply chains. Development finance institutions influence the increase in employment, which is supported by numerous studies. The direct impact on the increase in employment can be measured by the number of new jobs created in companies financially supported by these institutions. However, indirect effects are also the number of newly created jobs at other participants in the supply chain-manufacturers, distributors, suppliers, marketing, transport, construction companies, etc. In addition to direct and indirect effects, there are also induced effects that arise when employees spend their income buying products and services that influence the increase in the producer's income (IFC 2013).

One of the IFC studies presents the results of research whose objectives were to determine how the IFC investment of one million dollars in different economic sectors of Sri Lanka affects the generation of added value and employment. Taking the business services sector as an example, an investment of one million dollars leads to the creation of additional value in the entire economy of $5.3 million and to the creation of 436 new jobs (direct and indirect effects). If the induced effects resulting from the re-spending of the wages associated with the investment are also included in the analysis, the total employment effect of investing $1 million in business services would be 839 (Kapstein, Kim and Eggeling 2012).

Further analysis confirms that the largest number of generated jobs are in the agriculture (2057) and construction (1230) sectors, while the most unfavorable employment results are in the capital-intensive mining sector (less than 100). This is justified by the fact that the agriculture and construction sectors with relatively less capital, achieve higher efficiency and productivity, which is accompanied by higher added value (Kapstein, Kim and Eggeling 2012). Also, another study examines the relation between investment by development finance institutions and employment growth in developing countries, in which six multilateral and bilateral development finance institutions – European Investment Bank, CDC (British International Investment), International Finance Corporation, PROPARCO (French Development Finance Institution), DEG (German Development Finance Institution) and European Bank for Reconstruction and Development are the subject of analysis. Research confirmed that the aforementioned institutions generated 2.6 million direct and indirect jobs in 70 developing countries in 2006 through their activities (Jouanjean, Massa and te Velde 2013).

Micro, small and medium enterprises are especially important for entrepreneurship development, stimulation of economic growth and sustainable development, creation of new job opportunities and employment growth, tax revenues increase, as well as driving impact in emerging markets. Development finance institutions directly contribute to micro, small and medium enterprises to access finance and solve one of the main problems that inhibit development through providing financial funds, using innovative financial products, institution-building, advisory services as well as raising capital on international markets and indirectly by influencing policies and laws (Gyimah and Agyeman, 2019). The contribution of development finance institutions to the improvement of the business performance of small and medium-sized enterprises is evidenced by the activities of the European Investment Bank during the financial crisis. Namely, during the financial crisis from 2007 to 2009, the European Investment Bank increased loan disbursement by 57% and increased loans to small and medium-sized enterprises by 128%. The share of EIB loans to small and medium enterprises in total EIB loans increased significantly from 14.6% in 2008 to 19.1% in 2009. This increase in lending to small and medium-sized enterprises is a consequence of the well-capitalized European Investment Bank and the significant increase in capital in the years before the crisis, which provided the opportunity for credit expansion in crises. Also, in the observed period, there was no capital limit for increasing lending by the European Investment Bank. This explains why during the crisis, governments increase support for development banks in order to fulfill their countercyclical role. Namely, pro-cyclical lending by actors from the private sector represents a significant problem. Commercial banks increase their credit activity in periods of economic growth, while in periods of recession, they reduce their lending, which does not stimulate macroeconomic stability and economic growth. This has created positive changes and more European banks had credit lines for small and medium enterprises from the European Investment Bank. In 2007, banks in 16 out of 27 European countries had credit lines for small and medium enterprises with the European Investment Bank, and in 2009 their number increased to 24 (Griffith-Jones, Tyson and Calice 2011).

CONCLUSION

Development finance institutions are gaining importance over time and policymakers recognize their development potential. Their focus is on the promotion of sustainable growth and on strategies, instruments and mechanisms that can contribute to increasing investment activities and improving the business environment in underdeveloped regions. Development finance institutions aim to implement as many successful projects as possible, which will increase financial funds that can be reused for new investments. They direct investments to those sectors that represent the priorities of public policies of developing countries. These sectors are targeted as important in industrial policy strategies, infrastructure plans, etc. In particular, the investment-stimulating role of development finance institutions was recognized in crises that did not reduce their investment activities, but on the contrary, accelerated them to mitigate the negative consequences. Taking into account the achieved results in underdeveloped countries, which increasingly represent destinations for capital inflows, inclusion of development finance institutions in political flows is a logical sequence. It is necessary to mobilize finances from all sources in order to achieve global development goals. Private finance mobilization through development finance institutions as important actors in the development finance landscape is a strategic objective even though investing in developing countries entails certain risks, low levels of returns on investment portfolios, lack of profitable and large investment opportunities, as well as lack of financial innovations. In achieving its goal of social and economic development by investing in the private sector, development finance institutions through various project activities increase employment and reduce poverty. Their investment leads to the creation of additional value in the entire economy, but also to the creation of new jobs, both direct and indirect as well as induced. Realized investments in the sector of micro, small and medium enterprises leave them the opportunity for a more significant role in the creation of private sector development policy.

REFERENCES

1. CDC. 2020. *What did we learn during our approach to the Ebola crisis*? London: CDC Group.
2. Center for Global Development. 2016. "Multilateral Development Banking for This Century's Development Challenges - Five Recommendations to Shareholders of the Old and New Multilateral Development Banks." Accessed April 15, 2023. https://www.cgdev.org/publication/multilateral-development-banking-for-this-centurys-development-challenges.
3. European Commission. 2021. "Neighbourhood, Development and International Cooperation Instrument (NDICI) – Global Europe." Accessed April 23, 2023.
4. https://international-partnerships.ec.europa.eu/system/files/2021-07/factsheet-global-europe-ndici-june-2021_en.pdf.
5. Ferraz, João Carlos. 2023. *Development Finance Institutions for Sustainable Industrial Development*. Vienna: United Nations Industrial Development Organization (UNIDO).

6. Fernández-Arias, Eduardo, Ricardo Hausmann, and Ugo Panizza. 2020. "Smart Development Banks." *Journal of Industry, Competition and Trade* 20, no. 2: 395-420. DOI:10.1007/s10842-019-00328-x.
7. Garmendia, Christina and Annie Olszewski. 2014. "Impact Investing in Development Finance." Accessed March 29, 2023.
8. https://iri.hks.harvard.edu/files/iri/files/impact_investing_in_development_finance_dfis.pdf.
9. Gavas, Mikaela, and Aitor Perez. 2022. *The future of the European Financial Architecture for Development.* Brussels: European Parliament.
10. Group of Multilateral Development Banks. 2021. "Mobilization of Private Finance by Multilateral Development Banks and Development Finance Institutions 2019." Accessed May 2, 2023. https://www.adb.org/documents/mobilization-private-finance-mdbs-dfis-2019.
11. Griffith-Jones, Stephany, Judith Tyson, and Pietro Calice. 2011. *The European Investment Bank and SMEs: key lessons for Latin America and the Caribbean*. Santiago: CEPAL.
12. Gutierrez, Eva, Heinz Rudolph, Theodor Homa, and Enrique Beneit Blanco. 2011. *Development Banks: Role and Mechanisms to Increase their Efficiency*. Washington: World Bank.
13. Gyimah, Adjei Gyamfi and Annette Serwaa Agyeman, 2019. "A Study on How Development Finance Institutions Support SMEs: A Case Study of International Finance Corporation." *International Journal of Financial Research* 10, no. 2: 27-35. doi:10.5430/ijfr.v10n2p27.
14. IDFC. 2020. *The Role of DFIs in Supporting Refugees and Forcibly Displaced People*. Paris: The International Development Finance.
15. IFC. 2013. *IFC Jobs Study: Assessing Private Sector Contributions to Job Creation and Poverty Reduction*. Washington: International Finance Corporation.
16. Jones, Alexei. 2021. *Fostering inclusiveness in a Team Europe approach*. Maastricht: European Centre for Development Policy Management (ECDPM).
17. Jouanjean, Marie-Agnes, Isabella Massa, and Dirk Willem te Velde. 2013. *The role of development finance institutions in promoting jobs and structural transformation: a quantitative assessment*. London: Overseas Development Institute (ODI).
18. Kapstein, Ethan, Rene Kim, and Hedda Eggeling. 2012. *Modeling the Socio-Economic Impact of Potential IFC Investments in Sri Lanka*. Washington: International Finance Corporation.
19. Laplane, Juliette, Anniek Herder, and Johana Schmidt. 2020. *Applying the Fair Finance Guide Methodology to DFIs – Baseline Assessment Investment and Finance Policies of Selected Development Finance Institutions*. Amsterdam: Profundo.
20. Maksimović, Marijana and Jelena Zvezdanović Lobanova. 2022. "Employment, Unemployment and Inequalities – Current Challenges." In *Towards a Better Future: Visions of Justice, Equality, and Politic,* edited by Goran Ilik and Angelina Stanojoska, 142-154. Bitola: University "St. Kliment Ohridski".
21. Nichol, Jim. 2009. *Russia-Georgia Conflict in August 2008: Context and Implications for U.S. Interests*. USA: Congressional Research Service – CRS.

22. OPIC. 2011. O*verseas private investment corporation 2011 annual report: Investing with impact for 40 years*. Washington: OPIC.
23. Ostojić, Ivana. 2022. "The Role of Development Finance Institutions in Supporting Sustainable Development." PhD diss., Singidunum University.
24. Ostojić, Ivana, Predrag Jovanović, and Branka Matijević. 2022. "Development Finance Institutions, Environmental Inequalities and Just Green Transition." In *Towards a Better Future: Visions of Justice, Equality, and Politic,* edited by Goran Ilik and Angelina Stanojoska, 119-132. Bitola: University "St. Kliment Ohridski".
25. Petrović, Predrag, Goran Nikolić, and Ivana Ostojić. 2018. "Emissions of CO_2 in the European Union: Empirical analysis of demographic, economic and technological factors." *Stanovništvo* 56, no. 1: 63-82. https://doi.org/10.2298/STNV180614005P .
26. Petrović, Predrag. 2022. "Economic Sustainability of Energy Conservation Policy: Improved Panel Data Evidence." *Environment, Development and Sustainability* 25, no. 5: 1473–1491. https://doi.org/10.1007/s10668-021-02104-6.
27. Paiva-Silva, J. 2021. "The Workings and Challenges of Development Finance Institutions: The Case of the Deutsche Investitions-und Entwicklungsgesellschaft (DEG)." Accessed May 22, 2023. https://www.repository.utl.pt/handle/10400.5/497.
28. Savoy, Conor, Paddy Carter, and Alberto Lemma. 2016. *Development Finance Institutions Come of Age: Policy Engagement, Impact and New Directions*. Washington: Center for Strategic and International Studies.
29. UNCTAD. 2018. "Scaling up Finance for the Sustainable Development Goals: Experimenting with Models of Multilateral Development Banking." Accessed May 23, 2022. https://unctad.org/system/files/official-document/gdsecidc2017d4_en.pdf.
30. Xu, Jiajun, and Regis Marodon. 2021. *The Public Development Banks and Development Financing Institutions Database*. Beijing: Institute of New Structural Economics.
31. Xu, Jiajun, Xiaomeng Ren, and Xinyue Wu. 2019. *Mapping Development Finance Institutions Worldwide: Definitions, Rationales, and Varieties*. Beijing: Institute of New Structural Economics.

Professional Article
UDK 004.8:005.96
004.8:347.921.8

THE ROBOT LAWYER OF THE FUTURE – HOW CAN ARTIFICIAL INTELLIGENCE CHANGE THE LEGAL SYSTEM?

Assoc. Stojan Troshanski, Ph.D
International Slavic University - St. Nicholas
stojantroshanski@yahoo.com

ABSTRACT

The legal system is a dynamic category. The new ideas and technologies will contribute to its evolution. Such a change should improve it and enable more practical, efficient and faster legal processes that would meet people's needs

This aspect of science is part of the human resources management (potentials). Evolution in human resource management seems destined to happen all the time. The reason for these stages is obviously globalization and the direct development of technology. These new technological systems will change the nature of work in all professions, including the legal sector.

For the purposes of this paper, a method of content analysis was used.

KEY WORDS: robot lawyer; legal system; human potentials; artificial intelligence; fourth industrial (r)evolution.

INTRODUCTION

> "New technologies will dramatically change the nature of work in all industries and occupations. The underlying uncertainty is related to the extent to which automation will replace labor. How long will this last and how far will it go?" – Klaus Schwab.

Every individual should feel the rhythm that the new time brings with it. Changes are constantly here and we feel them. Each of us reacts to that stimulus in a different way, but we all agree on one thing – those changes must be in accordance with natural laws and the cosmic order. They are our greatest and faithful allies on

the road called - life! Such a big change is brought to us by the new industrial revolution, the fourth in a row (Трошански 2023, v).

Dr Mahathir Mohamad, Prime Minister of Kuala Lumpur, says: "The fourth industrial revolution will change the types of jobs needed in industry. Our strong view is that as a nation we must create the jobs of the future. Our goal must be to automate the work, but to humanize the jobs. Let's let machines do the dangerous and the repetitive and make sure we humans have the capacity to be creative and interactive" (Трошански 2023, 1).

Klaus Schwab is the founder and executive chairman of the World Economic Forum and the author of the book The Fourth Industrial Revolution. He writes in his book about how the upcoming technological revolution will change our lives from the roots. Technological advances are rapidly changing the way we work, how we earn a living, how we do certain other things in our private lives, our intimate sphere of living, that is, almost everything. In that book he gives some overview of several areas in which those changes are taking place and gives a forecast for the near future. The underlying message is that societies have to deal with these changes and that the most important thing they will need to do to begin with is to adapt to the new conditions (Трошански 2023, 5). He stated the following: „Technology is not an exogenous force over which we have no control. We are not constrained by a binary choice between "accept and live with it" and "reject and live without it" (Schwab 2016, 9).

On this occasion, we will refer to the robot lawyer as a benefit of the new technological evolution. One of the first amazing applications of the new technology is the artificial intelligence attorney who is supposed to represent the accused in court.

HOW DOES THE ROBOT LAWYER WORK?

The most established way to apply AI as legal counsel is through chatbots. Among them, DoNotPay is the most popular. It works by applying AI patterns to various issues and mostly helps to peacefully resolve the misunderstandings users have with the services provided by customer support. In the process of creating the chatbot DoNotPay, 27.7 million USD was collected. The list of investors is quite impressive and includes individuals like Dylan Field (CEO of Figma), Scott Belsky (Chief Product Officer (CPO) of Adobe), Balaji Srinivasan (former Chief Technical Officer (CTO) of Coinbase), even the music duo The Chainsmokers. In addition, the project has support from Andreessen Horowitz, Founders Fund, Index Ventures, etc (Stojadinović 2022).

Namely, the defendant will use an artificial intelligence attorney that will listen to court statements using a smartphone and formulate real-time legal responses on behalf of the defendant using a headset. But let's answer the key question – is it legal to use artificial intelligence in the courtroom?

For the DoNotPay chatbot to be admissible in courtrooms, one prerequisite must be met – all parties must consent to being recorded. Of the 300 cases they applied for, only two parties agreed to participate in this experiment. But what happens if the robot lawyer loses the case? DoNotPay CEO Joshua Browder said the

company will cover all costs. Customer information is unknown, but what we do know is that it's something new. This means that if they lose the case, DoNotPay will pay the penalty costs, which, objectively speaking, is not a huge financial risk. And, not only that. It is likely that over time this tendency will influence courts to "relax" the rules and accept the legal advice offered by artificial intelligence (AI) (Stojadinović 2022).

When should you use the services of a robot lawyer? One of the main reasons why it was created is to provide legal services to those who cannot afford them, but also to not pay additional fees. In fact, legal advice could be used far more often than required, even when it comes to everyday matters such as consumer rights, tenant rights, etc. A lawyer can be useful whenever we need a second opinion, compared to real legal advisors who we only turn to when things get complicated. In other words, the DoNotPay app aims to automate user rights (Stojadinović 2022).

The creators of this chatbot claim that many court cases could be won by individuals themselves, but this is often not the case due to high legal costs, lack of time and resources to fight bureaucracy. In ultima linea, the best thing of all, according to DoNotPay's CEO, is that this feature will be available to anyone who can benefit from it for just $36 a year. That way, DoNotPay will end up in the hands of ordinary people first, not in the hands of big corporations (Stojadinović 2022).

WHAT SERVICES DOES THE ROBOT LAWYER OFFER?

The amazing fact is that DoNotPay offers 200 different types of legal assistance. Below are some of the services that earned DoNoPay the title of the world's first robot lawyer:

–Rights of passengers in the airline company;
–Appeals against speeding fines or illegal parking tickets;
–Breach of contract;
-Cancellation of any service or subscription;
–Renewal of car registration;
–Copyright protection;
–Complaints about defamation;
–Applying for scholarships;
–The fight against spam in e-mail;
–Filing a complaint against any company (Stojadinović 2022).

Tests have been made on this system, and the results of one such experiment are presented as follows: the subject of "owner protection" was randomly selected to see what would happen if, for example, your owner procrastinated and could not fix the mold in the apartment you are renting. DoNotPay will explain which laws oblige your landlord to ensure that the properties he rents out meet the key criteria to be free from damp and mould. After that, they will explain your rights regarding repairs to the apartment or compensation for damages. He will guide you, step by step, on how to ask your landlord to make repairs. This may include gathering documents/evidence, putting together a written

explanation, sending the claim (and keeping one copy for yourself) and giving the landlord enough time to resolve the issue. It also provides for the possibility that in case the owner does not answer you, then it offers you contact with legal aid, environment and health or the ombudsman. If you want to sue the owner but avoid court, the DoNotPay app offers you that option as well and points you to various solutions in the Owner Protection section. There you will be asked to answer a few questions to provide the chatbot with enough information to compile the complaint. DoNotPay can send that letter on your behalf if you don't want to do it yourself. Finally, it can help you start a small claims lawsuit if all else fails. After the testing, the testers came out completely satisfied with the received legal assistance (Stojadinović 2022).

WIDE RANGE OF APPLICATION - US CONGRESSMAN GAVE A SPEECH PARTLY WRITTEN BY ARTIFICIAL INTELLIGENCE

US Congressman Jake O'Kincloss' speech on the bill to create a US-Israel Center for Artificial Intelligence in the US House of Representatives was, according to his idea, written with the help of artificial intelligence. The short two-paragraph speech, read in the House of Representatives by the Massachusetts Democrat, was created by an Internet chatbot artificial intelligence called ChatGPT. The congressman said he tasked the program "to write 100 words for him to give a speech in the House of Representatives" about the bill. Auchincloss added that he had to refine the task several times to get the final version of the text he read. According to the congressman and his colleagues, this is the first time in the US Congress that a speech written by artificial intelligence has been given. He clarified that he made the decision to have a part of his speech created through "Chat-GPT" to encourage discussion about artificial intelligence, i.e. the challenges and opportunities associated with it. "I am the youngest parent among the Democrats and artificial intelligence will be a part of my life. It can become a general-purpose technology for my kids," Auchincloss said (ВечерПресс 2023).

The emergence of "Chat-GPT" and similar programs offered on the Internet are already a challenge for teachers, who now have to resist the nascent "trend" of students' essays, in fact, being prepared by artificial intelligence. Researchers are also concerned about the possibility that chatbots could help spread misinformation, fake news and propaganda (ВечерПресс 2023).

WHAT EXACTLY IS ChatGPT?

ChatGPT is a chatbot, that is, an advanced language model developed by OpenAI, a research laboratory based in San Francisco, California. It is one of the largest language models that is trained on a diverse range of texts from the internet, including websites, forums and social media platforms, to understand and generate text as if it were written by a human. (Фокус.мк 2023).

This new technology has the potential to revolutionize the way businesses and individuals interact with artificial intelligence (AI). ChatGPT can be used to

generate chatbots, which can help customers solve their queries, generate reports, essays, compose emails and more. Chatbots powered by ChatGPT are able to hold conversations as if you were talking to a human and can answer a wide variety of questions. In addition, ChatGPT can also be used in the field of natural language processing (NLP) and can be used to generate summaries and translations, creative writing, articles, stories and poems based on the information given to it. Another benefit of ChatGPT is its ability to understand the context of the conversation, making it easier to answer questions and perform tasks more efficiently. This technology is designed to learn from its past interactions, allowing it to continually improve (Фокус.мк 2023).

ChatGPT is a technology that has the potential to change the way businesses and individuals interact with AI. With its ability to generate human-like text, hold conversations and perform a range of tasks, it has the potential to revolutionize industries such as marketing. Moreover, the idea of machines having human-like creative and technical intelligence has raised alarm about how artificial intelligence might affect everyday life.. There are concerns that ChatGPT and similar tools could replace people's jobs in areas such as content creation and programming. But another segment of the public sees these tools as great additions that can help humans and AI work together (Фокус.мк 2023).

CONCLUSION

Artificial intelligence is destined to create some of the most significant and disruptive innovations of this century. Autonomous cars, chatbots, smart home devices, robot lawyers etc., are all applications and creations of the evolving era of artificial intelligence that will redesign the way we live and work. In the near future, more and more industries will depend on artificial intelligence and machine learning, leading to tremendous growth in the job market for talented AI and machine learning specialists. Regardless of what the new AI economy means for the future workforce, young professionals will undoubtedly benefit from entering this growing field of possibilities.

BIBLIOGRAPHY

1. Stojadinović, M. (11.1.2022). Robot Advokat: Kako Veštačka Inteligencija Može Promeniti Pravni Sistem? Web-Mind.io. Пристапено преку: (https://web-mind.io/sr/vestacka-inteligencija/robot-advokat-kako-vestacka-inteligencija-moze-promeniti-pravni-sistem/?fbclid=IwAR0s57qJ8aZq6CwWlIR9V3_E6iLBwSbOh4t-vNhQcFW6pfPK7ZsTPzg-IC4)
2. Трошански, С. (2023). МЕНАЏМЕНТ НА ЧОВЕЧКИ РЕСУРСИ И ЧЕТВРТАТА ИНДУСТРИСКА РЕВОЛУЦИЈА - Новата аналогно-дигитална ера. Скопје
3. ВечерПресс. (2023). Конгресмен во САД одржа говор, делумно напишан од вештачка интелигенција. Пристапено преку:

4. (https://www.vecer.press/%d0%ba%d0%be%d0%bd%d0%b3%d1%80%d0%b5%d1%81%d0%bc%d0%b5%d0%bd-%d0%b2%d0%be-%d1%81%d0%b0%d0%b4-%d0%be%d0%b4%d1%80%d0%b6%d0%b0-%d0%b3%d0%be%d0%b2%d0%be%d1%80-%d0%b4%d0%b5%d0%bb%d1%83%d0%bc%d0%bd%d0%be/?fbclid=IwAR1pHgW8M2xRnmDs3NaQNr5J_rse4SbXXkKx2i0rGhsDsO8zGRPj090Q2l0)
5. Фокус.мк. (30.1.2023). Што е „роботот“ ChatGPT, новата алатка заснована на вештачка интелигенција? Катерина Смилева Божиновска. Пристапено преку:
6. (https://fokus.mk/shto-e-robotot-chatgpt-novata-alatka-zasnovana-na-veshtachka-intelegentsija/)
7. Schwab, K. (2016). The Fourth Industrial Revolution, 1st ed. World Economic Forum.

Scientific Article
UDK 343:340.137(4-672EУ)

HARMONIZATION OF CRIMINAL LAW IN EUROPEAN COMMON LEGAL SPACE

Ivan Ilic, PhD
Associate professor, University in Niš, Faculty of Law,
ivan@prafak.ni.ac.rs

ABSTRACT

The paper contains an analysis of the police and judicial cooperation between Member States of the European Union. The first part follows the development of "third pillar" of the European Communities, the provisions of the Treaties. The central part is a review of the most important legal documents, issued under the auspices of the EU, which is the gradual harmonization of criminal law. Attention is also given to the issue of human rights and fundamental freedoms, particularly in criminal proceedings. The emphasis is on analysis of the major provisions of the Treaty of Lisbon, in light of changes made in the areas of cooperation within the framework of the former "third pillar", with reference to its prospective standard. The exposed observations support the idea that harmonization of criminal law is moving towards the creation of a supranational, European substantive, procedural and executive Criminal Law.

Key words: harmonization, EU criminal law, “third pillar”, Treaty of Lisbon

1. INTRODUCTORY REMARKS

The interconnections between the social processes in the world led to a global approach in regulating these processes. It was resulted in supranational regulation of many areas of social life, which relativized imperium of the state. This particularly applies to the regulation of the of human rights protection.

European Union is a supranational organization with 4.2 million square km, and nearly half a billion people. It has its original legislation - Community law, and the Lisbon Treaty gets full legal personality. However, criminal law (substantive, procedural, executive and organizational) is not a part of the acquis. Namely, there is no original criminal legislation of the EU, although the crime takes on a global scale.

Supranational regulation, however, also deals with the regulation of criminal law area. Numerous conventions of the Council of Europe govern this matter (European Convention on Human Rights and Fundamental Freedoms, Convention on Assistance in Criminal Matters, Convention on Extradition, and others). The validity of these conventions is achieved through ratification, thus becoming an integral part of domestic law.

The origins of criminal law the EU was appeared with Treaty of Amsterdam (Official Journal C 340, 10) adoption. This Agreement has been reformed the areas

that make up the so-called the third pillar of the EU- related issues for police and judicial cooperation in criminal matters.

Under the EU institutional framework some institutions have been established: Europol, Eurojust, The European Anti-Fraud Department (OLAF) and the European Judicial Network. On the other hand, a variety of legal documents that seek to achieve the goal of gradual harmonization of the criminal (substantive, procedural and executive) law were issued: Declaration on the fight against organized crime, Convention on the Protection of financial interests of the European Communities, *Corpus iuris* on protection of financial interests, Framework Decision the European Arrest Warrant and others.

For the harmonization of criminal law it is essential to create institutional structures with adequate powers, and the adoption of necessary legal documents with legally binding force for the Member States. Whether the harmonization of criminal laws is in the beginning, or is it already at the stage where we can talk about the contours of the European union criminal law?

2. DEVELOPMENT OF POLICE AND JUDICIAL COOPERATION IN CRIMINAL MATTERS

Cooperation in criminal matters until the end of the Cold War in general, was sporadic and took place outside the institutional framework of the European Communities. However, there was the first informal meeting of interior ministers of the Member States, and the decisive event which inspired the ought about cooperation of police and justice occurred in 1972. It was all the incident at the Olympic Games in Munich, when the Palestinian terrorist group Black September killed two members of the Israeli Olympic team, holding several hostages. The event, called "Munich massacre" united the interests of "the Twelve" concerning the matters of internal security of Member States of the European Union.

Cooperation between the police is significantly enhanced by the formation of TREVI group in 1975, which gethered a Ministers of the Interior or Justice. Its main task was to fight against terrorism, but later expanded its role in the fight against drug trafficking, arms trafficking and other serious forms of international crime. After the adoption of the Single European Act in 1985, other bodies and working groups with a similar role. Committee CELAD, which was formed in 1989 undertook activities in the fight against terrorism and drug trafficking. Rhodes Group, which was formed in 1988, had a role in securing freedom of movement of persons. Important is also the role of the System for customs regime from 1988, the Department of harmonizing anti-smuggling from 1989 and The Group for Immigration from 1986.

Cooperation in criminal matters started in 1976. at the initiative of France, which a year later submitted a proposal to create a European judicial area and the adoption of the Convention on the automatic extradition for serious crimes. The initiative has not been approved by some member states, but France submitted new initiative at 1982. enriched with the proposal to establish European Criminal Court. As this proposal did not pass, further building the European criminal area took place within the Council of Europe member states which has issued a number of conventions in this field.

The Maastricht Treaty (Official Journal C 191, 29) which wad signed at 1992. made the architecture of the European Union similar to the ancient temple based on the so-called "Three pillars". Cooperation in the fields of justice and home affairs is located in the third pillar (Janjevic, 2003). Maastricht Treaty in Article K1. explicitly identifies nine areas of common interest to Member States (policy of granting asylum, crossing external borders, fight against drugs, combating smuggling, judicial cooperation in civil and criminal matters, customs and police cooperation including the creation of Europol and the crossing of external borders of the EU) in which cooperation was achieved. Specific legal instruments that enable collaboration were predicted (adoption of the so-called. "Common positions" and "Joint Action Decisions"). Working groups for immigration and asylum, the police and customs cooperation and judicial cooperation in the field were also formed.

Maastricht Treaty contains the "evolutionary clause" which allows the development and elaboration of some of its provisions, which leaves room for improving cooperation in this field. Simultaneously with the agreement the two declarations were assigned, where one of it is particularly important - Declaration on cooperation between police. It provides for the harmonization of differences in management practices and adoption of measures for the harmonization of investigative procedures.

The third pillar changed its name with the adoption of the Treaty of Amsterdam in 1997. Its new name is “The police and judicial cooperation in criminal matters." Some of the areas of cooperation (free movement of persons, visas, asylum, immigration) are now transferred to the first pillar, which is characterized by the supranationality. The Schengen acquis was also attached to the first pillar. It can be said that the adoption of the Treaty of Amsterdam created the outline for the construction of the EU criminal law. The preamble of the Agreement is determined by the aim to create a "space of freedom, security and justice" which emphasized its orientation towards providing security for citizens, while preserving their fundamental rights and freedoms and access to justice. The legal basis for police and judicial cooperation are Articles 29 - 42. First, it stated the main goal of the cooperation (Article 29) which attempts to ensure the development of joint actions of Member States in criminal matters and the prevention of racism and xenophobia. The plan envisages cooperation of police, customs and judicial authorities and harmonization of regulations of the criminal law of member states. Harmonization of criminal law, considering Article 31 of the Contract, means the harmonization of regulations of the Member States, in particular substantive criminal law, in terms of a uniform determination of the elements of crimes and sanctions, however, only in the field of organized crime, terrorism and drug trafficking. However, areas of cooperation in regard to the types of offenses were specified only exemplary, and that harmonization is allowed in all types of criminal offences (Đurđević, 1094: 2008). This notion is confirmed by the practice of the Council of Ministers, which issued the regulations which made the harmonization of the offenses of money laundering, corruption, human trafficking, information and financial crime and others.

Harmonization of EU Member States criminal law is achieved through the adoption of Conventions, the adoption of Framework Decisions, which are

especially characteristic for the cooperation within the third pillar, and provides also the possibility of taking Common Positions and Decisions. Although the contract contains no explicit authorization, there is the unification of certain general criminal law institutions. Thus a Framework Decisions and Conventions require that each attempt, act or omission, abetting or assisting in some criminal acts are incriminated by law. In the area of criminal procedure law, harmonization of regulations is less emphasized and reduced to provide legal assistance in criminal matters, the recognition and enforcement of foreign court decisions, and the issue of extradition. There are no supra-national elements, although the adoption of a number of Framework Decisions led to positive developments in this field.

After the terrorist attacks in the United States, 2001, further strengthen cooperation in this field has been noticed. There is a need for the harmonization of criminal law of the Member States and for an enhanced cooperation between police and judicial authorities in the prevention of criminal activities. The legal basis for enhanced cooperation is Article 7 of Treaty of Nice (Official Journal C 80) in 2001.

Treaty of Lisbon (Official Journal C 306), Part 3, Chapter 5, art. 82-90, regulates the issue of cooperation of the courts in criminal matters. It is important that its adoption of the EU suspended the structure based on the pillars. The definitions of these articles are covered by the title "Freedom, Security and Justice". In accordance with the Treaty, the European Parliament and the Council, acting in accordance with the legislative procedure, started with adoption of measures to prevent and resolve the conflict of jurisdiction between Member States. Its aim was to establish rules and procedures for the recognition of judicial decisions on the entire territory of the Union and to facilitates the cooperation between authorities of the Member States in criminal proceedings and enforcement of sentences. To the extent necessary to facilitate mutual recognition of sentences and judicial decisions, as well as the establishment of police and judicial cooperation in criminal matters having cross-border dimension, European Parliament and the Council may, by *Directive*, adopted by the envisaged legislative procedure, define the *minimum rules* concerning mutual admissibility of evidence between Member States, the rights of persons in criminal proceedings and the rights of crime victims. Acting by the Regulations enacted through the usual legislative procedure, it establish the structure of the European Judicial Network, its profile, field of action and its tasks (initiation of criminal investigations, as well as propose initiating action by the competent authority of national governments, particularly those related to Offences against the financial interests of the Union, the coordination of investigations and prosecutions, and the strengthening of judicial cooperation).

Titulus iuris for the harmonization of substantive criminal law is Art. 67 Par. 3 of the Lisbon treaty, in the introduction to the chapter entitled "Space of Freedom, Security and Justice", in which it was stated that the high level of security will provide, among other things, the unification of criminal law. It also introduces the possibility of issuing Directives on the characteristics of offenses and sanctions in the area of particularly serious forms of crime (terrorism, trafficking, sexual abuse of women and children, money laundering, corruption, etc..) with cross-border feature. Therefore, since the adoption of a Treaty, this area receives a supranational

character, which replaces the form of intergovernmental cooperation that existed within the former "third pillar".

By the adoption of the Lisbon treaty, Criminal Procedural Law will become the most important area of criminal authority development of the Union and of the creation of supranational regions. Regulations on Mutual Legal Assistance in Criminal Matters and the area of mutual recognition of foreign court decisions having been shifted from the third pillar receive a supranational character. Mutual recognition of foreign court decisions, according to Art. 82 Par. 1 of the Treaty is one of the prerequisites of creating a space of Freedom, Security and Justice. To this aim, the EU will take measures in the form of Directives (Art. 82, par. 2). Cooperation in the field of recognition and enforcement includes three segments: extradition, enforcement of sentences and assistance in obtaining evidence. Exchange of evidence for criminal proceedings is, however, a stumbling block. First of all, the existing differences between continental and *common law* system in the evidence law make it difficult for transmission from country to country. Difficulties also arise in connection with the protection of basic human rights in criminal proceedings, which are perceived differently from country to country.

3. LEGISLATIVE FRAMEWORK FOR HARMONIZATION

Treaty of Maastricht provides specific legal instruments necessary for developing cooperation in justice and home affairs, by which is achieves the goal of harmonization of criminal law. Thus, Article K3 of the Treaty provides for the adoption of the Convention, *Common Positions* and *Joint Actions* in the areas of common interest. Treaty of Amsterdam added another two instruments of harmonization - *Framework Decisions* and *Decisions* (Article 34 paragraph 2). They to make convergence and harmonization of regulations for some of the worst types of crimes, in terms of constituent elements of the offenses and penalties for offenders, as well as the harmonization of the law of Member States in the areas of recognition and enforcement of foreign court decisions, legal assistance in criminal matters and extradition.

Conventions are the traditional form of harmonization of legal regulations. These are international treaties that, after being established by the European Council, are being sent to the Member States for adoption. The Convention shall enter into force after ratification by the member states and applies only to states that have ratified it. However, it appeared that the harmonization of criminal laws by creating a Convention's rights is not effective in terms of fighting crime because of the slow and complicated procedures of ratification and because of the refusal of some countries to ratify them. Common positions are legal documents defining the approach of certain issues by the EU. Unlike them, the Joint Action are made by the Council with in the decision, in a situation where this is necessary in order to take some action at the operational level of the Union. They oblige member states to take a stand on the issue in question and to take necessary actions. Joint actions mainly made for security issues and crime control policy. Framework Decisions are a type of legal acts that serve the approximation of member states. They are similar to the Directives in terms of action, for binding the result to be achieved, leaving national authorities the discretion of election forms and methods that will achieve that goal.

Unlike Directives, Joint Actions have no direct effect. However, decisions of the European Court on Human Rights granted them so called “indirect effect” ie. It created an obligation for national courts to interpret provisions of national law in accordance with the provisions of EU law (Pupino, C-105/03: 2005). Convention and the Framework Decision prescribe minimum rules for determining the characteristics and types of crime and punishment measures. In addition, there is a unification of some of the institutes of the general part of criminal law, thus the provisions of the Convention and Framework Decisions include the recommendations for Member States that certain actions, forms of guilty, complicity, or certain types of stages in the commission of criminal acts should be criminalized and punished. Decisions are adopted by the Council in order to achieve some of the aims in the area of judicial and police cooperation in criminal matters. They are legally binding for member states, but not directly applicable, but are implemented in national legislation.

Treaty of Lisbon makes a great step forward in terms of harmonization of criminal laws. It predicts the possibility to make the Directive which set minimum rules on the elements of the essence of particular criminal acts (acts of organized crime with cross-border features) and minimum rules on criminal sanctions. The provision which is of special importantce is a part of Art. 280. related to criminal protection of EU financial interests. That provision gives to the authority bodies of the European Union rights to pass decrees, which are legal acts with immediate effect and which are not implemented in the legal systems of member states. By adopting of the Regulation in this area was the Union would obtain the right to prescribe crimes and sanctions, thus overcoming the current level of harmonization. Dissolution of the so-called Third Pillar and its drowning in a single EU law, stops possibility ability to make legal acts of the Third pillar (Conventions, Decisions, Framework Decisions and Common Positions), so that now this area has legal acts with supranational characteristics (Regulations, Directives, Decisions, Recommendations, Opinions).

Treaty of Lisbon touches some institutions of the criminal procedure law. First, in Article 82. Par. 1 anticipates the mutual recognition of sentences and judicial decisions as one of the fundamental principles underlying the judicial co-operation. Until now, this area has been regulated by the documents of the third pillar, while after the entry into force of the Lisbon Treaty it will be regulared by the procedural rules with supranational symbolizes that will continue the unification of national legislation and criminal procedures. Supranational procedural rules will be issued in the form of Directives (Article 82,par.2) that cover three major areas: extradition, recognition and enforcement of judgments and assistance in obtaining evidence.

The first international agreement important for the cooperation within the framework of the recent "third pillar" of the EU was called The Schengen Agreement, signed between Belgium, the Netherlands, Luxembourg, Germany and France 1985. It aimed the police and customs simplify control, combating illegal drug trafficking, weapons, illegal migration, and compliance procedures for issuing visas. Measures to achieve these objectives have been developed in the Convention Implementing the Schengen Agreement of 1990, which is colloquially called "the

other Schengen agreement." The idea of signing such an agreement came from another earlier idea - the idea of the single European judicial space. It was necessary to create a "Europe without borders", but as the consequence of the abolition of borders leads to security levels decline. It is necessary to supplement a "security deficit" by an international act. Treaty of Amsterdam incorporated the provisions of the Schengen Agreement related to criminal matters. This is the called "Schengen acquis", which includes for example: measures of abolition of control over internal borders, visas, asylum, police cooperation, judicial cooperation in criminal matters, the ne bis in idem principle, matters of extradition, enforcement of criminal court decisions, etc..

Convention on the simplification of extradition procedures between EU member states was adopted in 1995 and brought some significant changes. It assumed the exclusion of any conditions for the extradition of political nature when it comes to crimes of terrorism, and in the cases of organized criminal association. It also assumes the extradition of nationals, lowers the limit of the punishment foreseen as a condition for extradition, and assumes a simplified extradition procedure for customs and fiscal crimes. Having these provisions it was a step further in terms of standard conditions for extradition prescribed by other international legal, multilateral or bilateral instruments.

Convention on the Protection of the European Communities financial interests (PIF Convention) adopted in 1995 (OJ C 316). It is the most significant legal instrument of criminal protection of the EU budget. It assumes harmonization of criminal law of the Member States, cooperation of ministries, prosecutors and courts, and the harmonization of substantive criminal law in terms of determining the elements of crimes and punishments. It was followed by supplementary protocols on corruption among national and European officials in 1996. (the so called Anti-corruption protocol) and on the criminal liability of legal persons, confiscation of property and money laundering in 1997. Additional Protocols expanded the range of the Convention on corruption, money laundering and corporate crime, in addition to the initial validity in the field of protection against fraud. The Convention defines elements of the crime of fraud, obliging on Member States to prescribe certain penalties for the perpetrators, accomplices and attempted criminal offense. The procedural part, obliges the states to cooperate in the investigation, prosecution and the execution of sentences. The Convention contains provisions on the application of *ne bis in idem,* which are identical with the provisions of the Schengen Agreement and the exceptions to this principle.

Closely related to the Convention on the Protection of financial interests, there is a project named *Corpus iuris* on the protection of EU financial interests, which the european jurists public sees as the foundation of European criminal law. It included a substantive, procedural, organizational and executive criminal law. The project was revised in Florence in 1999. Starting point was determination of the basic principles of protection of EU financial interests within the European Judicial Space. *Corpus iuris* established a mixed system, composed of national and communitarian elements. Starting from the principle of legality of criminal offenses and penalties eight offenses and penalties were established (fraud to the detriment of the Union budget, stock fraud, corruption, malpractice, abuse of trust, disclosure of

official secrets, money laundering and criminal association). It also mentioned the basis that exclude the unlawfulness the notion of the perpetrator, complicity, and the responsibility of legal persons. Further, the qualifying circumstances and elements of criminal association are listed. The forms of guilt and punishments were also defined. It prescribed, as the major penalties of imprisonment of up to 5 years (or up to 7 years) and a fine were. Minor penalties are: prohibition to perform certain duties of up to five years and taking away the objects used in the criminal act and a public announcement of the verdict. The second part dealing with process, really makes a radical shift anticipating of the investigation and sentencing model that combines elements of both adversarial and inquisitorial type of procedure (Amann, 835:2000). It assumes the establishment of the European Public Prosecutor's Office to conduct investigations of such offenses in a unique legal space. Prosecution would be composed of the Chief Prosecutor of the Europe (*European Public Prosecutor*), in Brussels, and delegated prosecutors in each Member State. European prosecutors could conduct investigations on the territory of each Member State, while the proceedings could be initiated and guided by the national courts. For the European public prosecutors the principles of indivisibility and solidarity are applyed. The initiation of criminal proceedings is conducted under the principle of legality, with certain exceptions. The prosecutor conducting the investigation has the following rights: to examine the suspect to conduct an investigation, require the expert opinion, to conduct a search and taking away of the objects, to determine the interception measures, to examine witnesses, to inform the defendant about the work charges and put the suspect into custody. After executing the previous procedure, the delegated prosecutor, under the supervision of the Chief Prosecutor, decides to terminate the procedure, or the case can be referred to national courts. During pre-trial proceedings, the control of the charges is carried by an independent judge, the so called "Judge of freedom." Measures to restrict the fundamental rights and freedoms are taken according to the principles of necessity and proportionality. In accordance with the application of the principle of a single judicial area, the order of detention can be made in any Member State. After the investigation, the case is handed over to the judge who examines the proceedings, the validity of the evidence and then it is submitted to the trial court.

Territorial jurisdiction is determined by the location of a delegated prosecutor, and is defined by national legislation. In Article 32. the rules on admissible evidence are defined and in the next one, the rules on exclusion of evidence obtained in an unauthorized manner. The important principle is equality of arms, that includes the rights of the defendant and the victim, the burden of providing evidence, the evidence and the exclusion of certain evidence. It is especially emphasized on the side of the defendant is presumed innocence, the burden of providing evidence is on the, and the validity of the *ne bis in idem* principle is assumed. Against the decision of the Trial Court prosecutor, there is the remedy (appeal) in accordance with national regulations, together with the validity of the prohibition *reformatio in peius*.

The European Court of Justice Is the appellate court. The first draft of *Corpus Juris* published in 1997 drew the attention and critical discussion of the legislative and executive authorities of the Member States as well as the academic

community. After the remarks and suggestions addressed to the *Corpus iuris*, in 2000 a draft of the renewed *Corpus iuris II* was published, modified, of course, the most important was the elimination of the jury trial. Although it was not designed as a model of European Criminal Code or the Code of Criminal Procedure of the European Union, scientific community sees it as a basic legal document for the creation of a European criminal law and European criminal procedure law *de lege ferenda*.

A problem related to the transnational crime is the fight against terrorism. The European Union fights against this phenomenon by making legal documents that define the elements of the crime and punishment, and a simplifying extradition procedure. In this sense, The Framework Decision on European Arrest Warrant (2002/ 584/ JHA, 13/6/2002) was adopted in 2002. The immediate reason for the adoption of the Framework Decision, was the terrorist attack on the U.S. on 11 September 2001. , after which it became obvious that the EU must fight terrorism through closer cooperation in criminal matters. Framework Decision on European arrest warrant was based on the conclusions of the Tampere which European Council adopted in 1999. assuming the improvement of the principle of mutual recognition of judicial decisions within the EU.

European arrest warrant replaced the complicated model of extradition in the European Union, which had been partially regulated by the provisions of numerous conventions. The main aims were accelerating and simplifying the procedure and the exclusion of the executive power (and thus of political infuence) from the decision-making and transferring powers to the judicial authorities. The execution of warrants is the exclusive competence of judicial authorities which check whether the conditions for extradition are met, and if the condition is met, extradition is carried out automatically (Palmieri, 38:2005). The European Arrest Warrant is defined in the Framework Decision as a judicial decision issued by a Member State, to arrest or extradit of the Defendant by the State party for criminal prosecution, executing the decision on detention and execution of the warrant of detention. It can be issued in the cases of a prison sentence or order of detention in custody for at least four months, and the crimes that are punishable by imprisonment or order the detention of over one year. The crimes for which the European warrant (participation in a criminal association, terrorism, human trafficking, illegal trafficking in drugs, etc..) can be used are prescribed in Article 2. Par. 2. of the Framework Decision. European warrant must be executed, regardless whether the offense is the same in both countries, if in the country that issues the warrant for that offense it is punishable by a minimum of three years. This is the list of 32 crimes for which the traditional principle of dual incrimination is abolished. Authority of the state executing the warrant must act upon within 60 days to decide whether or not to extradite the convicted person. This period may be extended for 30 days in justified cases. If, however, a person has voluntarily surrendered, the deadline for a decision on extradition is 10 days. Once the decision was made to accept the order, it must be carried out within 10 days.

Article 3. of the Framework Decision, assumes the cases where a Member State may refuse to execute warrants: if the offense for which extradition has been requested is a subject to amnesty or pardon in the state from which extradition is

requested, if the State from which extradition is requested has already passed a verdict against the same person in the same case (*ne bis in idem*), if the person whose extradition is requested is protected by immunity or if the warrant does not contain the necessary elements. By accepting the European arrest warrant, states have given up a part of their sovereignty and the decision-making on this issue is largely transferred to the State which issued an Arrest warrant (Tripković, 788: 2008). The procedures for the extradition of a person is significantly accelerated and simplified. After the adoption of the Framework Decision, Member States can no longer refuse to surrender their nationals, which led to changing the constitutional provisions in many countries that had excluded this possibility. In terms of conditions for approving of warrants, EU member states accepted more liberal approach than usual, which is regulated by bilateral agreements.

Improving international legal assistance in criminal matters, was also the goal of the issuing the Framework Decision on the European warrant on submission of evidence (.COM(2003) 688 final, 14.11.2003). Many parts of the Framework Decision are taken from the EU Convention on Mutual Legal Assistance in Criminal Matters Act from 2000. which due to a small number of ratifications never took its effect. The aim of adopting the Framework Decision was bridging the gap between continental and Anglo-Saxon legal system in the law of evidence. The Framework Decision is based on the assumption of mutual recognition, which refers to the production of evidence that are existing and available. In its full name it does not use the term "evidence", but "objects, documents and data." Obtaining other types of evidence will be regulated by mutual recognition of judicial decisions. The Framework Decision includes provisions to accelerate the procedure for obtaining and submitting evidence. There was also a list of 32 criminal offenses in which one can not rely on the principle of *ne bis in idem* as a reason for the refusal of execution of warrants. The basic condition for the execution of warrants is the minimum recommended sentence of 3 years imprisonment. There was a "territorial clause" as a reason for refusing warrants. All the provisions other are identical to the provisions of the Framework Decision on the European Arrest Warrant.

The Charter of Fundamental Rights of the EU (OJ 2000 C 364) was adopted in 2000. with the intention to become a catalog of basic human rights and freedoms guaranteed in the European Union. It was to become a legally binding document after the reform of the Treaties, completed in Nice in 2004. However, the epilogue was different- it has become a part of the so-called. "*soft law*", with the legally non-binding effect. Indirectly, it did have a legal effect, because its provisions were used by the European Court of Justice in its decisions. Charter's identical text was embedded in the Constitutional Treaty variant. Treaty of Lisbon in its Article 6 says that "*The Union recognizes the rights of freedom and the principles embedded in the Charter*." Although it was set aside in a separate document, the Charter came into force simultaneously with the Treaty of Lisbon, and has the same legal force as the Treaty. Two EU member states, Poland and the United Kingdom have made the reservation to the effect of the Charter. It contains a catalog of basic human rights which is binding for the EU and Member States to ensure compliance with them while adopting and interpretating its legal acts. The supervision of the assert of the rights and freedoms is done by the European Court and national courts, and

individuals have the right to initiate proceedings before national courts in case of violence of the Charter, and it can ask the European Court the previous question. In the development of EU criminal law, fundamental are especially important following the human rights guaranteed by the Charter: the right to human dignity (Article 1.) that must be respected in any proceedings against an individual, the right to life (Article 2.), the right to physical and mental integrity (Article 3.), the prohibition of torture, cruel or degrading treatment or punishment (Article 4.), equality before the law (Article 20.), and the prohibition of discrimination (Article 21.) In the field of substantive criminal law this should be emphasized: the principle of legality of criminal offenses and penalties (Article 49., par. 1.), the forbidance of retroactivity, except in the case of applying the more lenient law (Article 49. par. 2.), and the principle of proportionality of crime and punishment (Article 49. par. 3). The Charter guarantees certain rights in the domain of criminal procedural rights: the right to liberty (Article 6.), the right to privacy (Article 7.), the right to a remedy (Article 47. par. 1.), the right to a fair trial (Article 47. par. 2.), the right to legal assistance (Article 47. par. 3.), the presumption of innocence (Article 48. par. 1.), right to defense (Article 48. par. 2.), and finally the *ne bis in idem* principle, which is given effect at national level but also on the territory of the Union (Article 50.).

At the end of the examination instruments for harmonization criminal legislation of EU member states, let' s notice that in recent times legislative bodies deal with the position of victims of criminal activities. In this sense, the Framework Decision on the standing of victims in criminal proceedings (2001/220/JI) was made. This document aims to provide increased legal protection for the victim, before, during and after the conclusion of criminal proceedings. Also, program the "Criminal Justice" (2007/126/JI) for the period since 2007 to 2013 was made, which provides financial support for respecting of fundamental rights and for legal systems. Finally, of great importance in the field of criminal law enforcement is a Council Decision on the exchange of information from criminal records in 2005 (200S/876/JI).

4. CONCLUSION

After entry into force of the Treaty of Lisbon, 2009., a new era in the development of criminal legislation began. It has given the European Union supranational authority in criminal law.

Criminal jurisdiction has been considered as a mirror of national sovereignty, which states considered the "last stand", which was hardest to give up with. Their inviolable sovereignty of *ius puniendi*, in the future will be significantly diminished and transferred to supranational body of an international organization, such is the European Union. Thus, the notion and identity of the criminal law, understood in the classical sense came into question. The ideas of harmonization, and the unification of the criminal law are not new. They have evolved gradually, and the convergence of the basic institutions of the European Criminal Law took place step by step. What was brought by the Treaty of Lisbon had already been, but indicated by variant Constitutional Treaty.

"Legislative" powers of the European Union are reflected in the supranational decision-making process which has so far been limited only to "first pillar". It

created a favorable climate for the unification of a large number of criminal material and criminal procedural legislation of the Member States. The areas that have gone furthest in the process are the recognition and enforcement of judgments, extradition and the recognition of the evidence. Most was achieve in terms of harmonization of pre-trial stage and the preliminary inquiry. Phase of the investigation will be given to the European public prosecutor, which will be mixed Anglo-continental type. A significant place in the investigation phase belongs to Europol, which will participate in the conduct of the investigation, and Eurojust, which will initiate an investigation and prosecution before the national authorities. Legal protection in criminal procedure is a point which also goes a step forward. The European Court of Justice is given jurisdiction in criminal matters. The Charter of Fundamental Rights has become an integral part of the legal system of the EU and the European Convention on Human Rights and Fundamental Freedoms, a document which can now be accessed by the European Union. The rights and protection of victims are increasingly take account

In the area of substantive criminal law, transnational organized crime are harmonized, which means that the elements of crimes, as well as the type and measure of punishment.

Considering the three possible levels of integration in the field of criminal legislation - co-operation, as a minimum, and the harmonization and unification, as the higher levels, we can conclude that after the entry into force of the Treaty of Lisbon the EU legal system moved away from the level of cooperation and accepted the model of harmonization, with the tendency of unification in the future. It is a step away from of creating a criminal law of the EU, in the true sense of the word, to which we will probably come in the years ahead. Other nion EU countries, as well as countries in the process of joining the European Union are not outside the harmonization. It is fullfilled, particularly within the Council of Europe and its legal instruments, and with in the gradual harmonization of their own legislation with EU law.

BIBLIOGRAPHY

1. Tripkovic, B.: The European Arrest Warrant in the practice of constitutional courts: towards cooperative constitutionalism, Collected papers of the Law Faculty in Novi Sad, 2008, no. 1 - 2, pp. 785 – 806..
2. Palmieri, M. European integration in criminal field (European Arrest Warrant), Temida, 2005, no. 4, pp. 37 – 43.
3. Sokovic, S.: Crime Control in the system of EU law, European Law Journal, 2005, no. 2 - 3, pp. 51 – 69.
4. Amann, D.M. Harmonic convergence? Constitutional criminal procedure in an International context, Indiana Law Rewiev, 2000, nr. 809, pp. 809- 873..
5. Djurdjevic, Z.: The Lisbon Treaty: a milestone in the development of criminal law in Europe, Croatian Chronicle of Criminal Law and practice, 2008, no. 2, pp. 1077. – 1127.
6. Tomasevic, G. The main institutes of international criminal procedural law, Collected papers of the Law Faculty in 2004, no. 3 - 4, pp. 199. – 222.
7. Janjevic, M.: The third pillar of the European Union, Belgrade 2003.

Original Scientific Article
UDK 35.077:341.171(4-672ЕУ:4-12)
321.7:341.171(4-672ЕУ:4-12)

INSTITUTIONAL SETTING DEVELOPMENT IN SEE COUNTRIES IN THE CONDITION OF EUROPEAN INTEGRATION[3]

Jelena Zvezdanović Lobanova, Ph.D.
Institute of Social Sciences Belgrade Centre for Economic Research
jzvezdanovic@idn.org.rs
Marijana Maksimović, Ph.D.
Institute of Social Sciences Belgrade Centre for Economic Research
originalmarijana@gmail.com
Vasko Kelić, MSc
Institute of Social Sciences Belgrade Centre for Economic Research
vasko.kelic.dm@gmail.com

Abstract
This paper deals with the institutional development achievements and obstacles to democratic transition in the SEE countries. By applying comparative analysis and calculating global governance indicators for period 2005 – 2013 and 2014 – 2021, we show how the EU enlargement policy development have influenced institutional changes in these countries, in particular in SEE non-EU countries. The EU accession conditionality has had strong impact on the quality of their political and institutional governance. The concluding remarks reveal that Western Balkan countries are still far from getting EU membership due to their inability to comply with accession criteria, as well as main EU Member States' resistance to EU enlargement policy. They are still burden with the inefficiencies stemming from poor neighborly relations, weak institutional settings, high rate of corruption, absence of the rule of law etc. In order to achieve progress on their path towards EU accession, these countries should take decisive steps to strengthen democracy and the rule of law by preventing corruption.

Keywords: the institutional quality, reforms, governance, EU, SEE, Western Balkan countries

[3] "This paper was written as part of the 2023 Research Program of the Institute of Social Sciences with the support of the Ministry of Science, Technological Development and Innovation of the Republic of Serbia."

INTRODUCTION

Improving the quality of the institutional arrangements is an issue of relevance to South Eastern Europe[4] (SEE) countries, especially those in the Western Balkan (WB) region. The importance of institutions in shaping their economic, political and social developments, as well as their influence on the direction of strategic policy for the future, is indisputable. The implementation of institutional reforms in this region implied the rapid suppression of institutions from the previous political and economic system, while the construction of new ones depended on the speed of structural changes realization and the fulfillment of requirements for EU membership. The SEE countries had similar institutional conditions, but thereafter chose different trajectories (the speed and sequence of policy reforms) for the establishment of a market economy. Those countries that managed to meet EU's Copenhagen criteria achieved better results in the improvement of their institutional environment. SEE-non EU countries are still lagging behind the EU member states countries due to the backsliding on democracy, weak economic performance, regional disputes, and political instability over the past few decades. These countries are faced with the capture of the state by elites who give priority to rent-seeking and ethno-nationalist appeals instead of economic reform implementation and creation of democratic institutions (Vachudova 2019). The region is characterized by high political risks related to lasting enmities from the wars of the 1990s, ethnic fragmentation, high share of the informal economy and employment rate, pervasive corruption and low levels of confidence in government etc. Such democratic backsliding emerged due to weak institutional arrangements and inherited governance practice that enable executive dominance, patronage and informality (Kapidžić 2020).

Our paper is organized as follows. In the Section 1 we give an overview of empirical studies which mainly investigate the effects of institutional quality on economic performance in host countries. In Section 2, we highlight the most important economic, political and social challenges during the implementation of structural reforms and building of institutions. Then, we present the level of institutional development that has been achieved in SEE countries by calculating global governance indicators and compare their institutional performances.

LITERATURE REVIEW

In the literature on economic development, the institutional quality has been often stressed as the key determinant in explaining the economic performance, national competitiveness and differences between countries and regions. The significance of institutional quality on countries' success in economic growth and

[4] In the very beginning of the 1990s, the SEE region consisted of Albania, Bulgaria, Romania, and the Socialist Federal Republic of Yugoslavia. We analyse the Southeastern European EU member states (SEE EU: Bulgaria, Croatia and Romania) and Southeastern European non-EU member states (SEE non-EU or Western Balkans: Albania, Bosnia and Herzegovina (BIH), North Macedonia, Montenegro, Serbia).

development has been revealed in a number of empirical studies (Alfonso, 2022; Minović et al., 2020; Zergawu et al., 2020, Ramadhan, 2019; Zvezdanović Lobanova et al. 2016, Zvezdanović, 2013). For example, Kovaci (2022) reveals that the influence of institutional setting on economic development is positive, it varies according to the country groups i.e. both investment, and total factor productivity channels are more effective in low and middle-income countries. This finding is consistent with the results of Hayat (2019), who demonstrate that both institutional quality and FDI inflows cause higher economic growth. His findings show that better institutional quality in the low and middle-income countries was found to be enhancing the FDI-led economic growth.

By applying an ordinary least squares panel regression model using the data from 16 transition countries from Central and Eastern Europe and Western Balkans in the period 2000-2016, Kocevska-Shapkova and Makrevska-Disoska (2017) examine the effects of interdependence of institutions and free trade on economic prosperity. The authors find both institutions and trade are statistically significant determinants the GDP per capita in the selected economies. The recent study by Radulović (2020) compare the effects of institutions on the economic growth of SEE region with those in EU and non-EU countries for the period 1996–2017. The results indicate that there is a long-run relationship between institutional quality and economic growth for all significant variables in EU countries, while in the non-EU countries only governance indicators such as government effectiveness, political stability and absence of violence, regulatory quality, and voice and accountability proved to have significant impact on economic growth. Similarly, Nedić et al. (2020) find that the implementation of institutional change policies (especially those that promote government effectiveness and regulatory quality) in SEE non-EU countries characterized by delayed transition can have a positive effect on long-term economic growth.

Yildirim and Faysal (2016), studying 38 countries from different continents, reveal that institutional quality indicators such as the integrity of the law system, regulations on trade barriers, restriction of foreign investments, the share of the private sector in the banking system and employment-dismissal variables have positive impact on the macro-economic performance. According to their findings, indicators that proved to have negative effect are judiciary independence, government expenditures, transfers and subsidies, civil freedoms, the black market exchange rate, collective bargaining and political stability.

Oanh et al. (2021), in a study of 48 Asian countries on the basis of indicators from 2005 to 2018, find that quality of institutions is a crucial factor of economic development. The authors point out that the higher institutional quality in the lower income Asian countries promote the growth more effectively than in the higher income ones. Obviously, there is a certain institutional threshold for economic performance after which further institutional improvements cause the adverse impact on economic growth. Olaoye and Aderajo (2020), however, point out that economic institutions will only achieve desirable economic effects if the quality of political institutions is above a certain threshold. To prove their point, they use a sample of 15 country members of the Economic Community of West African States (ECOWAS).

INSTITUTIONAL DEVELOPMENTS IN SEE COUNTRIES ON THEIR PATH TOWARD EU MEMBERSHIP

The process of structural reforms implementation in the SEE region took place in very complex circumstances. Among the explanations offered to account for adverse economic, political and social developments in this region, the most prominent are the wars and ethnic conflicts, the dissolution of the Socialist Federal Republic of Yugoslavia, economic and diplomatic sanctions imposed on Yugoslavia, NATO bombing, a delayed transition to democracy and market economy etc. Therefore, all these adverse events have been framed through the overlapping and conflicting dynamic of nation- and state-building processes and countries' aspirations to join the EU (Džankić et al. 2019). Such developments severely and negatively affected the GDP growth, industrial production, inequality, living conditions and social well-being. Countries were also faced with the severe economic decline, foreign trade implosion and hyperinflation in the early 1990s (Uvalić, 2019). "The existing institutional arrangements were serious impediments to the economic development of the post-socialist countries since they were not able to adapt successfully to the changing conditions" (Zvezdanović Lobanova et al., 2021).

With the desire to support this region, the EU adopted the Stability Pact for South Eastern Europe in 1999 in order ensure peace and security, as well to stimulate cooperation between countries. "European integration of the WB countries is being carried out through the Stabilization and Association Process (SAP) aimed at strengthening relations between the EU and the countries of the region" (Zvezdanović Lobanova, 2017). It was launched and strengthened at the EU-Western Balkans summit of 2003 in Thessaloniki with the aim to support eventual EU membership. This political agreement was signed with the aim to enable EU integration of the Western Balkans into Euro-Atlantic structures and transition to market economies. Thanks to this Pact, implemented projects led to the improvement of cooperation in the region (in the areas such as the fight against organized crime and corruption, migration, the visa regime and cross-border cooperation). In addition, the CEFTA free trade zone was established and the regional electricity market was formed. The pace of institutional and economic reforms was accelerated after the signature of the Stabilisation and Association Agreement with the EU (North Macedonia in April 2001; Croatia in October 2001; Albania in June 2006; Montenegro in October 2008; Serbia in April 2008 and BIH in June 2008) and again after the start of the membership negotiations.

In addition, this Pact envisaged an increase in employment and provision of better working conditions. In this regard, the regional cooperation and the strengthening of institutions dealing with employment and employment issues were set as main goals by the ministries of labor of the WB countries. As a result, a regional network was established to monitor and combat undeclared work, and this activity was supported by increased institutional capacity. At the same time, the WB countries began to engage more and cooperate in the field of employment and social

policy, as well as to support the development of inclusive markets, which enable individuals and their families to acquire not only better conditions for overall life, education, treatment, food quality, but also better use of their free time. The modernization of the labor market is also very important because it provides an easier connection with the European labor market. It also enables a more efficient conversion of undeclared work into legally declared job, as well as the implementation of those employment measures that increase the employment of young people, women, and the long-term unemployed (Employment, 2020). This contributes to economic reforms being more successful in the SEE and WB countries, but also to being better aligned with the principles of the labor market in the EU.

It is very important for these countries to increase the level of production and productivity and to enable rapid development of information technology sector by respecting the basic principles of the economy. In addition, these countries are expected to become export-oriented and to increase the level of their exports, to encourage free trade and to strengthen not only the particular economy, but also of the entire region. This is not a new claim, since the trade has been a kind of connection since the Middle Ages. In the 17th century, it was the most natural way of connection, and today, it means reducing restrictions on the free flow of goods and services between countries. "Trade liberalization (economic or market liberalization) enables greater freedom when importing goods. It involves removing or reducing trade practices that prevent the free flow of goods and services from one country to another. It includes the elimination of tariffs (for example, export subsidies) as well as non-tariff barriers (for example, licensing regulations, quotas or production standards)." (Maksimović, 2017, 452-453). Beside intensive trade cooperation, cooperation in the area of culture, education, employment, anti-corruption, rule of law and respect for the principles of democracy should promote better understanding between these countries, reduce conflicts and expand joint activities that preserve peace and prosperity in the region.

The prospects of European integration had significant impact on the economic and social transformation in SEE countries. After Bulgaria, Romania and Croatia became the EU member states, they have experienced a higher economic performance and an increase in competitiveness. Such a trend was revealed in an article by Campos et al. (2019) who find that there are large positive effects from EU membership. The authors point out that countries receive positive, significant and substantial net benefits from EU membership in terms of higher GDP per capita and labor productivity. These benefits represented powerful stimulus for governments of WB countries to fullfil the EU's extensive entry requirements. However, this positive pay-off from EU membership differs across countries and over time. By providing material benefits and external legitimacy to the ruling elites in these countries, the EU has had a transforming effect on domestic institutional and legislative structures underpinning the rule of law (Noutcheva and Aydin-Düzgit, 2012). The presence of the European Union in the Balkans actually represents support for the WB countries in terms of building institutions, achieving the rule of law and encouraging those countries to cooperate with each other, but also with EU countries. This strengthens stabilization, but, at the same time,

encourages the Europeanization of the Balkan countries. The EU is the place where the Balkan countries want to be, because it is a large and organized market, the economies of many member countries are organized according to the social-market model, it has clear positions on the issue of energy efficiency, it offers good education, and possesses developed science and diplomacy (Maksimović and Novaković, 2020, 80-81).

SEE non-EU countries need to fulfil the criteria of Article 49 of the Treaty on European Union and the political, economic and legal requirements for EU membership (the Copenhagen criteria). The EU's conditionality approach has been largely ineffective concerning state building, in part due to the lack of commitment of political elites to EU integration and the persistence of status issues on the policy agenda (Bieber 2011). Political elites in EU accession countries are characterized by lack of political will and lack of leadership in strengthening the rule of law. The poor EU aid effectiveness aimed for reform implementation and economic growth stimulation is due to corrupt elites from this group of countries which are directly or indirectly financed by these sources (Barlett 2021). According to the European Commission (2018), candidate countries are expected to make additional effort to implement comprehensive and convincing reforms in the field of the rule of law, competitiveness, and regional cooperation and reconciliation. The candidate countries are expected to build inclusive institutions that promote rule of law, productivity growth and enable economic progress (Ostojić, 2020).

The narrative of prospective EU enlargement largely depends on "enlargement fatigue" which can be defined as the unwillingness of some of the EU members to admit new countries (Economides 2020). The less readiness of the EU to accept new members is reflected in the adoption of the reshaped EU enlargement strategy which is characterized with the "fundamentals first" approach (Miščević and Mrak, 2017). This approach focuses on three main pillars: the rule of law, economic governance and public administration. Bearing in mind the fact that WB countries are facing difficulties while addressing economic, political and security issues, EU offered regional economic integration as an alternative to the Western Balkans' EU membership.[5] This initiative has been denoted as a stepping-stone for this group of countries in fulfilling the accession criteria. It is also a great opportunity from eliminating barriers that hinder closer economic integration (such as fiscal, technical and physical barriers).

In 2018, the EU adopted a new enlargement strategy for the Western Balkans countries which focus is on the fight against corruption, organized crime and the strengthening of the rule of law. The EU-Western Balkans strategy sets out six "flagship initiatives": strengthening support to the rule of law, reinforcing engagement on security and on migration, supporting socio-economic development, increasing connectivity, a Digital Agenda and supporting reconciliation and good neighborly relations (European Commission, 2018). From this, it might be

[5] Common Regional Market initiative has thus been launched at the 2020 Sofia Summit with the aim of fostering further economic integration among the Western Balkans countries (European Commission, n.d.).

concluded that migration plays one of the important principles in building connections in the region and the policy of joining the EU.

Migrations intensified in the 21st century, especially around 2015. Whether they are viewed as a phenomenon or a process, they lead to demographic, economic, social and cultural changes. Those countries that were supposed to receive migrants, not infrequently, led a restrictive migration policy, by limiting the access to the labor market.

By observing migrants not only through the prism of the search for better working conditions, and thus life (economic migrants - macroeconomic level), but also through the prism of corporations (changing their place of residence due to the large companies' demands – microeconomic level), it can be concluded that migration is a consequence of different socioeconomic conditions and context. "The migration policies of the countries that are supposed to receive migrants significantly affect the volume and model of migration, conditions are often set where their residence will be and what and to what extent their access to the labor market will be." (Maksimovic, 2017, 454). The WB countries should bear in mind that in recent decades, the demand for highly qualified labor has increased significantly, and that the model of migration is also changing, from permanent settlement to temporary or circular migration, aimed at two or more countries of destination. They must also take into account illegal (disguised) migration, which represents a big problem for developed and especially underdeveloped countries. Migration policy is crucial for resolving the problems related to migrants, because it can be implemented both at the national and the regional level, or even at the level of a broader entity such as the European Union. In this context, border control is also crucial, as well as the establishment of valid records of migrants and migratory movement. This is necessary for countries to find a common "language" on the issue of migrants, and thus preserve peace and stability in the region. "The basic problem that migration policy should solve is to give all civil rights to immigrants so that they became equal political subjects." (Maksimović, 2018, 193). The revision of the EU enlargement strategy has been made with the intention to make it more credible, predictable, dynamic and political with special emphasis on good neighborly relations and regional cooperation (Wentholt, 2020).

TRACKING INSTITUTIONAL PERFORMANCE IN SEE COUNTRIES

The current level of economic development of SEE countries is largely dependent on their transition path. As it can be seen from the table 1, there are significant differences in their economic performance expressed by the GDP per capita in constant prices. Croatia as the region's youngest EU member state has the highest value of this indicator (it is three times higher than in Albania), followed by Romania and Bulgaria. Western Balkan countries are well behind these three countries since they managed to reach the 1992 level of GDP per capita only in the

mid-2000s[6]. The Western Balkan countries are characterized by lower level of GDP per capita (Albania has the lowest value), high unemployment rate and youth unemployment (the worst performance were recorded by BIH, Montenegro and North Macedonia), a large informal economy share (higher than 30%) and a relatively high government debt as percentage of GDP (with the exception of BIH) (see Table 1). Unfortunately, the majority of countries are in similar situation regarding the insufficient youth employment opportunities, which represent significant challenge and growing concern for their governments.

Table 1: Selected macroeconomic indicators in SEE countries in 2021

Country	GDP per capita (constant 2015 US$)	Unemployment rate (% of total labor force)	Youth unemployment (% of total labor force ages (15-24)	Informal economy (% of GDP)	Government debt (% of GDP)
ALB	4,831	12,7	29,5	31,9	73,2
BIH	5,862	14,9	35,3	33	35,4
BGR	8,634	5,3	15,8	27,7	32,8
HRV	15,166	7,6	21,9	29,5	77,7
MKD	5,287	15,8	36,1	33,4	51,6
MNE	7,350	16,9	30,3	-	83,5
ROU	11,542	5,6	21	23,8	49,3
SRB	7,114	10	25,8	31,3	56,5

Source: World Bank Country Insights and World Economies

According to the Economist Intelligence Unit data for 2022, the majority of SEE countries (six of eight) improved their score in the Democracy Index[7] in 2021 compared with 2020. The modest improvements were recorded by Montenegro and BIH, while Bulgaria experienced a negligible deterioration in its score due to setbacks in the functioning the government. Although Albania registered progress in its overall score, this country faced a decline in the field of political culture and civil liberties. It is noteworthy that North Macedonia and Montenegro were upgraded to "flawed democracy" status due to notably changes in the functioning the

[6]In addition, what the WB countries should address in the future is a change at the level of industry, which directly affects GDP growth. Namely, their transition to the concept of sustainable development, i.e. of green growth and green technologies leads to structural changes in the entire economy. The transition to a green economy should bring a reduction in the pollution volumes by companies. "Tasks of green economy and green business should contribute to reducing the impact of the economy on the environment, and contribute to fulfilling the criteria for decent work - decent work that implies appropriate wages, safe working conditions, basic social protection, respect for workers' rights and the process of social dialogue." (Maksimović, 2020, 252).

[7] The overall index assesses the state of democracy on a scale of 0-10, which covers 167 independent States and is based on the following categories: electoral process and pluralism, functioning of government, political participation, political culture, and civil liberties.

government and in political participation (elections and rising of confidence in political parties).

If we take into consideration the overall democracy score for 2021 (see Table 2), Bulgaria is the best positioned country in the SEE region, occupying the 53th position with an overall score of 6,64, followed by Croatia (56th=6,50), Romania (61th=6,43), Serbia (63th=6,36) etc. It is interesting that Western Balkan region is characterized with the high divergence in scores: for example, Serbia retained 63th position in the global ranking (out of 167 countries), while BIH is obviously an outlier (95th position). Table 2 also shows that all SEE countries have achieve quite impressive results in comparison to 2013 regarding political participation and functioning of government, but less so in improving political culture and civil liberties. In circumstances where the gap between the political elites and society is widening, which has culminated in the erosion of civil liberties, there is a justifiable fear that foreign investors' rights, including those concerning intellectual property, will not be adequately protected (Zvezdanović Lobanova et al., 2021). The normal functioning of the democratic institutions is hampered by strong political polarization and lack of cross-party dialogue (European Commission, 2022). All SEE countries belong to the group of flawed democracy (countries that face significant weakness in some aspects of democracy, functioning of governments, political culture and participation) with the exception of BIH, which is designated as "hybrid regime".

Table 2: Democracy Index for SEE countries (in 2013 and 2021)

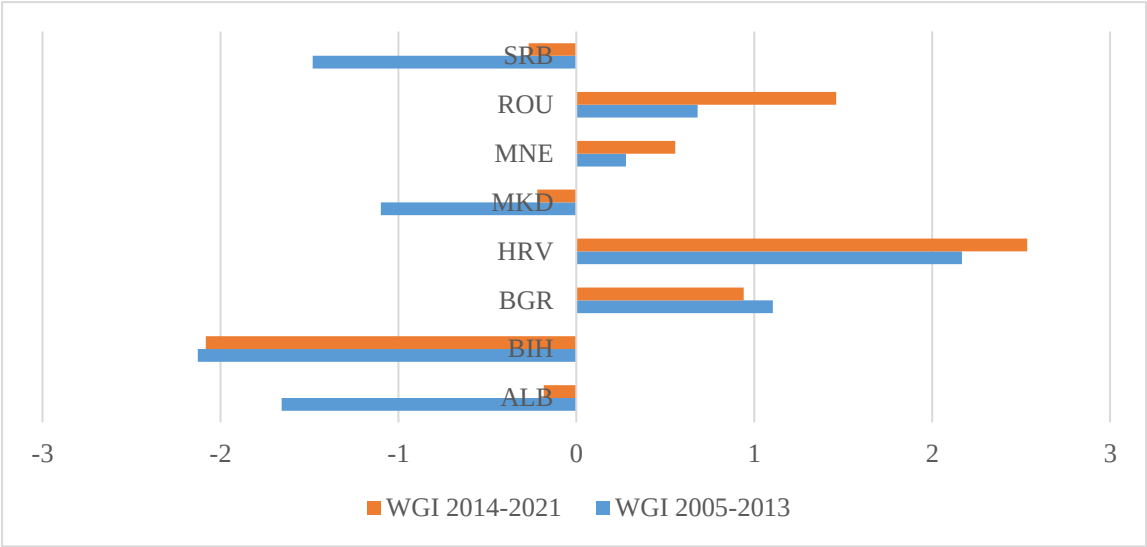
Country	Overall score		Electoral process and pluralism		Functioning of government		Political participation		Political culture		Civil liberties	
	2013	2021	2013	2021	2013	2021	2013	2021	2013	2021	2013	2021
ALB	5,67	6,11	7	7	4	6,43	5	4,44	5	5,63	7,35	7,06
BIH	5,02	5,04	6,50	7	2,93	3,29	3,33	5,56	5	3,75	7,35	5,59
BGR	6,83	6,64	9,17	9,17	5,71	5,36	6,67	7,22	4,38	4,38	8,24	7,06
HRV	6,93	6,50	9,17	9,17	6,07	6,07	5,56	6,11	5,63	4,38	8,24	6,76
MKD	6,16	6,03	7,75	7,42	4,64	6,43	6,11	6,11	4,38	3,13	7,94	7,06
MNE	5,94	6,02	7,92	7,42	5,36	6,43	5	6,67	4,38	3,13	7,06	6,47
ROU	6,54	6,43	9,58	9,17	6,07	6,07	4,44	6,11	4,38	3,75	8,24	7,06
SRB	6,67	6,36	9,17	8,25	5,71	6,07	6,11	6,67	5	3,75	7,35	7,06

Note: Albania – ALB, Bosnia and Herzegovina – BIH, Bulgaria – BGR, Croatia – HRV, North Macedonia – MKD, Montenegro – MNE, Romania – ROU and Serbia – SRB.

Source: The Economist Intelligence Unit (2022) Democracy Index 2021 and 2013

In Figure 1, we show the institutional setting development of SEE countries with the help of Worldwide Governance Indicators (WGIs) that measure different aspects of the state of governance (Voice and Accountability, Political Stability and Absence of Violence, Government Effectiveness, Regulatory Quality, Rule of Law and Control of Corruption). We present and evaluate the global governance indicator that is calculated with the help of the analytical framework developed by Fabry and Zeghni (2010). The global governance is the sum of the averages of the six indicators for the periods 2005 – 2013 and 2014 – 2021 calculated for each SEE

country. The value of each indicator can range from - 2.5 to +2.5, while the global



governance indicator can vary from -15 to +15 (Zvezdanović Lobanova 2017). For the SEE region the interval is between -2,12 and +2,53.

Figure 1: Ranking of SEE countries based on their global governance

Note: ALB – Albania; BIH – Bosnia and Herzegovina; BGR – Bulgaria; HRV – Croatia; MKD – Macedonia; MNE – Montenegro, ROU – Romania; SRB – Serbia.

Source: Own calculations based on WGI data

Transition countries made progress in building institutions, but with different dynamic, and in different periods. In the period 2014-2021, Western Balkan countries have made crucial efforts in order to improve their institutional arrangements as shown by the global governance indicator (with the exception of BIH). It is noteworthy that the overall quality of institutional setting has worsened in Bulgaria due to problems that led to a rotation of power in 2021. The most problematic institutional areas in the SEE region in 2021 are control of corruption, government effectiveness and rule of law. Modest results have been achieved in the field of political stability and absence of violence and raising the voice and accountability. BIH can be denoted as an institutionally inefficient country whose sub-indices are in the negative zone, which negatively influence the average level of the SEE countries.

The fight against corruption varies significantly and remains the burning issue in the region. Western Balkan countries still continues to face challenges of widespread corruption that presents a significant obstacle to democratic stability, the rule of law, and social and economic development in SEE region. They made insignificant or no progress at all in the prevention or repression of corruption. However, the main obstacles are authorities that are not interested in the fundamental change of society in order to enable greater functionality and justice.

Unfortunately, they are rather interested in preserving their own privileges at the expense of other groups and society as a whole. Domestic regimes from Western Balkans know how to take advantage of the domestic system weaknesses, while political elites rely on informal structures, clientelism, and the control of the media to undermine democracy (Kmezić, 2020).

CONCLUSION

During the last two decades, SEE countries made considerable efforts in order to improve their institutional settings. SEE EU member states (Croatia, Bulgaria and Romania) are denoted as leaders since they have managed to achieve greater success in improving their institutional settings. However, Western Balkan countries still continues to face challenges such as widespread corruption, high levels of informal economy, high rate of youth unemployment, non-compliance with EU laws and regulations, which adversely affect on their economic growth and competitiveness. They are far from getting EU membership since the calendar of WB accession process is followed by uncertainty. The European perspective of the SEE non-EU states is called into question since these countries are faced with serious setbacks for democracy and freedom (control of media and patronage, the existence of the informal power structure, politicized judiciaries etc.). Profound political and economic changes for EU accession are delayed due to unwillingness and inability of candidate countries to carry out their implementation. On the other hand, EU has no willingness to make notable steps in the direction of enlargement in the Western Balkans.

In addition, Western Balkan countries are characterized by the poor implementation of adopted laws. Since the harmonization of domestic legislation with EU and international standards has not reached a satisfactory level, transition countries are expected to continue the realization of key policy reforms. It is noteworthy that economic policy makers should pay special attention on investigating the influence of path dependence processes on the macroeconomic performance of transition countries. In the process of further institutional arrangement improvement, of key importance is the application of a holistic approach, as well as the establishment of mutual partnership between all structures in society (the government, local authorities, private and public sector). Finally, it can be concluded that the "Balkan question" is more than ever before in history a "European question", although the Balkan countries have always been on European soil.

REFERENCES

1. Afonso, Oscar. 2022. “The impact of institutions on economic growth in OECD countries.” *Applied Economics Letters* 29, no. 1: 63–67.
2. Bartlett, Will. 2021. “International Assistance, Donor Interests, and State Capture in the Western Balkans.” *Journal of Contemporary European Studies* 29, no. 2: 184–200.

3. Bieber, Florian. 2011. “Building Impossible States? State-Building Strategies and EU Membership in the Western Balkans.” *Europe-Asia Studies* 63, no. 10: 1783–1802.
4. Campos, Nauro, Fabrizio Coricelli, and Luigi Moretti. 2019. “Institutional integration and economic growth in Europe.” *Journal of Monetary Economics* 103: 88-104.
5. Džankić, Jelena, Soeren Keil, and Marko Kmezić. 2019. “Introduction: The Europeanisation of the Western Balkans.” In *The Europeanisation of the Western Balkans. A Failure of EU Conditionality*, edited by Jelena Džankić, Soeren Keil, and Marko Kmezić, 1–14. Palgrave Macmillan, Cham.
6. Economides, Spyros. 2020. “From Fatigue to Resistance: EU Enlargement and the Western Balkans.” Working Paper No. 17, The Dahrendorf Forum, Berlin, DE.
7. Employment. 2020. *Regional Cooperation Council.* Available at https://www.rcc.int/priority_areas/12/employment , accesssed 20 June 2023).
8. European Commission 2022. Communication on EU Enlargement Policy, COM (2022) 528 final, Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, October 12. https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52022DC0528&qid=1665762759029
9. European Commission. 2018. A Credible Enlargement Perspective for and Enhanced EU Engagement with the Western Balkans, COM (2018) 65 final, Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, February 6. https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52018DC0065
10. Fabry, Nathalie, and Sylvain Zeghni. 2010. “Inward FDI in Seven Transitional Countries of South-Eastern Europe: A Quest of Institution-based Attractiveness.” *Eastern Journal of European Studies* 1, no. 2: 77–90.
11. Hayat, Arshad. 2019. “Foreign direct investments, institutional quality, and economic growth.” *The Journal of International Trade & Economic Development* 28, no. 5: 561–579. https://doi.org/10.1080/09638199.2018.1564064
12. Kapidžić, Damir. 2020. “The rise of illiberal politics in Southeast Europe.” *Southeast European and Black Sea Studies* 20, no. 1: 1–17. http://dx.doi.org/10.1080/14683857.2020.1709701
13. Kmezić, Marko. 2020. “Rule of law and democracy in the Western Balkans: addressing the gap between policies and practice.” *Southeast European and Black Sea Studies* 20, no. 1: 183–198. https://doi.org/10.1080/14683857.2019.1706257
14. Kocevska Shapkova, Katerina, and Elena Makrevska-Disoska. 2017. “Influence of Trade and Institutions on Economic Growth in Transitional Economies: Evidence from Countries from Central and Eastern Europe and Western Balkans.” *Economic Analysis* 50, no. 3 – 4: 32–42.
15. Kovaci, Sureyya. 2022. “The empirical analysis of the role of institutions in the economic development.” In *Economic and financial analysis of global and national developments*, edited by Sahin Karabulut (ed.), 227 – 245.
16. Maksimović, Marijana and Nada Novaković. 2020. “Western Balkans, Reforms and Eurointegrations.” In: Cvetićani, N., Radulescu, A, Ateljević, J (eds). *Strategic*

Streams 2019: European Elections and the Future of Europe, pp. 76-103. Belgrade: Institute of social sciences.
17.Maksimović, Marijana. 2018. "Migration and human resources in the context of globalization." In: Lutovac, Z., Mrđa, S. (eds). Contemporary migrations and social development: an interdisciplinary perspective. Thematic anthology of leading national importance, pp. 191-202. Belgrade: Serbian Sociological Society; Institute of Social Sciences; Institute for Sociological Research, Faculty of Philosophy.
18.Maksimović, Marijana. 2020. "Human resource management and sustainable development: green workplaces". In: *Challenges of sustainable development in Serbia and the European Union*, pp. 244-263. Edition Proceedings. Belgrade: Institute of Social Sciences.
19.Maksimović, T. Marijana. 2017. "Globalization, Human Resources and Adaptation to Change." In: Šuvaković, U., Čolović, V., Marković-Savić, Olivera (eds). Globalization & Glocalization. Thematic Collection of Papers of International Significance: 451-460. Belgrade: Serbian Sociological Society; Kosovska Mitrovica; Faculty of Philosophy, University of Prishtina and Institute for Political Studies.
20.Minović, Jelena, Vesna Aleksić, and Slavica Stevanović. 2020. "Economic growth and institutional quality in South East Europe." *Ekonomika preduzeća* 69, no. 1–2: 1–13. https://doi.org/10.5937/EKOPRE2102001M
21.Miščević, Tanja, and Mojmir Mrak. 2017. "The EU Accession Process: Western Balkans vs EU-10." *Croatian Political Science Review* 54, no. 4: 185–204.
22.Nedić, Vladimir, Danijela Despotović, Slobodan Cvetanović, Tadija Djukić, Dragan Petrović. 2020. "Institutional reforms for economic growth in the Western Balkan countries." *Journal of Policy Modeling* 42, no. 5: 933–952. https://doi.org/10.1016/j.jpolmod.2020.04.002
23.Noutcheva, Gergana, and Senem Aydin-Düzgit. 2012. "Lost in Europeanisation: The Western Balkans and Turkey." *West European Politics* 35, no. 1: 59–78.
24.Oanh Kim Thi Tran, Hac Dinh Le and Anh Hong Viet Nguyen. 2021. Role of institutional quality in economic development: A case study of Asian countries. *Problems and Perspectives in Management* 19, no. 2: 357-369. https://doi.org/10.21511/ppm.19(2).2021.29
25.Olaoye, Olumide, and Oluwatosin Aderajo. 2020. Institutions and economic growth in ECOWAS: an investigation into the hierarchy of institution hypothesis (HIH), *International Journal of Social Economic* 47, no. 9: 1081-1108. https://doi.org/10.1108/IJSE-10-2019-0630
26.Ostojić, Ivana. 2020. "Inclusive and extractive institutions as factors of economic growth". In: *Challenges of sustainable development in Serbia and the European Union*, pp. 100-117. Edition Proceedings. Belgrade: Institute of Social Sciences.
27.Radulović, Marija. 2020. "The impact of institutional quality on economic growth: a comparative analysis of the EU and non-EU countries of Southeast Europe." *Economic Annals* 65, no. 225: 163–181. https://doi.org/10.2298/EKA2025163R
28.Ramadhan, Muhammad. 2019. "Assessing of the impact of good governance and institutions on economic growth in Indonesia." *International Journal of Scientific & Technology Research* 8, no. 11: 2594–2598.

29.Uvalić, Milica. 2019. “The Idea of Balkan Economic Integration.” *IEMed: Mediterranean yearbook*, 280–283.
30.Vachudova, Milada Anna. 2019. “EU Enlargement and State Capture in the Western Balkans.” In *The Europeanisation of the Western Balkans. A Failure of EU Conditionality*, edited by Jelena Džankić, Soeren Keil, and Marko Kmezić, 63–85. Palgrave Macmillan, Cham.
31.Wentholt, Nike. 2020. “The EU and the Western Balkans: challenges changing shape.” Clingendael Spectator, September 15. Accessed May 15, 2023. https://spectator.clingendael.org/en/publication/eu-and-western-balkans-challenges-changing-shape
32.Yildirim, Aynur, and Mehmet Faysal Gokalp. 2016. “Institutions and Economic Performance: A Review on the Developing Countries.” *Procedia Economics and Finance* 38: 347 – 359.
33.Zergawu, Yitagesu, Yabibal Walle, and Jose Manuel Gimenez-Gomez. 2020. “The joint impact of infrastructure and institutions on economic growth.” *Journal of Institutional Economics* 16, no. 4: 481–502.
34.Zvezdanović Lobanova, Jelena, Davorin Kračun, Alenka Kavkler, and Mikhail Lobanov. 2016. “The Institutional Quality as a Determinant of Growth Effects of Cross-border Mergers and Acquisitions in the European Transition Countries.” *Ekonomicky casopis* 64, no. 8: 780–794.
35.Zvezdanović Lobanova, Jelena, Mikhail Lobanov, and Milan Zvezdanović. 2021. “Governance and civil and political rights as FDI determinants in transition countries.” *Zbornik radova Ekonomskog fakulteta u Rijeci* 39, no. 1: 59–86. https://doi.org/10.18045/zbefri.2021.1.59
36. Zvezdanović Lobanova, Jelena. 2017. “Institutional setting as a determinant of economic effects of cross-border mergers and acquisitions in European transition countries.” PhD dissertation, Maribor: University of Maribor.
37. Zvezdanović, Jelena. 2013. Analyzing FDI Economic Effects and Determinants in SEE Economies – Comparative Appoaches. Our Economy 59, no. 3 – 4: 67–75.

Scientific Article
UDK 323.28:341.24
351.74:323.28
355.40:323.28

SIMULATION OF LAW ENFORCEMENT'S ROLE IN EFFICIENCY OF COUNTER-TERRORISM STRATEGIES: DIVERSIFICATION

Dr. Bhupinder Singh
Professor
Sharda School of Law
Sharda University Greater Noida, India

Abstract
Counterterrorism refers to the efforts undertaken by governments and international organizations to prevent, combat, and mitigate acts of terrorism. It involves a range of strategies and measures aimed at identifying and neutralizing terrorist threats, disrupting terrorist networks, and minimizing the impact of terrorist attacks on individuals, societies, and infrastructure. Counterterrorism efforts encompass various dimensions, including intelligence gathering, law enforcement operations, border control, legal frameworks, international cooperation, and addressing the root causes of terrorism. The terrorism activities and targeted assassination is somehow separated from other criminal acts, as in the case of terrorist activities because they target the persons who act in an official capacity which signified "a deep and personal commitment to a cause that may inspire others and epitomised the 'code of honour' by sparing innocent citizens and this arguably made terrorist assassination a more benevolent form of violence than any civil war".

Keywords: Terrorism, Criminal Financing, Peace and Justice, Security, Law Enforcement

1. Introduction

Counterterrorism refers to the efforts undertaken by governments and international organizations to prevent, combat, and mitigate acts of terrorism. It involves a range of strategies and measures aimed at identifying and neutralizing terrorist threats, disrupting terrorist networks, and minimizing the impact of terrorist attacks on individuals, societies, and infrastructure. Counterterrorism efforts encompass various dimensions, including intelligence gathering, law enforcement operations, border control, legal frameworks, international cooperation, and addressing the root causes of terrorism (Jackson 2018, 56).

Intelligence gathering plays a crucial role in counterterrorism by collecting and analyzing information to identify potential threats, uncover terrorist networks,

and prevent attacks. Law enforcement agencies work to apprehend terrorists, investigate their activities, and prosecute them through legal systems. Border control measures aim to prevent the movement of terrorists, their financing, and the trafficking of weapons and materials used in terrorist acts (Miller 2009, 15).

Effective legal frameworks are essential to provide the legal basis for counterterrorism actions and ensure that individuals involved in terrorist activities are held accountable for their actions. These frameworks should strike a balance between protecting human rights and civil liberties while allowing authorities to investigate and prosecute terrorism-related offenses. International cooperation is vital in countering terrorism since terrorist activities often transcend national borders. Collaborative efforts among nations involve sharing intelligence, coordinating border security, harmonizing legal frameworks, and supporting each other in investigations and prosecutions. Multilateral organizations, such as the United Nations and Interpol, play a significant role in facilitating this cooperation.

Addressing the root causes of terrorism is another important aspect of effective counterterrorism. This involves addressing socioeconomic disparities, political grievances, radicalization, and ideological extremism. Efforts to promote inclusive governance, respect for human rights, social justice, and economic development can contribute to reducing the conditions that breed terrorism and extremism.

While counterterrorism measures are necessary for protecting individuals and maintaining societal security, it is crucial to ensure that these efforts are carried out within the framework of respect for human rights, the rule of law, and fundamental freedoms. Balancing security with individual rights is essential to prevent the misuse of counterterrorism measures and to maintain public trust and legitimacy in the efforts undertaken. Therefore, counterterrorism encompasses a comprehensive range of strategies and actions aimed at preventing terrorist attacks, dismantling terrorist networks, and promoting security. By combining intelligence, law enforcement, international cooperation, and addressing root causes, societies can work towards countering terrorism while upholding the principles of peace, justice, and human rights.

Terrorism and financing both interlinked with each other and considered as an emerging danger to political/ social and economic stability around the world. Though there is no universal accepted definition of this term “terrorism”, but it can be assumed as a manner of intimidation that is used or threatens to utilize violence for the purpose to extent fear. Current terrorist and criminal financing fear as well as violence is differentiated in law from “ordinary” violence by the typical terrorist “trio” (Tsvetovat 2002, 33). The rise of terrorism also the result of development of technology in recent years as because of technologies in mass communication of news, learning and ideas rapidly interconnected through long-distances and it opening up an era of migration that is decisive to inspiring groups anywhere. There are big challenges to countering terrorism are nothing new and have a long history itself. The contemporary terrorism and criminal financing employ different kinds of violence and use to target civilians, military personal and officials from State and Central government (Brooks 2010, 125). The primary vicious technique of dispersal terror employed by virtually all such sets at the time was targeted assassination,

which the potential for political martyrdom and also carried with it serious personal risk (Singh 2021, 38).

Terrorist attacks sometime are used as an instrument for politically motivated action for the purposes of attaining a particular political aim thereby target particular members of governments or political peoples. Terrorist attacks can be broadly classified into two categories, such as- focused and indiscriminate. As we noticed in history, terrorist activities mostly fallen under the former category i.e., focused but now the contemporary terrorism is considered as an increasing magnitude and frequency of indiscriminate violence. Terrorist attack victims are not explicitly selected on the basis of the characteristics of individual, but are "chance as the victims who happen to be in the wrong place at the wrong time".

The terrorism and criminal financing used various forms of violence to target civilians, military personal and officials from State and Central government. There are big challenges to countering terrorism are nothing new and have a long history itself. The primary vicious technique of dispersal terror employed by virtually all such sets at the time was targeted assassination, which the potential for political martyrdom and also carried with it serious personal risk. The terrorism activities and targeted assassination is somehow separated from other criminal acts, as in the case of terrorist activities because they target the persons who act in an official capacity which signified "a deep and personal commitment to a cause that may inspire others and epitomised the 'code of honour' by sparing innocent citizens and this arguably made terrorist assassination a more benevolent form of violence than any civil war" (Schneider 2015, 131).

2. Relevance of Counter-Terrorism Research

The terrorism and financing has a very serious calamities and both put negative impact on the people and countries who witnessed terrorism from the long decades are many. The international and national efforts by legal measures to combat terrorism and criminal financing studies in this article. To understand international viewpoint/ standpoint regarding the concept of terrorism, the aim of the study is to measure the anti-terrorist laws universally at international level and in India. An endeavour is made to identify the commonalties and non-commonalties related to the definition of terrorism and understand the what are problems which hamper in the formation of a universal law.

3. Objectives of the Study

The law enforcement plays a crucial role in preventing terrorist activities through intelligence gathering, surveillance, and proactive investigations. By identifying and neutralizing potential threats, they contribute to the maintenance of peace and security within a society. Moreover, law enforcement agencies are instrumental in ensuring justice is served by apprehending terrorists, collecting evidence, and facilitating their prosecution. This not only brings terrorists to account for their actions but also strengthens the institutions responsible for upholding the rule of law. Additionally, law enforcement's involvement in counter-terrorism fosters collaboration and information sharing at national and international levels, promoting stronger institutions capable of addressing transnational security

challenges. The efficiency of counter-terrorism strategies hinges on the proactive and diligent efforts of law enforcement agencies, aligning with the broader objectives of SDG 16 to create a more peaceful, just, and secure world. The objectives of the present study are to:

- causes/ reasons of terrorist activities and criminal financing.
- evaluate international and Indian perspective to curb and control terrorist and criminal financing activities.

4. Causes of Terrorist Activities

The causes belong to the terrorist activities are so-called system of communicating vessel and this means that overabundance of different elements like, their conjoint relations and the various conditions that influence them. As from the past history and incidence of terrorist activities and disruption there are some generators of terrorism as- religious, ethnic, or ideological conflicts, negative aftermath of modernization, injustice, poverty, revolutionary sentiments among society, internal power struggle, etc. along with various categories of political, economic, social, cultural, and psychological aspects (Thons 2020, 101).

5. Different revenues to Finance Terrorism

There is a link between terrorist activities and criminal financing are increasingly apparent and the varied sources of financing frequently differ with the size and agenda of the terrorist organisation and its functionality (Wojciechowski 2017, 49). Because of financial activities these terrorist groups and organisations are capable of conducting diversified illegal activities. These illegal activities are frequently of a multinational in nature which include- drug trafficking, smuggling, human trafficking, wildlife plundering, credit fraud, counterfeit goods, etc. The blend of source of finance varies to suit the targets, modus operandi and scale of terrorism operations because of terrorist organisations that gain high value are mainly vulnerable owing to their strong reliance on financing (Hoffman 1999, 13).

6. Global Legal Instruments for Combating Terrorism

It represent a vital framework in the collective effort to address the multifaceted challenges posed by terrorism on an international scale. These instruments encompass a range of agreements, conventions, and treaties that facilitate cooperation among nations in the fight against terrorism. Notably, conventions like the United Nations Security Council Resolution 1373 and the International Convention for the Suppression of the Financing of Terrorism provide a legal basis for member states to take robust measures to prevent and combat terrorism, including the criminalization of terrorist acts and the suppression of terrorist financing. Furthermore, instruments like the 2005 United Nations Global Counter-Terrorism Strategy serve as comprehensive roadmaps for states to follow in their counter-terrorism efforts, emphasizing both the need for security measures and the importance of respecting human rights and the rule of law. These global legal instruments underscore the international community's commitment to working together to mitigate the threat of terrorism while upholding fundamental principles of justice, cooperation, and human rights. In an increasingly interconnected world,

such legal frameworks are essential in building a more secure and peaceful global environment.

1. *The United Nations Security Council Counter- Terrorism Committee*

This Counter Terrorism Committee (CTC) works to strengthen the capability of United Nations Member States to check terrorist acts within their borders and across regions (both) and it was established in the wake of the 11 September terrorist attacks in the United States. The Counter-Terrorism Committee Executive Directorate assists CTC, which carries out the policy decisions of the Committee, facilitates counter-terrorism technical assistance to countries and conducts expert assessments of each Member State (Johnson 2010, 103).

2. *The Foundation of International Human Rights Law*

The Universal Declaration of Human Rights continues to be an inspiration to us all whether in addressing injustices, in times of conflicts, in societies suffering repression and is committed for the foundation of international human rights law and it has inspired a rich body of legally binding international human rights treaties which in efforts towards achieving universal enjoyment of human rights. That everyone of us is born free and equal in dignity and rights that's why it represents the universal recognition that basic rights and fundamental freedoms are inherent to all human beings are inalienable and equally applicable to everyone. Whatever our nationality, place of residence, gender, national or ethnic origin, colour, religion, language, or any other status, the international community on 10 December 1948 made a commitment to upholding dignity and justice. (Eldor 2004, 367).

Over the years, the commitment for the protection of human rights for all has been interpreted into law in the forms of customary international law, treaties, regional agreements, general principles and domestic law through which human rights are expressed and guaranteed. For the protection and promotion of human rights, the UDHR has inspired from several international human rights treaties and declarations, regional human rights conventions, domestic human rights bills, constitutional provisions, whereby it together constitutes a comprehensive legally binding system (Flynn 2007, 371).

Constructing on the realizations of the UDHR, the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights and entered into force in 1976. They set out everyday rights such as the right to life, freedom of expression, equality before the law, the rights to work, social security and education. International human rights treaties become more specialized and focused concerning major the issue of addressed and the social groups identified as requiring protection (Cortright 2007, 23). The body of international human rights law carry on to evolve, grow and further explain the fundamental rights and freedoms contained in the International Bill of Human Rights which addressing concerns such as racial discrimination, enforced disappearances, torture, disabilities and the rights of women, children, migrants, minorities and indigenous peoples. Governments undertake to set into place domestic measures and legislation compatible with the treaty obligations and duties via ratification of international human rights treaties. The domestic legal system also

provides the principal legal protection of human rights assured under international law. The mechanisms and procedures for individual and group complaints are available at the regional and international levels to help ensure that international human rights standards are indeed respected, implemented and enforced at the local level where domestic legal proceedings fail to address human rights abuses (Buergenthal 1997, 723). The United Nations is being ever more called upon to co-ordinate the global fight against terrorism and number of universal instruments against international terrorism have been elaborated within the framework of the UN system relating to specific terrorist activities. In September 2006, UN Member States adopted the United Nations Global Counter-Terrorism Strategy and this was the first time that Member States agreed to a common strategic and operational framework against terrorism (Grear 2007, 543).

3. *Association of Southeast Asian Nations (ASEAN) Convention on Counter- Terrorism*

The member countries of the Association of Southeast Asian Nations are Brunei Darussalam, the Republic of Indonesia, the Kingdom of Cambodia, the Lao People's Democratic Republic, Malaysia, the Republic of the Philippines, the Union of Myanmar, the Republic of Singapore, the Kingdom of Thailand, and the Socialist Republic of Viet Nam. All are extremely concerned above the crucial danger posed by terrorism to innocent lives, infrastructure and the environment, regional and international peace and stability along with economic development. The prominence of identifying and effectively addressing the root causes of terrorism in the formulation of any counter terrorism measures. The Charter of the United Nations and relevant international conventions, relevant principles of international law and protocols relating to counter terrorism and relevant resolutions of the United Nations on measures aimed at countering international terrorism, and reaffirming our commitment to protect human rights, fair treatment, the rule of law, and due process as well as the principles enshrined in the Treaty of Amity and Cooperation in Southeast Asia done at Bali on 24 February 1976 in which they reaffirming that terrorism cannot and should not be associated with any religion, nationality, civilisation or ethnic group (Vierdag 1978, 105).

7. Diversification Towards SDG 16: Peace, Justice and Strong Institutions

SDG 16, Peace, Justice, and Strong Institutions, is a critical component of the global agenda for sustainable development. This goal seeks to create peaceful and inclusive societies, provide access to justice for all, and build effective, accountable, and transparent institutions at all levels. Peace is not merely the absence of conflict; it encompasses social harmony, respect for human rights, and the promotion of non-violence. Justice is the cornerstone of a fair and equitable society, ensuring equal rights, access to legal systems, and the rule of law. Strong institutions are essential for ensuring stability, combating corruption, and promoting good governance (Sepulveda 2003, 19).

SDG 16 recognizes that peace, justice, and strong institutions are interconnected and mutually reinforcing. Sustainable development can only thrive in

an environment where people feel safe, their rights are protected, and institutions are accountable and responsive to their needs. It emphasizes the importance of addressing underlying causes of conflict, promoting social cohesion, and reducing violence in all its forms. To achieve this goal, it is crucial to strengthen legal frameworks, promote access to justice, and support the capacity building of institutions. This includes improving the functioning of judicial systems, enhancing legal aid services, and promoting the participation of marginalized groups in decision-making processes. Additionally, combating corruption, promoting transparency, and fostering accountability are key components of building strong institutions (Ssenyonjo 2016, 101).

SDG 16 recognizes the significance of inclusive and participatory governance, as it ensures that all voices are heard and that decisions are made in a transparent and accountable manner. It emphasizes the importance of engaging civil society, promoting freedom of expression, and protecting human rights defenders. Furthermore, it emphasizes the need to build effective and accountable institutions at the global level to address transnational challenges such as organized crime, terrorism, and illicit financial flows.

Ultimately, SDG 16 aims to create a world where justice prevails, peace is sustainable, and institutions are resilient. It acknowledges that peace and justice are not only fundamental rights but also prerequisites for achieving all other sustainable development goals. By investing in peace, justice, and strong institutions, we lay the foundation for a more inclusive, equitable, and sustainable future for all.

It encompasses a wide range of interconnected objectives aimed at fostering peaceful and inclusive societies, ensuring access to justice for all, and building effective and accountable institutions at all levels. At its core, SDG 16 acknowledges that peace, justice, and strong institutions are not just desirable outcomes in themselves but also critical enablers for achieving the other Sustainable Development Goals. Peace is fundamental for the well-being and progress of societies. SDG 16 emphasizes the need to prevent and resolve conflicts, both within and among nations, promoting a culture of peace and non-violence. It recognizes that sustainable development can only be attained when societies are free from violence, oppression, and insecurity. Peaceful and stable societies provide the necessary conditions for social progress, economic growth, and the protection of human rights (Baderin 2010, 14).

Justice lies at the heart of SDG 16, calling for equal access to justice for all individuals, regardless of their economic or social status. It highlights the importance of promoting the rule of law, ensuring effective and impartial legal systems, and protecting human rights. Justice systems that are transparent, accountable, and inclusive not only uphold the rights of individuals but also contribute to social cohesion, trust, and overall societal well-being (Budd 2016, 71)

Strong institutions are key to realizing sustainable development. SDG 16 emphasizes the need for institutions that are efficient, transparent, and responsive to the needs of citizens. It underscores the importance of combatting corruption, promoting good governance, and fostering the participation of marginalized groups in decision-making processes. Strong institutions are critical for creating an enabling environment that supports economic growth, social progress, and the protection of

fundamental rights. By addressing the complex issues related to peace, justice, and strong institutions, SDG 16 recognizes the interconnectedness of these goals with the broader development agenda. It acknowledges that without peace and justice, societies cannot thrive, and without strong institutions, sustainable development remains elusive. Achieving SDG 16 requires collaborative efforts from governments, civil society organizations, the private sector, and individuals, all working together to promote peace, ensure justice, and build robust institutions. Only through these collective endeavors can we pave the way for a more equitable, just, and peaceful world for present and future generations (Ahmad 2013, 147).

8. Concluding Observations

Terrorism and terrorist activities are widely documented as the world most famous enemy of the humanity in human history. Terrorism is obliteration with broad and destructive effects and it is the considered as a heinous of crimes against humanity. There is noticeable evidence that the socio-economic/ political conditions and explanations of terrorism suggest that different forms of dispossession drive people to terrorism along with some terrorist groups are more susceptible to recruitment by organizations using terrorist tactics.

Sustainable Development Goal 16 (SDG 16) is a call to action for building peaceful, just, and inclusive societies with strong institutions at all levels. It recognizes that sustainable development cannot be achieved without addressing the root causes of conflicts, promoting access to justice, and establishing accountable governance structures. SDG 16 aims to ensure that people live in societies free from violence, where their rights are protected, and where they have equal access to justice and effective institutions. By focusing on peace, justice, and strong institutions, SDG 16 acknowledges that sustainable development relies on stable, transparent, and inclusive systems that promote the rule of law, uphold human rights, and combat corruption. It emphasizes the importance of inclusive decision-making, accountability, and the protection of fundamental freedoms for fostering social cohesion, resolving conflicts peacefully, and achieving sustainable development for all. SDG 16 serves as a critical pillar in the pursuit of a more just, peaceful, and equitable world for present and future generations.

Human being live in the world characterized by increasing violence and conflicts and so, no doubt, terrorism with its destructive power has reshaped the world and it created the alarming situations that has led to the emergence of mistrust, division, fear, and now represents a significant new threat to international justice, peace and security. So the need of the hour is to take such legal and social measures to combat the terrorist activities and criminal financing.

9. Suggestions

To enhance law enforcement's role in counter-terrorism while aligning with SDG 16, we propose targeted simulations. These simulations should focus on scenario-based training, emphasizing collaboration among agencies, legal compliance, community engagement, cybersecurity, and cross-border cooperation. By regularly conducting these exercises, law enforcement can refine their strategies,

ensuring both the safety and rights of citizens, thus promoting the ideals of peace, justice, and strong institutions as outlined in SDG 16 as-

Interagency Training and Collaboration: One effective way to simulate law enforcement's role in enhancing counter-terrorism efficiency, aligned with SDG 16, is through interagency training and collaboration exercises. These simulations could involve various law enforcement agencies, intelligence services, and even international partners. By replicating real-life scenarios, these exercises can help improve coordination, information sharing, and response times, thereby strengthening the capacity of institutions to address terrorism while maintaining the rule of law.

Legal Scenario Simulations: Conducting legal scenario simulations can help law enforcement officers and legal professionals navigate complex legal challenges associated with counter-terrorism efforts. These simulations can explore issues such as the admissibility of evidence, due process, and human rights protections in counter-terrorism operations. By practicing these scenarios, law enforcement agencies can better balance the pursuit of justice with the need to protect national security.

Community Engagement Simulations: Counter-terrorism strategies often involve engaging with local communities to prevent radicalization and gather intelligence. Simulating community engagement scenarios can help law enforcement agencies hone their skills in building trust, gathering information, and fostering cooperation with communities. These simulations can also emphasize the importance of respecting cultural sensitivities and human rights, which aligns with the principles of SDG 16.

Cybersecurity and Digital Forensics Simulations: Given the increasing role of technology in modern terrorism, simulations focused on cybersecurity and digital forensics are crucial. These exercises can help law enforcement agencies develop their capacity to track and investigate online radicalization, cyberattacks, and the use of digital tools by terrorists. Enhancing these capabilities is essential for maintaining strong institutions capable of addressing evolving security threats.

Cross-Border Simulations: Terrorism often transcends national boundaries, necessitating cross-border cooperation. Simulations involving international law enforcement agencies can simulate joint operations, extradition processes, and information sharing across borders. These exercises can test the effectiveness of legal frameworks like extradition treaties and mutual legal assistance agreements, contributing to SDG 16's goal of building strong, international institutions.

Legal Compliance Reviews: Regular simulations should also include legal compliance reviews, where experts assess the actions taken during the exercises for adherence to national and international laws. This feedback mechanism helps identify areas where law enforcement agencies may need to adjust their strategies to better align with the principles of justice, human rights, and strong institutions.

Debriefings and Continuous Improvement: Following each simulation, thorough debriefings should occur, allowing participants to reflect on their performance and identify areas for improvement. This iterative process ensures that law enforcement agencies continually refine their tactics and procedures, reinforcing their commitment to SDG 16's goals while countering terrorism effectively.

Incorporating these diverse simulation scenarios into law enforcement training programs can help agencies better prepare for the complexities of counter-terrorism efforts, all while advancing the broader objectives of SDG 16, which emphasize the importance of peace, justice, and strong institutions as cornerstones of global security.

References

1. Ahmad, Abdul Razak. "The ASEAN Convention on Counter-terrorism 2007." Asia-Pacific Journal on Human Rights and the Law 14, no. 1-2 (2013): 93-147.
2. Baderin, Mashood A., and Manisuli Ssenyonjo. "Development of International Human Rights Law before and after the UDHR." DEVELOPMENT OF INTERNATIONAL HUMAN RIGHTS LAW BEFORE AND AFTER THE UDHR, Mashood A. Baderin & Manisuli Ssenyonjo, eds., Ashgate Publishing (2010).
3. Brooks, Bret E. "Law enforcement's role in US counterterrorism strategy." The Police Journal 83, no. 2 (2010): 113-125.
4. Budd, Darlene. "Association of Southeast Asian Nations (ASEAN)." In International Organizations and the Rise of ISIL, pp. 58-71. Routledge, 2016.
5. Buergenthal, Thomas. "The normative and institutional evolution of international human rights." Human Rights Quarterly 19, no. 4 (1997): 703-723.
6. Cortright, David, George A. Lopez, Alistair Millar, and Linda Gerber-Stellingwerf. "Global cooperation against terrorism. Evaluating the United Nations counter-terrorism committee." Uniting against terror: Cooperative nonmilitary responses to the global terrorist threat (2007): 23-50.
7. Eldor, Rafi, and Rafi Melnick. "Financial markets and terrorism." European Journal of Political Economy 20, no. 2 (2004): 367-386.
8. Flynn, Edward J. "The security council's counter-terrorism committee and human rights." (2007): 371-384.
9. Grear, Anna. "Challenging corporate 'humanity': Legal disembodiment, embodiment and human rights." Human Rights Law Review 7, no. 3 (2007): 511-543.
10. Hoffman, Bruce. "Terrorism trends and prospects." Countering the new terrorism 7 (1999): 13.
11. Jackson, Richard. "Writing the war on terrorism: Language, politics and counter-terrorism." In Writing the war on terrorism. Manchester University Press, 2018.
12. Johnson, Jeffery M., and Carl Jensen. "The financing of terrorism." JIJIS 10 (2010): 103.
13. Malone, David M. "On SDG 16: Peace, justice, and strong institutions." Freedom from Fear 2018, no. 14 (2018): 174-179.
14. McDermott, Constance L., Emmanuel Acheampong, Seema Arora-Jonsson, Rebecca Asare, Wil de Jong, Mark Hirons, Kaysara Khatun et al. "SDG 16: Peace, justice and strong institutions–a political ecology perspective." (2019): 510-540.
15. Miller, Seumas. Terrorism and Counter: Terrorism. Wiley-Blackwell, 2009.

16. Moeckli, Daniel, Sangeeta Shah, Sandesh Sivakumaran, and David Harris, eds. International human rights law. Oxford University Press, 2022.
17. Ramirez, Jacobo, Diego Angelino Velázquez, and Claudia Vélez-Zapata. "The potential role of peace, justice, and strong institutions in Colombia's areas of limited statehood for energy diversification towards governance in energy democracy." Energy Policy 168 (2022): 113135.
18. Ramirez, Jacobo, Diego Angelino Velázquez, and Claudia Vélez-Zapata. "The potential role of peace, justice, and strong institutions in Colombia's areas of limited statehood for energy diversification towards governance in energy democracy." Energy Policy 168 (2022): 113135.
19. Schneider, Friedrich, Tilman Brück, and Daniel Meierrieks. "The economics of counterterrorism: A survey." Journal of Economic Surveys 29, no. 1 (2015): 131-157.
20. Sepulveda, M. Magdalena, and María Magdalena Sepúlveda Carmona. The nature of the obligations under the International Covenant on Economic, Social and Cultural Rights. Vol. 18. Intersentia nv, 2003.
21. Singh, Bhupinder. "EFFICIENCY OF COUNTER-TERRORISM STRATEGIES: INTERNATIONAL AND NATIONAL LEGAL REGIME." National Journal of Criminal Law 4, no. 2 (2021): 38-42.
22. Ssenyonjo, Manisuli. International human rights law: six decades after the Udhr and beyond. Routledge, 2016.
23. Thons, Sebastian, and Mark G. Stewart. "On the cost-efficiency, significance and effectiveness of terrorism risk reduction strategies for buildings." Structural Safety 85 (2020): 101957.
24. Tsvetovat, Maksim, and Kathleen Carley. "Knowing the enemy: A simulation of terrorist organizations and counter-terrorism strategies." In CASOS Conference, vol. 23. 2002.
25. Vierdag, Egbert W. "The legal nature of the rights granted by the international covenant on economic, social and cultural rights." Netherlands yearbook of international law 9 (1978): 69-105.
26. Williams Jr, Robert A. "Encounters on the Frontiers of International Human Rights Law: Redefining the Terms of Indigenous Peoples' Survival in the World." Duke LJ (1990): 660.
27. Wojciechowski, Sebastian. "Reasons of contemporary terrorism. An analysis of main determinants." Radicalism and terrorism in the 21st century: Implications for security (2017): 49-70.
28. Yamaguchi, Natália Ueda, Eduarda Gameleira Bernardino, Maria Eliana Camargo Ferreira, Bruna Pietroski de Lima, Mauro Renato Pascotini, and Mirian Ueda Yamaguchi. "Sustainable development goals: A bibliometric analysis of literature reviews." Environmental Science and Pollution Research 30, no. 3 (2023): 5502-5515.

Scientific Article
UDK 339.56(4-672ЕУ:470+571):355.48(477)

TRADE COOPERATION BETWEEN THE EUROPEAN UNION AND THE RUSSIAN FEDERATION FROM THE POINT OF VIEW OF THE PERIOD BEFORE THE WAR IN UKRAINE AND FROM THE POINT OF VIEW OF THE CURRENT POLITICAL SITUATION

Ph, D. Sasha Dukoski
Faculty of Law - Kicevo
University "Sveti Kliment - Ohridski" Bitola
sasadukoski@hotmail.com

Ljuben Andrijašević, M.Sc
Faculty of Law - Kicevo
"St. Kliment Ohridski" University, Bitola
ljubenandrijasevikj@gmail.com

ABSTRACT

When it comes to Russia (the Russian Federation), certainly in relation to the Union and its foreign policy perspectives, we are obliged to emphasize that the Union's relationship with Russia is an extremely important issue, crucial for the leadership of the world in the 21st century.[8]

Since numerous WTO agreements could not be applied directly, they were introduced through a separate section of the Partnership and Cooperation Agreement between the EU and Russia, signed in 1994 and entered into force in 1997. The agreement aims to promote trade and investment and develop harmonious economic relations between the EU and Russia.[9]

The purpose of the paper is an analysis of the relations between the EU and the Russian Federation in terms of their trade cooperation and exchange, as well as their relationship in terms of the current political situation and the war in Ukraine.

Keywords: European Union, Russian Federation, Trade, embargo.

INTRODUCTION

As one of the youngest international organizations, the WTO is the successor of the General Agreement on Tariffs and Trade (General Agreement on Tariffs and Trade – GATT) which was established after the Second World War. The

[8] EUtopia, Goran Ilic, Grafo Prom – Bitola, Bitola, 2012, page 283;
2https://eprints.ugd.edu.mk/23614/1/Analiza%20na%20trgovskite%20relacii%20megu%20Evropskata%
20Unija%20i%20Rusija%20%281%29.pdf , page 80;

principles on which the operation of the World Trade Organization was established are the same on which the operation of the GATT was established. The WTO has about 150 members, covering over 97% of world trade.[10] [11]

Russia is the only country from the main trade partners of the European Union that joined the World Trade Organization at the latest, on August 22, 2012, and this led to a negative impact on the regulation of trade and economic relations between the EU and Russia.[12]

Namely, the relations between the European Union and Russia date back to the last century in the 90s, more precisely the conclusion of the Partnership and Cooperation Agreement of 1994, which represented a symbol of cooperation and the need for its intensification in the future, is significant.

As a consequence of this agreement, the conclusion of other agreements and contracts followed, which were concluded with one goal, which is to trace the path for closer cooperation in the Euro-Russian partnership.[13] [14]

Article 10, part III of the agreement states that: "The European Community and Russia will grant each other the most-favored-nation principle described in Article 1, paragraph 1 of the GATT." Furthermore, the agreement quotes almost all GATT articles that become binding on the contracting parties. The partnership and cooperation agreement has a ten-year term, with annual renewal and to be upgraded through the negotiation of a new agreement between the EU and Russia, providing a comprehensive framework for bilateral relations. The new agreement should be built on the basis of WTO rules and include stable, predictable and balanced rules for bilateral trade and investment relations. Negotiations began in 2008, but they were halted in 2010 because there was no progress on trade and investment. The negotiations, as well as some activities in the existing agreement, were suspended after the illegal annexation of Crimea and the destabilization of Ukraine in 2014. Since Russia's accession to the WTO in 2012, the EU has filed four lawsuits in the WTO against Russia and the first lawsuit was filed in 2013 due to the introduction of recycling fees on imported cars, in 2014 the EU filed three more lawsuits against Russia due to the ban on the import of pork from Europe; anti-dumping import duty on light commercial vehicles and due to excessive import duties, which Russia is starting to reduce since May 2017.[15]

From today's point of view, the EU and its member states strongly condemn Russia's brutal war of aggression against Ukraine and the illegal annexation of the

---

[10] International organizations, Prof. Dr. Gjorgi Tonovski, European University - RM, Skopje (Faculty of Legal and Political Sciences), Skopje 2006, page 197;

[11] International organizations, Prof. Dr. Gjorgi Tonovski, European University - RM, Skopje (Faculty of Legal and Political Sciences), Skopje 2006, page 198;

[12]https://eprints.ugd.edu.mk/23614/1/Analiza%20na%20trgovskite%20relacii%20megu%20Evropskata%

[14]EUtopia, Goran Ilic, Grafo Prom – Bitola, Bitola, 2012, page 283;

[15]https://eprints.ugd.edu.mk/23614/1/Analiza%20na%20trgovskite%20relacii%20megu%20Evropskata%
20Unija%20i%20Rusija%20%281%29.pdf , страна 80;

Ukrainian regions: Donetsk, Luhansk, Zaporozhye and Kherson. They also condemn the complicity of Belarus in Russian military aggression.[16]

As a response to the military aggression, the EU drastically expanded the sanctions against Russia, on whose census a large number of persons and entities were placed, so hitherto unremarkable measures of restrictions were adopted. On the other hand, the EU showed unity and strength by providing humanitarian, political, financial and military support and assistance to Ukraine. Russia also responded to this EU policy with its own sanctions.

THE RELATIONSHIP OF THE EUROPEAN UNION – RUSSIA FROM VARIOUS SPHERES OF ACTION

Russia is the largest country in the world, that is, its territory is four times larger than the territory of the European Union, taking into account its member states.The European Union has three times more inhabitants than there are in Russia, more precisely within the European Union there are 447.3 million inhabitants, and in Russia there are 144.4 million inhabitants.

The EU's GDP (grossdomestic product) is 13 trillion euros, while Russia's is 1.39 trillion euros.The European Union is Russia's first trade partner, while Russia is the EU's fifth trade partner. In 2020, a trade exchange of 174.3 billion euros was achieved. For Russia it is more than 37% of its total trade, while for the EU it is 4.8% of the total additional EU trade.

In 2020, exported goods from the EU to Russia amounted to 78.9 billion euros. Goods were exported mainly from the fields of engineering, transport, medicine, chemicals and other manufactured goods.While, on the other hand, exported goods from Russia to the EU in 2020 amounted to 95.3 billion euros. Raw materials, fuels, gas and metals such as aluminum, iron and nickel were exported.

If you look at the table showing the cooperation between the EU and Russia from 2010 to 2020, it is indisputable that the lowest balance is precisely in 2020.

The European Union is the largest investor in Russia with estimated stocks of 311.4 billion euros in 2019. All this accounts for 75% of all foreign direct investment in Russia. On the other hand, stocks of foreign direct investments specifically of Russia in the EU amounted to 135.9 billion euros in 2019, i.e. 1.9% of the total foreign direct investments in the European Union.[17]

The approach of the European Union to Russia is covered by five principles agreed in 2016 and reaffirmed by the Ministers of Foreign Affairs of the European Union in October 2020, namely: 1. Full implementation of the Minsk agreements (agreements to stop the war in the region Donbas in Ukraine) is a key condition for any substantial change in EU-Russia relations; 2. The European Union strengthens relations with its six eastern partners including: Armenia, Azerbaijan, Belarus, Georgia, Moldova and Ukraine and other neighbors, including those in Central Asia; 3. The European Union strengthens its resilience in areas such as energy security, hybrid threats and strategic communication; 4. There is selective engagement with

[16] https://www.consilium.europa.eu/hr/policies/eu-response-ukraine-invasion/;
[17] https://www.consilium.europa.eu/en/eu-russia-relations-facts-and-figures/;

Russia on issues of clear interest to the European Union; 5. The European Union fosters people-to-people contacts and supports Russian civil society;[18]

ANALYSIS OF TRADE EXCHANGE FOR THE PERIOD FROM 2000-2017 WITH EMPHASIS ON RELATIONS AFTER 2014 DUE TO UKRAINE

Insufficient export orientation and high import dependence in the EU's foreign trade exchange with Russia results in a low degree of coverage of imports with exports, that is, a large trade deficit. From 2000 to 2008, the international trade in goods between the EU and Russia was characterized by an increase, but also a continuous deficit. A significant decline is observed in 2009 as a result of the economic crisis that swept the world, followed by a recovery and reaching a trade peak in 2012 and again a decrease in trade from 2013 due to the economic crisis in Russia. In 2014, the decline in trade continues as a result of the Ukrainian crisis and its annexation to Russia. The resulting conflict in Ukraine led to the introduction of sanctions by the EU and counter-measures by Russia. The EU introduced and expanded a series of diplomatic and economic sanctions against the Russian Federation in protest of Russia's involvement in destabilizing Ukraine and violating Ukraine's territorial integrity. Russia retaliated with an embargo on certain agricultural products, raw materials and food, citing violations of food safety standards. The reduced trade continued until 2016, while in 2017 growth was recorded both on the export side and on the import side.

The trade balance has been negative throughout the entire period. There is a trade deficit of a record 92 billion euros in 2012, and this is mainly due to the import of energy from Russia, which amounts to 133 billion euros. In the following years, a continuous decrease follows, and in 2016, as a result of the low prices of oil and natural gas, the trade deficit decreased to 46 billion euros, and in 2017 it increased to 59 billion euros. In the analyzed time series, a continuous growth in imports and exports was observed from 2000 until 2008. In 2009, there was a large decrease in exports, from 105 billion euros in 2008 to 66 billion in 2009, but then an increase followed and reached a significant value of 123 billion in 2012, from 2013 onwards it continuously decreased. and in 2017, exports amounted to 86 billion euros. Imports moved in the same direction, ie. decline from 180 billion in 2008 to 119 billion in 2009, then growth import export trade balance ANALYSIS OF TRADE RELATIONS BETWEEN THE EUROPEAN UNION AND RUSSIA 82 to a record level of 215 billion billion in 2012 and again a decline from 2013 onwards that in 2017 the import was 145 billion euros.

The dominant category of products is mineral fuels, lubricants and related products, whose share in imports in 2000 was 55.5%, while in 2017 it was 67.2%. It is important to point out that Russia is the main supplier of energy products to the EU. Then comes the category of products classified according to the material with a share of 15% in 2000 and 12On the export side, machines and transport devices dominate, whose share in 2000 was 37% of exports, while in 2017 the share of this

[18] https://www.consilium.europa.eu/en/eu-russia-relations-facts-and-figures/;

product category was 45%. After them are chemical and related products, various finished products and products classified by material.% in 2017.[19]

RUSSIA'S WAR AGAINST UKRAINE AND IMPOSED SANCTIONS BECAUSE OF IT

From the start of the war in Ukraine until today, the European Union, with the aim of a ceasefire and approaching a truce, has on several occasions imposed sanctions against Russia, which are mainly of an economic nature.

The European Union is taking measures to mitigate the negative consequences of the global market and to resolve the issue of uncertainty regarding the security of the need and sufficiency of energy, which was imposed as a result of the war.[20]

After Russia recognized the independence of the Ukrainian regions of Donetsk and Lugansk, which are not under the control of the Government, and then carried out an unjustified invasion of Ukraine, the EU imposed sanctions against Russia. These are individual sanctions, sovereign sanctions and measures in the field of visas. Individual measures are aimed at individuals who are responsible for the initiation, financing and implementation of actions that lead to the undermining of the territorial integrity, sovereignty and independence of Ukraine. One of those who have been imposed individual sanctions is the President of Russia, Vladimir Putin. In addition to Russia, the EU also imposed sanctions on Belarus due to its complicity in the Russian invasion of Ukraine.[21]

In terms of sovereign sanctions, the EU has introduced a series of import and export restrictions. This means that European entities cannot sell certain products to Russia (export restrictions) and Russian entities are not allowed to sell certain products to the EU (import restrictions).

According to the data of the European Commission of the EU from the month of February 2022, the export of goods to Russia worth more than 43.9 billion euros and the import of goods worth 91.2 billion euros are prohibited. Compared to 2021, 49% of exports and 58% of imports have been sanctioned. These are bans enforced by EU customs bodies.

At the same time, the EU, in cooperation with other partners who have similar views, adopted a statement expressing Russia's right to stop being treated as the most favored nation within the WTO.

For example, goods that may not be exported from the EU to Russia include: state-of-the-art technology, transportation equipment, luxury goods (luxury cars, watches, jewelry), firearms, special goods and technology needed for oil refining, and on the other hand when it comes to imports into the EU from Russia, it

[19]https://eprints.ugd.edu.mk/23614/1/Analiza%20na%20trgovskite%20relacii%20megu%20Evropskata%
20Unija%20i%20Rusija%20%281%29.pdf , page.83;

[20] https://www.consilium.europa.eu/hr/policies/sanctions/restrictive-measures-against-russia-over-

[21]https://www.consilium.europa.eu/hr/topics/russia-s-war-on-ukraine/;

is about the following goods: crude oil, refined oil derivatives, coal, steel, iron, gold, cement, asphalt, wood, paper, cigarettes, cosmetic products and the like.[22]

From the very beginning of the war until now, the EU has introduced 10 packages of sanctions against Russia, so the last package of sanctions is from 25.02.2023, which added an additional 87 persons and 34 entities to the list of sanctions.

Economic sanctions represent a heavy, uncompromising and extremely unsophisticated measure.[23]

CONCLUSION

International politics remains an area of self-help where states face security dilemmas and force plays a significant role.

The goal of the high foreign policy is obvious, to form a uni-polar world order, which in the next 50 years will have one super power, that is the USA, and we know that the EU is completely inclined and in some way dependent on the action of the USA on it, as well as several great powers such as: Russia, China, Brazil, India, South Africa which are not super powers. The indications in terms of who will take the first place in the world in the future in terms of becoming the so-called "The world's largest economic power".

The EU as a "soft power" that represents a political community in the stage of birth with derivative sovereignty, not an international organization, and in the distant future will mainly stick to the side of the USA, which are the biggest opponents of Russia, so it is about two completely opposing and different concepts and societies, and from today's point of view, there is neither a theoretical nor a practical possibility for the EU to somehow completely turn to Russia, that is, to the East, but their current and future cooperation, primarily of an economic nature, is inevitable and extremely necessary , considering that the downfalls and privileges from it are felt by literally all of us who live on the territory of Europe, regardless of whether it is a member state of the EU or not.

Ultimately, the ICJ (International Court of Justice) condemned Russia for military actions and made a decision to stop them, so we can only hope that this will happen in the near future and that balance will be established in Europe and continue the peaceful way of life for all of us, that the high inflation that has already occurred will finally decrease, and thus that the already high prices will also decrease, above all of the basic resources for life, and that each of us will feel relief from an economic perspective, for what is needed to end the strained lines between the two entities and the sanctions, and the daily developments are changing and

---

[22]https://www.consilium.europa.eu/hr/policies/eu-response-ukraine-invasion/;

[23]Multilateral Diplomacy and the United Nations Today, Second Edition, James P. Muldoon Jr., Joan Fagot Aviel, Richard Reitano and Earl Sullivan, Joint Stock Publishing Company textbooks and teaching aids Educational work - Skopje, ul. "Dimitrie Chupovski" No. 15 Educational
delo AD - Skopje, Pechatnica Napredok - Tetovo, 2009, page 132;

written materials are absent at this time in terms of giving a final definition and analysis of all developments.

LITERATURE:

1. EUtopia, Goran Ilic, Grafo Prom - Bitola, Bitola, 2012.
2.International organizations, Prof. Dr. Gjorgi Tonovski, European University - RM, Skopje (Faculty of Legal and Political Sciences), Skopje, 2006.
3. International Trade Law, Sasha Dukoski, Kichevo 2014.
4. Understanding International Conflicts An Introduction to Theory and History, Joseph S. Nye, Jr., Academic Press Skopje, 2008.
5. Multilateral Diplomacy and the United Nations Today, Second Edition, James P. Muldoon Jr., Joen Fagot Aviel, Richard Reitano and Earl Sullivan, Joint Stock Company for publishing textbooks and teaching aids Prosvetno delo - Skopje, ul. "Dimitrie Chupovski" no. 15 Prosvetno delo AD – Skopje, Printing House Napredok – Tetovo, 2009.
6.https://eprints.ugd.edu.mk/23614/1/Analiza%20na%20trgovskite%20relacii%20megu%20Evropskata%20Unija%20i%20Rusija%20%281%29.pdf;
7.https://www.consilium.europa.eu/hr/policies/sanctions/restrictive-measures-against-russia-over-ukraine/sanctions-against-russia-explained/;
8.https://www.consilium.europa.eu/hr/policies/eu-response-ukraine-invasion/;
9. https://www.consilium.europa.eu/hr/topics/russia-s-war-on-ukraine/;
10.https://www.consilium.europa.eu/en/eu-russia-relations-facts-and-figures/;

Original Scientific Article
UDK 378-057.875-054.6:341.7(497.11)

ACADEMIC MOBILITY AS AN ELEMENT OF SOFT DIPLOMACY: A CASE STUDY SERBIA[1]

Nena A. Vasojević, Research associate
Institute of Social Sciences, Belgrade
Centre for Sociological and Anthropological Research
nvasojevic@idn.org.rs

Abstract

In the relevant scientific literature, topics dealing with the study of "soft power" in education, especially higher education, in the context of international mobility are increasingly represented. Academic mobility among students can influence the building of positive global results, which is the basis of soft power. However, soft power must be seen as a two-way process between the donor country and the beneficiary country. This paper explores to what extent and why the project "The World in Serbia" is important, i.e., the education of foreign students-scholarship holders at the Universities of the Republic of Serbia, and under what conditions it can be considered an instrument of soft power. The paper will use primary and secondary data, as well as data obtained by the research conducted on the population of foreign scholarship students who are educated in the Republic of Serbia within the project "The World in Serbia".

Keywords: academic mobility, soft diplomacy, Serbia, open society, students, scholarship holders

Introduction

In the 21st century, public diplomacy is the most common form of communication for establishing relations with other countries where the rapid process of globalization affects diplomacy. Today's paradigm of international order and the concept of power have been dramatically changed, and "hard power" has been replaced by "soft power", which countries use as their potential (science, art, culture, sports, education, etc.) to build a country brand instead of military, weapons, etc. (Snow 2009, 3). When it comes to diplomacy, topics are increasingly represented that study the role of education and academic exchange in building international relations, and this phenomenon is defined by the term "soft power" (Peterson 2014). Nye (2011) saw "the ability to get what you want through attraction rather than coercion or payment, because it stems from the appeal of a

[1] This paper was written as part of the 2023 Research Program of the Institute of Social Sciences with the support by the Ministry of Science, Technological Development and Innovation of the Republic of Serbia.
This research was supported by the Science Fund of the Republic of Serbia, 1434, *IS-MIGaIN*.

country's culture, political ideals, and politics" (Nye 2004). Putman (1993) understands the term as a type of social capital, while Lukes (2007) indicates potentiality. Education is a key social dimension for building the country's future potential and is oriented towards future generations. Educational diplomacy is an effective tool for mutually favorable and reciprocal ties between nations (Khan, Ahmad & Fernald 2020) and the education of foreign students of the country donors is seen as an important factor in achieving the goals of soft power. The authors of Wojciuk, Michałek & Stormowska (2015) argue that power does not have to be active, but can derive from powerful properties, rather than from their actions as is the case with the power of attraction. This entails that the soft power derived from education need not stem from a focused policy on attracting foreign "capital". Education, especially academic education, attracts foreign students and thus universities and colleges are some of the most important institutions attracting hegemonic reproductions (Wojciuk, Michałek & Stormowska 2015) thus creating opportunities to establish good relations between countries through a public diploma. International educational programs are very effective and powerful tools that are important for the analysis of a country's foreign policy (Ayhan et al., 2022; Byrne 2016; Metzgar 2016). As such, they are important mechanisms that contribute to states' foreign policy strategies and their soft power (Nye 2004) and as a result of a relationship “based on mutual trust, countries could have support for their policies and gain” public opinion sympathy (Özkan 2015). Today, soft diplomacy is recognized not only by developed and not developed states, and large powers, but also by small countries that believe in the use of education as a diplomatic instrument to help their governments achieve their national interests and strengthen their identity and trust towards other countries (Waxevanid 2018), where the country's security and socio-economic development takes place. However, the potential has also been discovered by non-state actors, who use it as an instrument of influencing cultures, attitudes, and behavior, or as an instrument of influencing actions that benefit their interests and values (Gregori 2011), where on the other hand it influences other countries to adopt policies (Nye 2005). With this international action, donor countries and beneficiary countries build an image of their international diplomacy ("soft diolomatia") and the establishment of bridges for the development of relations with other societies (Leonard & Alakeson 2000, 10). Therefore, the elements of soft power should be properly used with the strategy of public diplomacy that contributes to the promotion of the country.

Soft diplomacy of countries in the field of education

Today, many countries in the world, but also EU members, choose to promote public diplomacy through education (Özkan 2015). As the leading country in the development of public diplomacy, the Shadow States of America are recognized, and as the closest competitor, Europe has a strong cultural appeal (Akçadag 2012). Also, some European countries have a network of national agencies that work to promote and disseminate their languages and cultures. In this promotion and by allocating funds, the Leading French Institutes and cultural centers were funded by the Government of France, followed by Great Britain and

Germany (Akçadag 2012). Throughout history, France has been known for its well-developed diplomatic networks, which always include soft diplomacy as an important segment based on culture, interpersonal relations, publishing, and scholarship education. Today, the Government of France has more than 650 diplomatic and consular missions around the world, and as a result of its activities, it has almost 200 institutes and cultural centers aimed at teaching the French language and culture of other nations, especially in Africa (Özkan 2015, according to Akçadag, 2012). In the field of education, France provides financial support to 22000 foreign students coming from abroad, of whom 80% of these scholarship students are educated under a bilateral agreement between France and other governments (Özkan 2015). In addition, there are two programs: the first is Eiffel for students coming from Latin America and Asia, and the second is 'Major' for students who have a French Baccalaureat (high school diploma) and are living abroad (Özkan 2015, 39). In 2011, approximately 270,000 U.S. students used academic credit to study abroad, and that number increased by 10.4% compared to 2009 (Open Doors report 2011). U.S. colleges and universities hosted over one million international students in 2016/2017 and over half of the students came from China (33%), India (17%), and South Korea (5%) (Glass, 2018). However, a large increase in foreign students was also recorded in Korea from 2010 to 2021; the number of students rose to approximately 152 thousand international students currently studying at various Korean universities (Im, et, al. 2022). According to Frankel (1965), the education of foreign students (scholars) to develop and advance soft diplomacy according to Frankel (1965) leads to "improving the context of communication to become aware of other people's cultural codes" developing "disciplining and spreading international intellectual discourse", as well as "developing international education in its independent terms", different from other economic and social developments (Frankel 1965, 99–112). Relying on Frankel's conclusions, we do misunderstand the "hallmark" of soft diplomacy, which, in addition to educational programs, is embodied in other forms of cultural interaction between beneficiaries and donors. At the same time, students studying abroad outside their home country as scholarship holders of foreign governments and foundations can be seen as the new informal cultural diplomats of the 21st century (Vasojević 2022; Khan, Ahmad & Fernald 2020; Akli 2012), and according to available data, 183 international scholarship programs have been identified in 196 countries (Vasojević 2022; according to Cosentino et al, 2019) among which there is no program modification by the Government of the Republic of Serbia.

Soft diplomacy of Serbia in the field of education

Serbia has a historical background, and the development of modern society is based on soft diplomacy and an educational elite, but its perception of the outside world is not comparable to its actions. The development of modern Serbian society began with the education of Serbian scholarship holders at prestigious European universities. This tradition has been preserved throughout history, but it has also been extended to the education of foreign students at Serbian Universities as a form of soft diplomacy. This scholarship was first introduced by the Ministry of

Education and Religion in the 1920s (Vasojević 2022: according to Covic 2019), but the program was not planned and systematically coordinated. This scholarship initially served the Government's strategic plan in efforts to further advance and develop higher education capable of developing a dimension of internationality. However, in the early 1950s, Yugoslavia was looking for "soft diplomacy", from which new forms of soft diplomacy (cultural-educational cooperation) emerged and which resulted in an increasing number of foreign students at Yugoslav universities from Western countries and later from Third World countries, i.e., Asian countries (Vasojević 2022: according to Bondžić 2014), and in the late 1950s and early 1960s, the largest number of students was from underdeveloped Third World countries from the Asian and African continents, i.e. from countries with which close political relations had been established (Vasojević 2022: according to: Bondžić 2014). A result of international relations, i.e. International scientific and cultural cooperation, along with technical cooperation, led to the establishment of a unique Republic Institute for International Scientific, Educational, Cultural, and Technical Cooperation (In 1975), (Vasojević 2022; according to: Information Bulletin 1982) which brought numerous new bilateral agreements for education and training of (scientific) personnel where developing countries were dominant.

In the 21st century, the Government of the Republic of Serbia provides scholarships for students coming from developing countries, members and observer countries Of The Non-Aligned Countries (Movement of Non-Aligned Countries), aged 18 to 35 (*Official Gazette of the Republic of Serbia*55/05, 71/05) as one of the instruments supporting the strengthening of the strategy of international policy and development cooperation. Since 2010, this scholarship within the project "The World in Serbia" has provided opportunities for future students in developing countries to increase their knowledge and competencies by studying and acquiring an academic title at all levels of studies (undergraduate, master and doctoral studies) at four universities in the Republic of Serbia. It represents an implementation component of the program for strengthening the quality of higher education institutions and strengthening and developing international relations between donor countries and beneficiaries. where the main holders (coordinators) of the program are the Ministry of Education and the Ministry of Foreign Affairs. Also, the program provides a financial package that covers administrative expenses related to the preparation of documentation for enrollment at Serbian universities, financing Serbian language learning, covering tuition in full, student accommodation, and food, as well as additional monthly scholarships to cover living expenses (Vasojević 2022). Recognizing the significant contribution of the program to the development of human resources and the development of the "national brand" through this form of cooperation with the scholarship beneficiary countries, the Serbian government decided to expand the scope of the program and increase the number of scholarships offered to 200 packages per year (See: Vasojević 2022). Increasing scholarship beneficiaries can "act as a catalyst for sustainable development and competitive balance" because it can restore weak international credibility, increase international political influence, and stimulate stronger international partnerships (Dinnie 2008), indicating that if a country establishes a strong national brand, that image will attract talented people, such as international students from abroad (Anholt 2007).

Recipients of the scholarship also become cultural ambassadors and are expected to become agents for the dissemination of the culture and language of the donor country, spreading a positive image of the receiving country and their home country.

Research methods and findings

This study uses primary, secondary, and qualitative data. The information in this study is also enriched with data obtained by the survey method on the population of respondents among scholarship students from the project "The World in Serbia". The condition was that the respondents spend a minimum of six months in Serbia. Given that there is no database available in Serbia on international scholarship students who were educated in Serbia, we used the "snowball" technique to reach the interlocutor. The survey was conducted anonymously on the territory of the Republic of Serbia from December 2021 to March 2022 and it included 126 international scholarship students, thus providing a representative sample. In this paper, only a part of the results we have come to, which will respond to the established goal of the research, will be presented. The data was processed using the statistical programs Microsoft Excel and "IBM SPSS20". This paper aims to analyze detailed information about the project "The World in Serbia", and show its importance, i.e., show in which conditions the education of foreign scholarship students within the project "World in Serbia" can be considered an instrument of soft power, as well as to discover elements that should be improved to influence better implementation of the project.

For the analysis of the primary data, we used the model used by the author (Brilyanti, 2021), in her work. Based on the primary data in this case, by analyzing available regulations, we notice that the project "The World in Serbia" is one of the priority programs of the Government of Serbia in the field of higher education, where the education of foreign scholarship students aims to:

1. Enhancement and expansion of cultural diplomacy to better position Serbia as a global brand by promoting knowledge of its culture and educational system, as can be seen from the text below: "The project has invaluable importance for the promotion of the Republic of Serbia in the world and not only in the field of education" (*Official Gazette of the Republic of Serbia* 55/05, 71/05 – correction, 101/07, 65/08, 16/11, 68/12 – decisiom “US” and 72/12, 7/14 – decisiom “US”, 44/14 and 30/18- another law).
2. Contributing to the development of human resources in the beneficiary countries, this is reflected in the fact that students who are beneficiaries of scholarships from the Government of the Republic of Serbia are not obliged to stay in the donor country after schooling but are allowed to return to their home country or a third country where they are involved in workflows.
3. Stimulating a deeper cultural understanding among donor and beneficiary countries and from the program can be seen in the following section: "... The impression that scholarship holders take from our countries to their countries is a significant contribution to international cooperation, especially in the field of

maintaining friendly ties with Member States and Observers of the NAM[2] (Non Aligned Movement), (*Official Gazette of the Republic of Serbia* 55/05, 71/05 – correction, 101/07, 65/08, 16/11, 68/12 – decisiom "US" и 72/12, 7/14 – decisiom "US", 44/14 and 30/18- another law)

4. Support for strengthening the reputation of Serbian universities at the international level, which is achieved through academic mobility of students where there is international competitiveness and better placement of universities on international lists,

5. Strengthening (international) relations and cooperation between beneficiary and donor countries: "... a large number of countries covered by the Project have not recognized or withdrawn or are expected to withdraw recognition of the independence of so-called Kosovo (*Official Gazette of the Republic of Serbia* 55/05, 71/05 – correction, 101/07, 65/08, 16/11, 68/12 – decisiom "US" and 72/12, 7/14 – decisiom "US", 44/14 and 30/18- another law).

Also, secondary data indicate that in the period from the school year 2010/11-2021/22, the Government of the Republic of Serbia approved 1471 scholarships, but it is not known how many scholarships were used because there is no systematic monitoring of this group of scholarship holders. Based on the data we have received from the Ministry of Education at the moment, according to their records, there are 478 scholarship holders from 67 countries. In this sample, the largest number of scholarship beneficiaries come from the Democratic Republic of the Congo (44), and the most sought-after study programs attended by scholarship holders are medical studies (151). Based on the results obtained with the help of online research on a sample of 126 subjects (57 female and 69 male) students, some factors were discovered that may be important for the implementation of the project itself, related to the difficulties faced by students during academic mobility. Out of the total number of respondents, a smaller number of scholarship students, 48 of them face difficulties when enrolling in the faculty; 19 of them cite poor communication with representatives of the Ministry as a reason; 18 see problems that arise at faculties and universities during the enrollment procedure; and 11 respondents cite the language barrier as the reason. Also, 18.3% of scholarship holders state that with the monthly scholarship they receive from the Government of the Republic of Serbia, they can cover the cost of living, while 63.5% state that they cannot afford everything for life from the scholarships they receive monthly, and 4% of respondents state that the scholarship is not enough for them and that they are additionally engaged in work (part-time), while 14.3% of scholarship holders point out that the scholarship is not enough for them to cover the cost of living and that parents send them money to cover everythin. However, this data should be viewed from a different angle. As stated by the author Vasojević (2022) during their stay in Serbia, only 23% of the scholarship holders had a scholarship from their country. This policy indicates that not only major powers but also small countries believe in the use of educational diplomacy as a diplomatic instrument that can help governments pursue their national interests and strengthen their identity and trust towards other countries (Vasojević 2022, 910, according to Khan, Ahmad & Fernald

[2] Hereinafter NAM (Non Aligned Movement)

2020; Vaxevanidou 2018). In addition to financial factors, the sense of acceptance and belonging to a new environment is a very important factor when it comes to academic mobility and soft diplomacy because the sense of belonging enhances the international academic performance of students (users) and increases intercultural interaction between international students and domestic students (Glass 2018). Also, the meaning of satisfaction and belonging includes a group of different factors, and accordingly, we asked the respondents to express the degree of agreement on the Likert five-level scale with the following statements:

Table 1. The degree of agreement of respondents with the given claims

Scale 1-5	**N**	**%**
I feel accepted in Serbia.		
1	3	2,4
2	7	5,6
3	31	24,6
4	53	42,1
5	32	25,4
∑	**126**	**100,0**
Through other students (colleagues) I feel accepted		
1	21	16,7
2	15	11,9
3	35	27,8
4	36	28,6
5	19	15,1
∑	**126**	**100,0**
As a foreigner, I feel safe to live in Serbia		
1	0	0
2	6	4,8
3	32	25,4
4	35	27,8
5	53	42,1
∑	**126**	**100,0**
I am satisfied with my life in Serbia		
1	41	32,5
2	72	57,1
3	8	6,3
4	3	2,4
5	2	1,6
∑	**126**	**100,0**
I don't feel discriminated against in India.		
1	5	4,0
2	19	15,1
3	33	26,2
4	42	33,3
5	27	21,4
∑	**126**	**100,0**

1-I feel fully accepted by other students; 5-I don't feel accepted by other students; I don't agree at all; 5 I totally agree.

Discussion

Granting scholarships to foreign students within the project "World in Serbia" for studying in the Republic of Serbia is a form of soft power for improving the branding of the nation. Project "The World in Serbia" i.e. Foreign students' scholarships are a form of cultural diplomacy that supports the policies of a country. In addition to contributing to the development of human resources in beneficiary countries and donors, the "World in Serbia" scholarship also aims to increase cultural understanding and strengthen relations and cooperation between beneficiary and donor countries. The implementation of the "World in Serbia" project is a synergy between the government, the ministry department, and universities. This program provides opportunities for students from developing countries (Non Aligned Movement) to experience living and studying in Serbia, i.e. Europe.

Also, the project "The World in Serbia" provides a financial and administrative package to beneficiaries, which is an important factor why international students opt for Serbian universities, i.e. Scholarships. The Serbian government provides them with an easier visa process, covering tuition costs at all programs and higher schools within four universities, free accommodation in dormitories, as well as a monthly scholarship. Through this project, it can be seen that the Serbian government has introduced various financial and political initiatives that are part of soft diplomacy, intending to increase the number of international students studying in Serbia as an element of maintaining friendly ties with member states and observers of the NAM and strengthening international relations.

Questions focused on acceptance by domestic students suggest that 92% of respondents feel accepted in Serbia and that 95.2% of scholarship holders feel safe as foreign citizens in a donor country. Most students feel accepted by colleagues who are not part of the project (71.5%). However, a sense of acceptance and belonging largely depends on the host government and the host scholarships. Also, an important factor that affects the overall satisfaction of international students (scholarship holders) is their knowledge of the host language, which positively correlates with better adaptation in that community, and from the documents of the project "The World in Serbia" it can be seen that the Government covers free learning of The Serbian language for all scholarship holders. However, since we have not identified different levels of engagement with international students depending on their knowledge of the Serbian language, a plan for such an organization should be made in the future. In this way, there would be a reduction in differences between domestic and foreign students, but on the other hand, favoring English in communication with foreign students could cause a power dynamic for international students who are only able to speak English, and they would feel isolated and less appreciated than domestic students, so it is necessary to find a suitable model for all populations.

Conclusion

In international reports, education is used as an index in calculating a country's soft power. Today, Serbia is one of the most competitive countries for NAM students, with the number of students growing every year. The Serbian education system offers quality higher education where students feel safe and

accepted in society. The Serbian project "The World in Serbia", the education system, and the "open society" towards international students are mechanisms for strengthening and improving countries soft power.

Literature

1. Akli, M. (2012). The Role of Study-Abroad Students in Cultural Diplomacy: Toward an
2. International Education as Soft Action, *International Research and Review: Journal of Phi Beta Delta*, 2(1), 32–48
3. Anholt, S. (2007). What is competitive identity?, *In Competitive Identity* (pp. 1-23). Palgrave Macmillan, London.
4. Ayhan, K. J., Gouda, M., & Lee, H. (2022). Exploring Global Korea Scholarship as a Public Diplomacy Tool, *Journal of Asian and African Studies*, 57(4), 872– 893. https://doi.org/10.1177/00219096211035800
5. Akçada, E. (2012). "The EU's Public Diplomacy and Its Reflections on Turkey". *Public Diplomacy* (Ed: Abdullah Özkan-Tulisansçe Ersoy Öztürk). Istanbul: Tasam Yayinlari
6. Bondžić, D. (2014), Education of Students from Developing Countries as a Depot for Yugoslavia's Foreign Policy 1950–1961. *Annales, Series Historia et Sociologia Archives*, *24 (4)*, 637–648 [In Serbian]
7. Brilyanti, F.A. (2021). Nation branding through KNB scholarship as soft power diplomacy, *Dinasti International Journal of Education Management and Social Science*, 2(5), 2686-6358
8. Byrne, C. (2016). Australia's New Colombo Plan: Enhancing regional soft power through student mobility, *International Journal*, 71(1), 107 128. https://doi.org/10.1177/0020702015617786
9. Cosentino, C., Fortson, J., Liuzzia, S., Harris, A., Blair, R. (2019). Can scholarships provide equitable access to a high-quality university education? Evidence from the Mastercard
10.Foundation Scholars Program, *International Journal of Educational Development*, vol. 71, 1–13. https://doi.org/10.1016/j.ijedudev.2019.102089 .
11.Dinnie, K. (2008). The relevance, scope, and evolution of nation branding, *Nation branding: concepts*, 13-33.
12.Frankel, C. (1965). *The neglected aspect of foreign affairs American educational and cultural policy abroad*, Washington: The Brookings Institution
13.Glass, C. R. (2018). International Students' Sense of Belonging-Locality, *Relationships*, and Power ***Peer Review; Washington,*** 20 (1), 27-30.
14.Gregory, B. (2011). American Public Diplomacy: Enduring Characteristics, Elusive
15.Transformation, *Hague Journal of Diplomacy*, 6, (3-4), 351-372.
16.Im, DH., Basilisco, R., Shin, KS., Bae, Sh. (2022). Determinants of Working International Students' Life Satisfaction: The Mediating Role of Sense of Belonging,

International Journal of Advanced Culture Technology, 10 (4), 322-336, https://doi.org/10.17703/IJACT.2022.10.4.322
17.Khan, M. M., Ahmad, R., Fernald, W. L. (2020). Diplomacy and Education: A Systematic Review of Literature, *Global Social Sciences Review (GSSR)*, 5 (2), 1–9. URL: http://dx.doi.org/10.31703/gssr.2020(V-III).01
18.Lukes, S. (2007). 'Power and the Battle for Hearts and Minds. On the Bluntness of Soft Power', in F. Berenskoetter and M.J. Williams (eds.) *Power in World Politics New York: Routledge*, pp. 83–97.
19.Leonard, M., Alakeson, V. (2000). *Going Public: Diplomacy for the Information Society* London: The Forein Policy Center
20.Metzgar, E. T. (2016). Institutions of Higher Education as Public Diplomacy Tools: China-Based University Programs for the 21st Century, *Journal of Studies in International Education*, 20(3), 223–241. https://doi.org/10.1177/1028315315604718
21.Nye, J.S. (2011). *The Future of Power.* New York: Public Affairs.
22.Nye, S.J. (2005). *Soft Power: The Means to Success in World Politics.* New York: Public Affairs
23.Nye, J. (2004). *Soft Power and the Means to Success in World Politics*. NY: Public Affairs.
24.Open Doors Report. (2011). Retrieved from http://www.iie.org/en/Research-and-Publications/Open-Doors
25.*Official Gazette of the Republic of Serbia* 55/05, 71/05, 101/07, 65/08, 16/11, 68/12 –72/12, 7/14, 44/14,30/18 [In Serbian]
*26.*Özkan, A. (2015). Strategic Practices of Public Diplomacy Policies in Educational Field and Turkey's Potential for Cultural Diplomacy, *Procedia - Social and Behavioral Sciences, 176, 35 – 43. DOI: 10.1016/j.sbspro.2015.01.441*
27.Putnam, R. (1993). *Making Democracy Work: Civic Traditions in Modern Italy*. Princeton: Princeton University Press.
28.Peterson, P. M. (2014). Diplomacy and education: A changing global landscape, *International Higher Education*, (75), 2-3.
29.Snow, N. (2009). Rethinking Public Diplomacy. (Eds.) Snow., N. & Philip M.T., *Handbook of Public Diplomacy*, New York: Routledge
30.Vasojević, N.A. (2022). International students, beneficiaries of the state scholarships of the Republic of Serbia, and their education in the 21st century, *Sociološki pregled,* 56, (3), pp. 904-928) doi: 10.5937/socpreg56-39367 [In Serbian]
31.Vaxevanidou, M. (2018). Education as public diplomacy: How to build on international image in education, *Journal of Media Critique*, 4 (14), 55-70
32.Wojciuk, A., Michałek, M., Stormowska, M. (2015). Education as a source and tool of soft power in international relations, *European Political Science*, doi:10.1057/eps.2015.25

Professional Article
UDK 342.518:340.132(4-672ЕУ:438)

Competences of the Council of Ministers in the process of implementation of European Union law into the legal system of the Republic of Poland

Anna Hadała-Skóra, PhD
Institute of Legal Sciences, College of Social Sciences, University of Rzeszów, Rzeszow, Poland
ORCID iD: https://orcid.org/0000-0002-6432-5651
ahadala@ur.edu.pl

Artur Trubalski, PhD
Institute of Legal Sciences, College of Social Sciences University of Rzeszów, Rzeszow, Poland
ORCID iD: https://orcid.org/0000-0001-8020-9178
atrubalski.univ.rzeszow@gmail.com

Summary:

The Council of Ministers plays a key role in the process of implementation of EU law into the legal system of the Republic of Poland. Its actions are necessary to initiate and carry out the process aimed at enacting implementation laws. This body of the executive power is in fact responsible for the timely and correct implementation of EU law in the legal system of the Republic of Poland and for ensuring that EU law has the value of effectiveness. Therefore, taking into account Poland's long-standing experience in this respect, it is reasonable to present related issues from a time perspective.

Keywords: executive power, Council of Ministers, implementation of EU law, legislative process

The phenomenon of implementation of European Union (hereinafter: EU) law into the legal system of the Republic of Poland (hereinafter: RP) is inextricably linked with the participation of the executive authorities in this process. The main role of the Council of Ministers is to prepare an appropriate bill and to initiate the legislative process by submitting it to the Sejm (Kudej, 2002: 18). Therefore, despite the formal possibility for other bodies to prepare these bills, it is the Council of Ministers that is the competent, responsible and necessary entity to act on this subject. The Council of Ministers bears the burden of the first stage of the

implementation process. Therefore, this body is treated as a kind of host for this phase of the implementation process. In turn, there are specialised bodies within the Council of Ministers that prepare draft implementation laws (Trubalski, 2016: 88). Furthermore, the Council of Ministers is authorised under the provision of Article 146(4)(12) to determine the organisation and procedure of its work. Pursuant to the provision of Article 12(1) of the Act on the Council of Ministers, the Prime Minister may, on his own initiative or at the request of a member of the Council of Ministers, create permanent committees and committees of the Council of Ministers, committees to consider specific categories of matters, advisory and consultative councils and teams. When creating these subsidiary bodies, the Prime Minister shall determine their name, composition, rules of operation and procedure. Pursuant to the provision of Article 14(1) of the Act in question, the Legislative Council operates under the Prime Minister. In addition, the President of the Council of Ministers, having consulted this body, shall establish by regulation the principles of legislative technique. Pursuant to the provision of Article 14, paragraph 5 of the Act, he shall establish the principles of legislative technique specifying, in particular, the elements of the methodology for preparing and the manner of editing draft laws and regulations. The application of the principles of legislative technique is aimed at ensuring, in particular, the coherence and completeness of the law system, as well as the transparency of normative texts of legal acts. This must be done taking into account the practice of the application of the law and the scientific achievements in this area. In addition, the Government Legislation Centre operates under the Prime Minister. It is the main entity responsible for preparing the Council of Ministers' draft legislation. It also ensures the coordination of the work of the entities responsible for the preparation of draft legislation. According to the provision of Article 14 c of the Act, the Government Legislation Centre provides legal services to the Council of Ministers (Krawczyk, 2006: 132). It concerns, above all, the preparation of government draft laws, the development of legal and legislative positions to government draft laws, the coordination, in legal and formal terms, of the course of arrangements of government draft laws, cooperation with the Legislative Council (Prokop, 2003: 137) in the area of issuing opinions on government draft normative acts in terms of their compliance with the Constitution and consistency with the Polish legal system. Taking into account the process of implementation of EU law into the legal system of the Republic of Poland, the task of the Government Legislation Centre contained in the provision of Article 14c(7) of the Act on the Council of Ministers is very important. It concerns cooperation with the minister responsible for the Republic of Poland's membership in the European Union on the adjustment of Polish law to European Union law and its implementation. Based on this regulation, the Government Legislation Centre is the main body responsible for the coordination and preparation of draft legislation implementing EU law. The Chancellery of the Prime Minister also plays an important role. The Council of Ministers is the entity whose tasks include bringing draft laws implementing EU law into the legal system of the Republic of Poland for consideration by the Sejm. This competence results from the wording of the provision of Article 118(1) of the Constitution of the Republic of Poland of 2 April 1997 (hereinafter: the Constitution), which establishes the Council of Ministers as

one of the entities entitled to initiate the legislative process (Kruk, 1998: 11). This general regulation of a primary nature determines which entities are in each case competent to initiate the legislative process by bringing the relevant bill to the Sejm. It refers to the unlimited scope of the subject matter that can be regulated by a law. It follows that the draft acts submitted by the Council of Ministers may cover the entirety of the issues that are subject to statutory regulation. In addition to the Council of Ministers, other entities indicated in the provision in question are also entitled to such action. The special place of the Council of Ministers among the entities having the legislative initiative is defined by the provision of Article 221 of the Constitution. According to its content, issues related to the state budget have been reserved to the exclusive jurisdiction of the Council of Ministers (Patyra, 2012: 109). This is an exception that demonstrates the special role of this entity in the legislative process. For the fact that it is entrusted with the exclusivity on the subject of legislative initiative concerning the budgetary matter shows that it is treated as an entity with a high level of expertise. It is worth noting that the provision in question concerns not only the exclusive competence of the Council of Ministers with regard to the legislative initiative on the budget law. The exclusive competence of this entity also extends to the legislative initiative concerning the law on the budget provisional, amendments to the budget law. In addition, the Council of Ministers is the only one entitled to exercise the legislative initiative with regard to the law on incurring public debt and the law on granting financial guarantees by the state. As can be seen from the above analysis, the drafters of the Constitution considered it advisable to identify the Council of Ministers as the body competent to exercise the legislative initiative on broadly defined state financial issues. The indication in this regard of the competence of the Council of Ministers is not an accidental action. The creators of the Basic Law rightly came to the conclusion that it is the most competent entity in this respect (Trubalski, 2016: 90). Given that matters of state policy not reserved for other state and local government bodies belong to the Council of Ministers, this body clearly has a leading role in the conduct of state affairs within the bicameral executive. This concept is also confirmed by the wording of other provisions defining the competences of the Council of Ministers. This refers in particular to the constitutional provisions stipulating that this body enacts the draft state budget, directs the execution of the state budget and protects the interests of the State Treasury. These provisions confirm the leading role and great significance of the Council of Ministers in the legislative process. The norms in question also appear to provide sufficient grounds for the claim that the Council of Ministers is, compared to other entities with legislative initiative, the body which is competent to draft laws in areas of key importance to the functioning of the state. In the exceptional case provided for in the provision of Article 221 of the Constitution, there is even a reservation of a certain subject area to the exclusive jurisdiction of the Council of Ministers. Also, in view of the wording of the provision of Article 126(3) of the Constitution stipulating that the President performs his tasks within the scope and on the principles set out in the Constitution and laws, the leading role of the Council of Ministers with regard to legislative initiative within the bicameral executive should be recognised. Of course, on the basis of the provision of Article 118(1) and (2) of the Constitution, legislative

initiative is also vested, apart from the exception provided for in the provision of Article 221 of the Constitution, in MPs, the Senate, the President of the Republic and a group of at least 100,000 citizens having the right to elect to the Sejm (Szepietowska, 2006: 102). However, when it comes to the preparation and submission to the Sejm of draft laws implementing EU law into the legal system of the Republic of Poland, the thesis of the de facto primacy of the Council of Ministers with regard to legislative initiative was confirmed. A manifestation of this phenomenon is the content of the Act of 8 October 2010 on Cooperation of the Council of Ministers with the Sejm and the Senate on Matters Related to the Membership of the Republic of Poland with the European Union (hereinafter: the Cooperation Act). Pursuant to the provision of Article 18(1) of this Act, 'the Council of Ministers shall submit to the Sejm a draft law implementing European Union law no later than three months before the expiry of the deadline for implementation resulting from European Union law'. In addition, according to the provision of Article 18(4) of the Co-operation Act, 'the Council of Ministers shall present to the Sejm and the Senate, at least once every 6 months, information on legislative work related to the implementation of acts of European Union law whose deadline for implementation has expired or is expiring within 3 months from the date of presentation of the information'. The indicated regulations of the Cooperation Act are of fundamental importance for the process of preparing drafts of legal acts implementing EU law and for the exercise of the legislative initiative in this area. They define the entities and the deadlines for their work functioning within the first stage of the process of implementation of EU law. The legislator's identification of the Council of Ministers as the entity that is obliged to prepare and bring to the Sejm's deliberations draft laws implementing EU law into the legal system of the Republic of Poland confirms the leading role of this body in this respect (Mistygacz, 2012: 197). The creators of the Co-operative Law decided not only to designate the Council of Ministers as the competent authority in this respect. They specified that the Council of Ministers has this role obligatorily. In other words, it is obliged to ensure the implementation of EU law in the legal system of the Republic of Poland. Furthermore, the Council of Ministers is obliged to do so within a certain time limit. As a rule, a draft law implementing EU law should be submitted to the Sejm within 3 months before the deadline for implementation under EU law. In order to ensure the reliability and timeliness of the process of implementation of EU law, the legislator has clearly and unequivocally defined the organisational and time framework for the first stage of the implementation process. The enactment of the Cooperation Act, as well as its normative content, thus provide the basis for the functioning of the first stage of the implementation process. In turn, the designation of the Council of Ministers as the entity competent to prepare draft legal acts implementing EU law in the legal system of the Republic of Poland is another element testifying to the growing importance and role of this executive authority in connection with the Republic of Poland's membership in the EU. It is particularly concerned with influencing the legislative process in the implementation of EU law (Trubalski, 2016: 93). On the other hand, the indication of a 3-month deadline for bringing the relevant bill to the Sejm is intended to ensure the timeliness of the process of implementation of EU law. This deadline is in principle intended to allow

for a legislative process ending with the promulgation of the bill. There are, however, two exceptions to this principle. The first is when the deadline for the implementation of EU law exceeds 6 months. In such a case, the Council of Ministers submits to the Sejm a draft law implementing EU law no later than 5 months prior to the expiry of the deadline. The second exception allows for an exemption from the deadlines provided for in the provisions of Article 18(1) and (2) of the Cooperation Act. The Council of Ministers may submit draft acts implementing EU law without observing the aforementioned deadlines in particularly justified cases. In addition, it is obliged to seek the opinion of the authority competent under the Rules of Procedure of the Sejm in this regard. Making the possibility of non-compliance with the deadlines indicated in the provision of Article 18 of the Cooperation Act subject to the necessity to consult the authority competent under the Rules of Procedure of the Sejm should be considered a manifestation of disciplining the Council of Ministers. This is because the opinion of the competent authority of the Sejm is issued on the basis of a request, which must contain an indication of the reason for the failure to meet the deadline and a justification for it. This makes it formally necessary to use this solution only in exceptional situations. In other words, the competent authority of the Seimas has current information on the progress of the implementation process, as well as being informed of the reasons for any delays. This should be regarded as a manifestation of the control function of the Sejm over the Council of Ministers in the process of implementation of EU law. Indeed, in accordance with the provision of Article 95(2) of the Constitution, the Sejm exercises control over the activities of the Council of Ministers to the extent specified by the provisions of the Constitution and laws (Mojak, 2008: 155). In the scope in question, however, we are dealing with an authorisation to control of a statutory nature. The provision of Article 18(3) of the Constitution, read in conjunction with the provision of Article 95(2) of the Constitution, establishes a mechanism for the control of the Sejm through its competent body over the Council of Ministers, which is relevant to the process of implementation of EU law in the legal system of the Republic of Poland. Of course, it should also be noted that the opinion in question expressed by the competent body under the Rules of Procedure of the Sejm is not binding on the Council of Ministers. In practice, this means that the Council of Ministers is not formally obliged to comply with a negative opinion of the body competent on the basis of the Rules of Procedure of the Sejm. Therefore, in the case of a negative opinion, the Council of Ministers has the formal possibility to disregard the deadlines set out in the provisions of Article 18(1) and (2) of the Cooperation Act. The issue concerning the nature of the opinion in question requires closer analysis. Indeed, the non-binding nature of the opinion may raise questions regarding the effectiveness of the control exercised by the Sejm over the Council of Ministers in this manner. It can be said that the possibility of the Council of Ministers not taking into account a negative opinion casts doubt on the effectiveness of such control. The provision of Article 10(1) of the Constitution, which is fundamental to the principles of the political system, must be taken as the starting point for deliberations on this issue. It establishes the principles of separation of powers and balance of powers. As discussed earlier in this thesis, both the division and balance are not of an entirely

rigid, unequivocal and unchangeable nature. Against the background of each of these principles, a certain margin can be discerned in the practice of the functioning of the system of the Republic of Poland, the existence of which allows certain deviations from the model. The result of the functioning of the division and balance between the executive and legislative authorities in the conditions of implementation of EU law is the non-binding character of the opinion of the authority competent under the Rules of Procedure of the Sejm concerning the possibility of non-compliance with the deadlines for the preparation and bringing to the Sejm's debates of laws implementing EU law in the legal system of the Republic of Poland. This is because establishing the binding character for the Council of Ministers of such opinions would result in a breach of the principles of division and balance between the executive and the legislature (Piotrowski, 2007: 113). Binding the Council of Ministers to the content of the opinion of the Sejm's competent body on the basis of the Rules of Procedure would mean in practice that the legislature would encroach on the area proper to the executive authority authorised by the Cooperation Act to act within the first stage of the implementation process. Nor can it be said that the Sejm is deprived of control by the lack of binding character of the opinion. After all, it was the Sejm in the legislative process that led to the enactment of the co-operation law in its current form. It therefore had an obvious and real influence on the regulations contained therein. The representatives of the science of constitutional law also approve of such a solution. Furthermore, it should be noted that the Sejm has an influence on the action of the Council of Ministers if only for the reason that it is an emanation of the parliament. Representatives of the doctrine also rightly draw attention to other instruments by means of which the Sejm, its organs and even individual deputies may exert influence on the actions of the Council of Ministers. Turning to the analysis of the content of the provision of Article 18(4) of the Cooperation Act, it should also be noted that it has elements of a controlling nature exercised by the Sejm and the Senate over the first stage of the implementation process. However, the regulations contained therein cannot be described as strictly controlling. For in accordance with the provision of Article 95(2) of the Constitution, *a contrario*, the Senate does not exercise a control function with respect to the Council of Ministers. This is in fact the domain of the Sejm. One can only note a kind of inconsistency on the part of the legislator, who in one place grants the Sejm control competences with respect to the Council of Ministers with regard to the first stage of implementation. In another instance, it provides for powers of a controlling nature to be exercised by both the Sejm and the Senate. The inconsistency in question may suggest that the Senate exercises a control function over the Council of Ministers in relation to the first stage of the implementation process. This would be contrary to the provision of Article 95(2) of the Constitution. In view of the categorical wording of the provision of Article 18(4) of the Cooperation Act, it must be concluded that the information presented to the Sejm and the Senate cannot be regarded as the exercise of a strictly control function. It remains, therefore, to assume that we are dealing with a quasi-control power. This is indicated, for example, by the lack of sanctions in the event of the absence of the information in question, as well as the inability of both the Sejm and the Senate to react appropriately to the information presented. Furthermore, the exercise of

control is usually associated with powers of a supervisory nature. The Cooperation Act does not provide for such powers. At the same time, it is impossible to deny the Sejm the power and the actual possibility to influence the action of the Council of Ministers, which can be described as exercising oversight. The Senate, on the other hand, has no such powers with the rank of constitutional regulation. However, some representatives of the science of constitutional law draw attention to the powers of the upper house of parliament, its bodies and individual senators in this respect. They can be found, for example, in the Senate regulations or the Act of 9 May 1996 on the exercise of the mandate of a deputy and senator (Trubalski, 2016: 111). Also parliamentary practice allows for such actions. Nevertheless, these are not activities that can be called exercising a control function within the meaning of the provision of Article 95(2) of the Constitution. Indeed, such a solution would be contrary to the cited provision of the Basic Law. Thus, one may at most speak of exercising a function that has the features of quasi-control. It follows from the jurisprudence of the Constitutional Tribunal, as well as from the position of the doctrine of constitutional law, that the participation of the Senate in the first stage of the implementation process should be treated as a manifestation of the performance of a legislative function, and not of a control function (justification of the verdict of the Constitutional Tribunal of 12 January 2005 in case ref. K 24/04). Such a view, however, raises some seemingly significant doubts. Assuming that it is only at the second stage of the implementation process that we are dealing with the legislative process, it is difficult to conclude that the participation of the Sejm and Senate in the first stage of the implementation process (the process of drafting a bill) may be treated as a manifestation of the exercise of the legislative function, and not precisely the control function. The very wording of the provision in question reveals features characteristic of the control function, while at the same time lacking features of the legislative function. At the same time, the view that the modification of the function in question is the result of the exercise of EU law in the legal system of the Republic of Poland does not seem entirely legitimate. For despite certain differences, the view that the ordinary legislative process is so significantly different from the legislative process related to the implementation of EU law should be regarded as too far-reaching. This is because the actual course of each of these processes does not provide sufficient grounds for this. Therefore, bearing in mind the presumption of constitutionality of the provision of Article 18(4) of the Cooperation Act, it seems most appropriate to state that the Sejm, in the first stage of the implementation process, performs a control function over the Council of Ministers, whereas the Senate performs only a quasi-control function, having only some features related to control or supervision. However, it does not seem right to define the function performed during the first stage of the implementation process either by the Sejm or the Senate as performing a legislative function or a function of a legislative nature. For this is contrary to the essence of the participation of the chambers of parliament in the process. The difference between the classic control function exercised by the Sejm and the quasi-control function exercised by the Senate should be seen first and foremost in its supervisory powers. The Sejm has powers of a supervisory nature with respect to the Council of Ministers, by means of which it may actually influence the Council of Ministers. It is also important to note

that these powers are in force at the level of the Basic Law and also derive from the Rules of Procedure of the Sejm or the Cooperation Act. The Senate, on the other hand, has no such powers in relation to the Council of Ministers. Consequently, the exception contained in the provision of Article 18(4) of the Co-operation Act cannot be treated in an expansive manner. This would not only be contrary to the principles of legal interpretation, but would also amount to a contra legem interpretation of constitutional provisions. Besides, public authorities are obliged to act on the basis and within the limits of the law (Article 7 of the Constitution). Thus, extending the powers of the Senate without an explicit legal basis, and in contravention of the provision of Article 95(2) of the Constitution, is completely illegitimate. It follows that granting the Senate of the Republic of Poland a classical control function over the Council of Ministers seems impossible in the realities of the current Basic Law. On the other hand, granting quasi-controlling powers to the Senate, without the possibility of exercising powers that constitute the essence of the controlling function, seems possible. According to some authors, this may be related to the formation under the influence of the EU integration process of the European functions of the executive and the legislature. In the case of the Senate, the European function would include, apart from the legislative function, powers of a quasi-controlling nature. In turn, the European executive function would include powers of a quasi-legislative nature. Such a model is also in line with the concept of modification and transfer of part of the powers of the legislative authority to the executive. It is not possible to speak of a delegation of functions, but only of certain elements of the powers provided for in the function. These elements, moreover, cannot constitute the essence of the function. Thus, the legislative authority and the executive authority retain their functions, but under the influence of integration with the EU (the essence of which, in legal terms, is the implementation of EU law in the legal system of the Republic of Poland), there has been a transfer of some powers that do not constitute the essence of the legislative function (quasi-legislative powers) to the executive authority - the Council of Ministers (Trubalski, 2016:113).

The delegation in question, on the other hand, is associated with the loss of some competences by the legislature, which in turn leads to the phenomenon of the so-called democratic deficit. It has been further strengthened in relation to the President as a result of integration, in connection with the obligation to draft laws implementing EU law in the Polish legal system (Banaszak, 2006: 10). However, as far as the granting of some powers of a control nature to the Senate, which do not constitute the essence of the control function, is concerned, this occurred without the Sejm losing these powers. The Senate gained powers that the Sejm also has. In other words, there was a duplication of powers of a controlling nature and a transfer of powers of a legislative nature. It seems, therefore, that one may consider the possibility of the competent authorities gaining new powers as a manifestation of the formation of a European function as a result of the implementation process. In other words, the process of implementation of EU law into the Polish legal system as a result of Poland's membership in the EU has resulted in the Council of Ministers and the Senate acquiring new powers (Sarnecki, 1999: 90). However, these cannot be described as functions, let alone competences, which are clearly

defined in the Constitution. Poland's membership in the EU, as well as the implementation of EU law in the Polish legal system, however, result in actual changes in the powers in question, as well as in the entities exercising them. Without the change in question, the implementation process in its current form would be impossible. Thus, the current shape of the implementation process is a legal compromise, between the obligations of the Republic of Poland in relation to EU membership and the constitutional principles enshrined in the Constitution. This compromise would not have been achieved without the significant achievements of constitutional and European law academics. The jurisprudence of the Constitutional Tribunal in this respect is also of significant importance. It must be stated that from the perspective of Poland's many years of membership in the EU, the original position that it is the Council of Ministers that plays the leading role in the process of implementation of EU law is confirmed. The actions taken both by this body of the executive power and in cooperation with other authorities, including in particular the Sejm and the Senate, lead to the conclusion that they constitute a guarantee of correct and timely implementation of EU law in the legal system of the Republic of Poland. The Council of Ministers, as well as its subordinate bodies, are also the most competent, in terms of content, to prepare implementation bills, as well as to participate in the legislative process. Thus, it can be said that within the parliamentary-cabinet system of government functioning in the Republic of Poland, the Council of Ministers fulfils its tasks resulting from the membership of the Republic of Poland in the European Union.

BIBLIOGRAPHY

1. Krawczyk J., *Rola Rządowego Centrum Legislacji w procesie tworzenia rządowych projektów aktów prawnych,* „Studia Prawnicze" 2006, No. 3.
2. Kruk M., *Prawo inicjatywy ustawodawczej w nowej Konstytucji RP*, „Przegląd Sejmowy" 1998, No. 2.
3. Kudej M., *Postępowanie ustawodawcze w Sejmie RP,* Warszawa 2002.
4. Mistygacz M., *Rząd w procesie ustawodawczym w Polsce,* Warszawa 2012.
5. Mojak R., *Parlamentarna kontrola Rady Ministrów i Ministrów w świetle Konstytucji RP,* „Przegląd Sejmowy" 2008, No. 3.
6. Patyra S., *Mechanizmy racjonalizacji procesu ustawodawczego w Polsce w zakresie rządowych projektów ustaw,* Toruń 2012.
7. Piotrowski R., *Zasada podziału władzy w Konstytucji RP*, „Przegląd Sejmowy" 2007, No. 4.
8. Prokop E., *Rada Legislacyjna przy Prezesie Rady Ministrów*, „Studia Iuridica Lublinensia" 2003, No. 2.
9. Sarnecki P., *Senat RP a Sejm i Zgromadzenie Narodowe*, Warszawa 1999.
10. Szepietowska B., *Proces ustawodawczy*, [in:] *Parlament. Model konstytucyjny a praktyka ustrojowa*, ed. Z. Jarosz, Warszawa 2006.
11. Trubalski A., *Prawne aspekty implementacji prawa UE do systemu prawnego RP,* Warszawa 2016.

Professional Article
UDK 35.07/.08:174(497.115)
35.07/.08:174(4)

THE IMPORTANCE OF THE PRINCIPLES OF ETHICS IN PUBLIC ADMINISTRATION

Artan Maloku, LL.M., Teaching Assistant
Faculty of Law, University "Haxhi Zeka" in Peja, Republic of Kosovo
PhD student at the University "St. Kliment Ohridski"- Bitola, Republic of North Macedonia
malokua72@gmail.com

Gresa Makolli, M.A., Administrative Assistant and Career Center Coordinator
Rector's Office of AAB College, Republic of Kosovo
PhD student at the University "St. Kliment Ohridski"- Bitola, Republic of North Macedonia
gresamakolli2@gmail.com

Abstract

In this paper we discuss the importance of public ethics in administration in the European context and in the case of Kosovo. We use comparative, quantitative, analytical and interpretive methodology to analyze the concepts and principles of public ethics, as well as the current situation, achievements and shortcomings of ethics in public administration in Kosovo. The paper shows that public ethics has experienced development and challenges at the European level as an element of good governance and administrative reforms. In the case of Kosovo, it treats initiatives to improve ethics in public administration, as well as some problems and difficulties that hinder a strong ethical culture. Conclusions are that public ethics is important for credibility, transparency and efficiency in public administration. Research also suggests the need for more recommendations to improve the level of ethics in public administration in Kosovo.

Key words: ethics, accountability, public administration, European integration, Kosovo.

INTRODUCTION

Democratic governance requires a responsible, transparent, and ethical public administration that serves the public interest and respects the rights and values of citizens. Ethics in public administration is a field of study and practice in governance that deals with questions of how a public servant should behave in relation to their legal and moral duties and obligations. The purpose of this paper is to address the issue of ethics in public administration in general, focusing on the principles, norms, mechanisms, and challenges related to this important field of democratic governance.

The research methodology to achieve this work's objectives is a combination of qualitative and quantitative methods. We will use the analytical method to study legislation, official documents, reports from local and international institutions, as well as academic literature related to the topic.

The structure of the paper will be treated starting from the first part, where we will treat the concept and principles of ethics in public administration in general. In the second part, we will discuss the European aspect of regulating public ethics, focusing on the standards, regulations based on acts governing this field and problems related to public ethics. In the third part, the ethics in public administration in Kosovo, we will address the rules, standards, and ethical codes, the role and functioning of independent bodies and institutions dealing with public ethics and the main challenges and problems encountered in the implementation of ethics in public administration in Kosovo.

PUBLIC ETHICS: CONCEPTS AND PRINCIPLES IN PUBLIC ADMINISTRATION

If we start from the philosophical aspect, ethics is a theoretical-cognitive discipline, and within it, it has the ambition, duty, and subject to verify the origin, development, perform the classification and systematization of moral-ethical categories, verify and attempt to claim the aims and meaning of moral desires, based on criteria for assessing moral acts, actions, behaviors, and deeds, as well as generally on the reliability or unreliability of theory and science on morality (Spahić 2002, 64).

Ethics in public service involves the practical application of moral standards in governance (Chapman 2002, 210). Ethics is primarily concerned with how an individual feels and should behave; it deals with values and their application in a given context. A key aspect of public ethics is that public officials and institutions should be accountable to citizens and involve them in the decision-making process. Furthermore, public ethics encourages officials to make honest decisions based on the law, defined standards, and the public interest.

In the 19th and 20th centuries, with the development of the modern state and public institutions, public ethics gained increased importance. Concepts such as independence of officials, transparency in decision-making, and accountability became crucial issues in good governance (Armstrong 2005). While today, public ethics faces the current challenges and context, including the application of technology, social justice, addressing climate change and the development of a digital society.

The main principles of ethics in public administration

The principles define what good governance entails in practice and establish the main conditions that countries must respect during the integration process into the EU. The principles also include a monitoring framework that enables regular analysis of the progress made in implementing the Principles and setting the standards that the country must meet (Sigma 2021, 6).

Some of the main principles that are part of and play an important role in ethics in public administration can be:

- integrity, is a key element for the credibility and legitimacy of public administration and a tool to fight corruption (Minkova 2015, 9). Public servants must put public service obligations above private interests when performing their mandate or functions (Report CDDG (2019)9, 2020);

- the principle of legality in public administration entails its activities being based on the Constitution, laws, and applicable legislation in the Republic of Kosovo (Law no. 06/l -113, 2019, article 3). In addition to the administration, the regulation for the code of conduct for civil servants regulates the principle of legality, which states that civil servants perform all duties based on the Constitution, international instruments, and legislation in force;

- another principle that is foreseen and regulated in legal terms is transparency. According to this principle, public administration carries out its activities in a transparent manner and informs the public about its activities (Law no. 06/l -113, 2019, article 5). So transparency requires public officials to be open and share their information with citizens (Stavileci, Batalli and Sokoli 2012, 107). This includes making decisions in a transparent manner, publishing relevant documents, and in engaging communication with the public;

- the principle of professionalism and political neutrality entails that public administration serves the public interest and citizens with professionalism and political neutrality in decision-making (Law no. 06/l -113, 2019, article 4). Professionalism in public ethics focuses on the high requirements and standards of professional performance. Public officials are expected to have specialized knowledge, receive training, and apply ethical standards in their duties;

- the principle of impartiality and professional independence prohibits employees in administration from showing bias, which means having a predisposition toward a specific outcome during the assessment of a situation, resulting in unjustifiable harm to the general interest or the rights of other interested parties (Regulation No. 04/2015, article 1.6). Independence and Impartiality require public officials to be independent of political influences, personal interests, and external pressures. They should make decisions and act in accordance with the public interest and laws;

- the principle of interinstitutional cooperation entails that public administration institutions exchange information and collaborate in the exercise of their functions (Law no. 06/l -113, 2019, article 6). Collaboration promotes harmony and teamwork in public administration. Officials should be willing to cooperate with colleagues and stakeholders to achieve public goals and fulfill their duties with efficiency and effectiveness.

Accountability (Report CDDG, 2020), requires public officials to be responsible for their actions. They should be willing to take responsibility for their decisions and be answerable to citizens and institutions for their conduct. Some of the benefits that be presented when putting these principles into practice be: Increased credibility and legitimacy towards interested parties, increased commitment of employees, increased quality and performance of organizations, increased positive impact on society, etc.

Meanwhile, some of the challenges of respecting ethical principles are: dealing with conflicts of interest, corruption, pressure, dealing with ethical dilemmas or situations where there is no ideal solution, political influences or dealing with legal changes and regulations.

PUBLIC ETHICS IN THE EUROPEAN CONTEXT

Reforms and changes in public administration have also been experienced by several European states, driven by their aspirations to join the European family. Accession to the EU, required these countries to adapt to and follow the "Principles of European Administrative Space" (Hinrik and Sahling 2009, 9). Simply put, Europe is a continent with a long history of democracy, human rights, and shared values.

European standards and norms for public ethics

According to the Council of Europe, public ethics is "a system of values and norms that guide the behavior of persons involved in public governance" (Dickson 2016). The European standards and norms for public ethics are a set of rules that guide the behavior of individuals involved in public governance in Europe, with the aim of ensuring respect for human rights and fundamental freedoms, democratic principles, and the rule of law. Some of the key instruments containing these standards and norms are:

- the Charter of Fundamental Rights of the European Union as a legal document that defines the fundamental rights of citizens and residents of the European Union, such as human dignity, freedom, equality, solidarity, justice, and citizenship (Official Journal of the European Union 2000).

- one of the main instruments of the Council of Europe to promote public ethics is the European Code of Conduct for all persons that are involved in local and regional government and was adopted by the Congress of Local and Regional Authorities in 2018 (Bora 2018). This code defines general principles and specific rules of conduct for all local and regional government actors, such as elected representatives, public officials, contractors, and private partners. It also provides practical guidance to design and implement similar codes of conduct at the national, regional, or local level.

- The European Convention on Human Rights (ECHR 1950), is an international treaty of the Council of Europe that protects fundamental human rights and freedoms in Europe, such as freedom of thought, expression, belief, assembly and association, right to a fair trial and protection of discrimination etc. These rights are also part of ethics.

These are some of the instruments that reflect European values and principles for promoting public ethics. They also provide practical guidance and professional standards for individuals involved in public governance at the national, regional, or local levels.

Problems and challenges of public ethics at the European level

Public ethics at the European level faces various challenges and problems, which can vary across countries and different contexts. There may also be challenges and problems that can damage the integrity, transparency and independence of individuals involved in public governance.

Corruption, which is a widespread and harmful phenomenon that violates human rights and freedoms, causes a loss of public trust and hinders economic and social development (John 2018). Corruption can manifest in various forms, such as bribery, favoritism, nepotism, clientelism, abuse of power, fraud, or money laundering.

Conflict of interest occurs when a person has a personal or private interest that may unfairly influence the performance of their public duties (Report CDDG 2020). Conflict of interest can raise doubt about the objectivity, impartiality, and professionalism of the person in question and can lead to unlawful or negligent decisions. If we stop and analyze the notion of conflict of interest, we see that it takes part in every sphere of social life.

The absence of transparency and accountability can foster corruption, abuse of power, non-compliance with ethical rules and norms, and the lack of oversight of public authorities by supervisory institutions or citizens (Bora 2018). Unethical or even fraudulent actions by officials can be significantly reduced if citizens are involved in public life, if they verify local government decisions or if they participate in discussions on local issues (Centre of Expertise for Local Government Reform 2017, 24).

Political pressure and the influence of private interests is a risk to the independence and autonomy of persons involved in public governance. This pressure and influence can come from political parties, interest groups, lobbyists, the media, or international actors and can aim to change or hinder public decision-making in favor of one or against the other (Resolution no. 2170, 2017). Public officials should not use public funds or other resources for political parties and other political purposes (Report CDDG 2020, 32). Public officials must act in such a way that they are not subject to unnecessary political influence, pressure or intimidation. For civil servants, there must be measures to limit the use of public equipment and facilities for private gain.

These challenges and problems require a continuous commitment of people involved in public governance at the European level to implement European standards and norms for public ethics and to promote the European values of democracy, the rule of law, and respect for human rights. There are many cases when employees are involved in corrupt affairs and in disrespect for the principles of public ethics.

One such case that must be emphasized is that of Eva Kaili, which caused a great shock in the EU and raised concerns about the ethics and transparency of European institutions (Agence France-Presse 2022). Eva Kaili it was Greek MP and one of the vice presidents of the European Parliament. She was arrested and charged by Belgian justice with corruption and money laundering in December 2022, along with three other people. They were suspected of receiving money and gifts from Qatar to influence EU policies. According to investigators, around 1.5 million euros

in cash were seized from several properties in Brussels, including 150 thousand euros from her apartment. Eva Kaili denied the allegations and said she was betrayed by her partner, Francesco Giorgi, who was a parliamentary assistant and admitted his share of the blame (Rankin and Smith 2022).

She remained in custody for four months until she was released on bail in April 2023 (Koutsokosta and Liboreiro 2023). She was also expelled from her political party PASOK in Greece and was criticized by many of her colleagues in the European Parliament. This case, along with the other defendants, is still under trial and could have serious consequences for the reputation of the EU and its relations with the Gulf countries. It has also highlighted the need for reforming the ethics system in the EU and for more effective protection of the financial interests and fundamental values of the European Union.

THE CASE OF KOSOVO: CURRENT SITUATION, ACHIEVEMENTS AND SHORTCOMINGS OF ETHICS IN PUBLIC ADMINISTRATION IN KOSOVO

In the last three decades, there has been an increase in knowledge in the fields of public administration, political analysis, organizational studies and managerial approaches to ethical issues (Cooper 1996, 56). In many different manuals and compilations, virtue ethics has become a standard topic and is presented as one of the "big trees" of ethical theories or perspectives (Geuras and Charles 2005, 24).

Kosovo is still in the process of building sustainable and transparent governance structures and institutions. However, the insufficient level of ethics in the performance of their duties remains one of the main challenges in establishing an administration in line with the principles of public ethics (Congress of Local and Regional Authorities 2021, 12). The role of public ethics is crucial in shaping a sustainable and developed society in Kosovo. Building a culture of responsibility and democratic values influences the improvement of living and contributes to the construction of a fairer and more sustainable society.

Currently, Kosovo does not have a general code of ethics and conduct that would regulate the behavior of public officials. In recent years in Kosovo, the lack of professional ethics is evident in the public administration. In 2019, Kosovo adopted the Law on the Organization and Functioning of State Administration and Independent Agencies (Law no. 06/l -113 2019).

This law provides space for the creation of a more efficient administration respecting the principles of public ethics. Also, it forces the public administration to act with professionalism and political neutrality in decision-making. But that is not sufficient in regulating of the ethics in public administration.

In addition to the lack of legal, in some other areas compared to previous years, progress has been made, taking public procurement as an example. According to the European Commission's report (2022, 13), in the field of public procurement the expansion of electronic procurement modules has advanced and increased the linkages between this system and Kosovo's financial management information system for controlling commitments and proper budget implementation. In 2021, the

Agency dealt with 108 cases of corruption in the field of corruption prevention in public procurement, out of which 18 opinions were given, 64 recommendations were respected, while 19 others were not, and 7 cases were dismissed. Indeed, this enables transparency and helps prevent misuse. Early reports also predicted that poor relations between central and inter-ministerial institutions prevented the introduction of new laws that would improve the functioning of public administration (EC report 2020).

According to one of the recent EC report (2022, 14), in the coming year Kosovo in particular should further strengthen the capacities of the Anti-Corruption Agency, in terms of personnel and expertise, to ensure that it can effectively carry out its mandate. In 2021, the Agency handled 101 cases of conflict of interest. The number of requests from the institutions that submitted to the Agency for advice and opinions on the conflict of interest has increased. The agency has given its opinion in 63 cases, 1 case was forwarded for investigation, 1 case for contravention procedure and in 10 cases the conflict of interest was avoided. Regarding the activity of the Anti-Corruption Agency, in 2022 a new law on the Anti-Corruption Agency was approved, aiming to better define the scope of the Agency's competencies (Law No.08/L-017 2022).

However, Kosovo has a number of laws that seek to increase transparency and public accountability. Most important are the Law on Access to Public Documents (Law No. 06/L-081 2019), Law on Declaration, Origin, and Control of Assets and Gifts (Law No. 08/L-108 2022), the Law on Public Procurement (Law No. 04/L-042 2011) and Law on the Prevention of Conflict of Interest in the Exercise of Public Function (04/L-051 2011).

Given the importance of professional behavior and ethics in public administration, Kosovo has issued the Regulation on the Code of Conduct in the Civil Service (Regulations No. 04/2015). This regulation aims to establish the rules of conduct for all civil servants in Kosovo and increase public awareness of the behavior that civil servants should exhibit during the performance of their duties. This regulation sets out the fundamental principles that civil servants must adhere to when providing public services. Violation of the principles specified in this Regulation leads to disciplinary measures against the public official in accordance with the applicable legislation.

Regarding best practices, in 2022 the Municipality of Gjakova adopted Code of Ethics which aims to regulate the behavior of municipal officials in order to reflect the professional and moral ethics of the municipality. The purpose of this Code is to develop the organizational culture within the municipality and promote the basic principles of ethics. According to this code, municipal officials are obliged to exercise their duties in accordance with the laws and they are required to act on the basis of public interests and not private or party interests. To ensure the implementation of this Code, the Municipal Assembly of Gjakova establishes the Ethics Code Commission (Municipality of Gjakova 2022).

Kosovo remains at the level of preparation and has made limited progress in public administration reform. In particular, some key positive steps were taken by developing comprehensive strategies for Public Administration Reforms (SPAR 2022). As part of it's activities in various fields, among them are accountability and

transparency. It was highly detected the weak implementation of the legal framework for the organization and operation of the state administration and independent agencies, access to public documents including the publication of government data, and non-implementation of the Ombudsman's recommendations by public administration institutions. All these issues are expected to be addressed through this strategy by 2026.

CONCLUSION

We noticed that ethics is a key dimension in public administration, it is a fundamental dimension as it promotes integrity, transparency, and reliability. An ethical public administration has priority in fulfilling duties and providing quality services to citizens. Ethical principles serve as a guide for public administrative activity, the content of ethical principles in public administration helps guide employees and administrative leaders in making ethical decisions. Respecting ethical principles is essential to build an ethical culture in administration.

We have also observed that despite the existing legal framework and the high level of functioning of international institutions, there can still be actions that are contrary to public ethics. However, when compared to the countries in the Balkans, the EU member states are more responsible, and the sanctions against such actions are more rigorous.

The current state of ethics in public administration in Kosovo presents the achievements and challenges that exist. We have noted that public ethics is a crucial element for the democratic and economic development of Kosovo, as it affects citizens' trust in public institutions, transparency, and accountability of public actions, and the prevention and combating of negative phenomena such as corruption, nepotism, clientelism, etc.

Finally, we concluded that Kosovo has taken some positive steps in drafting and adopting normative acts that regulate public ethics at the central and local levels. But, there are still shortcomings in their implementation and monitoring. That is influenced by various factors, such as the lack of ethical knowledge and sensibilities among public servants, the absence of effective control and punishment mechanisms, the lack of financial resources, political and societal pressure, traditional and cultural mentality, etc.

REFERENCES

1. Agence France-Presse, 2022. "*Calls for EU reform after five arrested in Qatar corruption inquiry"* The Guardian, Accessed May 20, 2023. https://www.theguardian.com/world/2022/dec/10/calls-for-eu-reform-after-five-arrested-in-qatar-corruption-inquiry
2. Armstrong, Elia. 2005. *Transparency and Accountability in Public Administration: Recent trends, regional and intenrational developmetns and emerging issues*, United Nations.
3. Bora, Manuela. 2018, *European Code of Conduct for All Persons Involved in Local and Regional Governance*, Report CG35(2018)12, Congress of Local and Regional Authorities, Accessed May 20, 2023. https://rm.coe.int/16808d3295

4. Chapman, Richard. 2002. *Etika në shërbimin publik për mijëvjeçarin e ri*, Iceberg, Tirana.
5. Cooper, Harris. 1998, *Synthesizing research: a guide for literature reviews*, Sage, London.
6. Council of Europe- Center of Expertise for Local Government Reform. 2017. "*Strengthening Public Ethics and Prevention of Corruption in Public Administration"* Accessed June 3, 2023. https://rm.coe.int/peb-strengthening-public-ethics-and-preventing-corruption-in-public-ad/1680759f16
7. Council of Europe- Congress of Local and Regional Authorities. 2021. "*Doracak për Qeverisjen e Hapur Lokale dhe Etikën Publike në Kosovë"* Accessed May 25, 2023. https://rm.coe.int/handbook-ogpe-kos-sqi/1680a4ef85
8. Council of Europe, "*European Convention on Human Rights"* 1950. Strasbourg, Accessed May 26, 2023. https://www.echr.coe.int/documents/convention_eng.pdf
9. Councile of Europe- European Committee on Democracy and Governance, 2020. "*Guide on Public Ethics steps to implementing Public Ethics in Public Organisations"* Report CDDG(2019)9, Strasbourg, Accessed May 27, 2023. https://rm.coe.int/cddg-2019-9e-rev-guide-public-ethics-/16809a4ae7
10. Dickson, Stewart. 2016. Report "*Keqpërdorimi i burimeve administrative gjatë proceseve zgjedhore: roli i përfaqësuesve dhe zyrtarëve të zgjedhur publikë vendorë dhe rajonalë"* Congress of Local and Regional Authorities of the Council of Europe, Accessed 23 May, 2023. https://rm.coe.int/misuse-of-administrative-resources-sqi/1680a5a193
11. European Commission- Kosovo Report. 2020. "*Commission Staff Working Document"* Brussels, Accessed June 11, 2023. EUR-Lex - 52020SC0356 - EN - EUR-Lex (europa.eu)
12. European Commission- Kosovo Report. 2022. "*Commission Staff Working Document"* Brussels, Accessed May 20, 2023. https://eur-lex.europa.eu/legal-content/NL/TXT/?uri=CELEX:52022SC0334
13. European Union, 2000. *Charter of Fundamental Rights of the European Union*, Official Journal of the European Communities, Accessed May 27, 2023. https://www.europarl.europa.eu/charter/pdf/text_en.pdf
14. Geuras, Dean & Charls, Garofalo. 2005. *Practical Ethics in Public Administration*, Management Concepts, Vriginia.
15. Hinrik, Jan & Sahling, Meyer. 2009. "*Sustainability of Civil Service Reforms in Central and Eastern Europe Five Years After EU Accession*" Sigma Papers, No. 44, OECD, Accessed May 27, 2023. http://dx.doi.org/10.1787/5kml60pvjmbq-en
16. John, Peter. 2018. Report "*Konfliktet e interesit në nivel lokal dhe rajonal"* Congress of Local and Regional Authorities of the Council of Europe, Accessed May 29, 2023. 1680a5a10a (coe.int)
17. Koutsokosta, Efi & Liboreiro, Jorge. 2023. "*EU corruption scandal: Watch as Eva Kaili speaks to reporters following prison release"* Euronews, Accessed May 24, 2023. https://www.euronews.com/myeurope/2023/04/14/watch-as-eva-kaili-speaks-to-reporters-following-prison-release

18. Law on Access to Public Documents, 2019. No. 06/L-081, Official Gazette of the Repbulic of Kosova, Accessed May 18, 2023. https://gzk.rksgov.net/ActDocumentDetail.aspx?ActID=20505
19. Law on Declaration, Origin and Control of Property and Gifts, 2022. No. 08/L-108, Official Gazette of the Repbulic of Kosova, Accessed May 18, 2023. https://gzk.rksgov.net/ActDetail.aspx?ActID=61304
20. Law on prevention of conflict of interest in the exercise of public function, 2011, No. 04/L-051, Official Gazette of the Repbulic of Kosova, Accessed May 18, 2023. https://gzk.rks-gov.net/ActDetail.aspx?ActID=16314
21. Law on Public Procurement in the Republic of Kosovo, 2011. No. 04/L-042, Official Gazette of the Repbulic of Kosova, Accessed May 18, 2023. https://gzk.rks-gov.net/ActDocumentDetail.aspx?ActID=2772
22. Law on The Agency for Prevention of Corruption, 2022. No.08/L-017, Official Gazette of the Repbulic of Kosova, Accessed May 18, 2023. https://gzk.rks-gov.net/ActDetail.aspx?ActID=60591
23. Law on the organization and functioning of state administration and independent agencies, 2019. No. 06/l -113, Official Gazette of the Repbulic of Kosova, Accessed May 18, 2023. https://gzk.rksgov.net/ActDetail.aspx?ActID=18684
24. Ministry of Internal Affairs, 2022. *Strategjia e Reformës së Administratës Publike (SRAP) 2022-2026*, Accessed May 18, 2023. https://konsultimet.rksgov.net/viewConsult.php?ConsultationID=41405
25. Minkova, Milena. 2015. "*Udhëzues për Planifikimin e Integritetit dhe Menaxhimin e Integritetit*" UNDP, Prishtinë, https://www.undp.org/sites/g/files/zskgke326/files/migration/ks/manual-layout-Shqip.pdf.
26. Municipal Assembly of Gjakova. 2022. *Kodi i Etikës në Komunën e Gjakovës*, K.KGJ-01-011/01-21905-RR, Accessed May 18, 2023. https://gzk.rksgov.net/ActDetail.aspx?ActID=64364
27. Parliamentary Assembly- Resolution for *Promoting integrity in governance to tackle political corruption*. 2017. No. 2170.
28. Peters, Anne. 2012. *Conflict of Interest as a Cross-Sectoral Problem*, Cambridge University Press.
29. Rankin, Jennifer & Smith, Helena. 2022. "*Greek MEP Eva Kaili to stay in custody after corruption charges,says court"* The Guardian, Accessed May 20, 2023. https://www.theguardian.com/world/2022/dec/22/greek-mep-eva-kaili-to-stay-in-custody-after-corruption-charges-says-court
30. Regulation on the Code of Conduct in the Civil Service of the Republic of Kosovo, 2015. No. 04/2015, Official Gazette of the Repbulic of Kosova, approved by decision number No.05/17. Accessed May 27, 2023. https://gzk.rksgov.net/ActDetail.aspx?ActID=10764
31. Savileci, Esat, Batalli, Mirlinda & Sokoli, Agur. 2012. *Organizimi i Administratës*, University of Pristina, Pristina.
32. Sigma papers. 2021. "*Parimet e Administratës Publike"* OCED, Accessed June 3, 2023. https://www.sigmaweb.org/publications/principles-public-administration-overview-alb.pdf

33. Spahić, Mustafa. 2002. *Učenja islama*, Vrijeme, Zenica.

Scientific Article
UDK 343.144:340.13(497.7)
347.95:343.144(497.7)"2019/2021"

THE ROLE OF THE INSTITUTE OF PLEADING GUILTY IN THE CRIMINAL PROCEDURE IN THE REPUBLIC OF NORTH MACEDONIA, WITH AN EMPHASIS ON ITS APLICATION IN CRIMINAL JUSTICE CASES FOR THE JURISDICTION OF THE APPEALS COURT IN BITOLA

Ilcho Bogeski, MA
Intern in
Primary Public Prosecutor's Office in Prilep, Republic of North Macedonia
ilco.bogeski@yahoo.com

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

Abstract

The institution of pleading guilty (admission of guilt in European terminology) in terms of how it is applied and practiced in the Republic of North Macedonia (RNM) is a novelty in our criminal procedure, introduced with the adoption of the Code on Criminal Procedure (CCP). The reason for its increased use by the justice system is due to a greater number of benefits, which have made it one of the most effective instruments in simplifying and speeding up criminal proceedings, while simultaneously maintaining the high standard of proof required in criminal proceedings, in order to ensure fairness, ascertaining the truth and the rule of law.

In this paper, attention will be paid to the definition, evolution, determination, and implementation of the institution of pleading guilty in our legislation, and a special assessment will be devoted on its application in criminal legal cases in the area of the Court of Appeal in Bitola.

Key words: criminal procedure, guilty plea, Court of Appeal in Bitola

INTRODUCTION

The institute of admission of guilt is a novelty in the criminal procedure of the RNM, introduced with the adoption of the CCP in 2010. The legislator's primary goal in implementing it into the RNM's Criminal Code is to lessen the burden on the courts caused by an excessive number of cases and the demand for their quick

settlement. In addition to reducing the need for victims and witnesses to testify at trial, which can be a traumatic experience for them, increasing the procedure's efficiency and lowering costs and complexity when it comes to using protected identities or other witness security measures, a guilty plea can be an opportunity for the prosecution to provide crucial information relevant to other investigations or prosecutions.

In criminal proceedings, the admission of guilt is a defensive tactic used by the defendant to address the lack of foundation of the indictment and the fact that, given the evidence gathered by the prosecution, it does not provide enough room for the defense to establish and present its theory of the case. In that situation, the accused provides a statement of admission of guilt through his attorney.

THE BASICS OF THE GUILTY PLEA

The statement of the accused in the criminal procedure is essentially every voluntary statement that he, in that capacity, gives to the authorities in the criminal procedure, either to refute them or, on the other hand, to accept the accusations. A confession is a special kind of statement made by the accused in which he confesses to the crime he did or, alternatively, admits that a certain fact that is incriminating for him is true. (Misoski & Ilic Dimoski 2014, p.6)

The most common types of pleas regarding guilt are "guilty" and "innocent". The defendant typically receives a reduced sentence as a result of entering a guilty plea, which is a form of mitigating circumstance. In a plea deal, the defendant and the prosecution or court agree to plead guilty in exchange for a lesser punishment or the dismissal of associated charges. When there is no plea bargain, a guilty plea is referred to as a "blind plea". (Etienne 2005, p.1239)

In our legislation, the most common types of pleas regarding guilt are also known, i.e., "guilty" and "innocent". Namely, in article 380 paragraph 3 of the CCP which reads: "The president of the council will call the accused to give a verdict in relation to all the criminal acts of the indictment, whether he feels guilty or not" (CCP 2010)

One of the most important components of the right to defense is the right to remain silent. It is a fundamental right, which means that the accused is not required to answer questions from the police, the public prosecutor's office, or the court, or to confess to the crime or, on the other hand, to acknowledge the existence and veracity of any other fact in the criminal procedure. Hence, he is not obliged to give any statement that will contribute to the resolution of the case, neither in the preliminary procedure nor at the main hearing.

In that regard, legal decisions stipulate that the accused has access to this right from the start of the first examination. The rules for the examination of the accused provide additional support for this. They state that the summoned person must be *expressis verbis*, that is, in a clear way, warned of his or her right to remain silent prior to the examination. This is because the maxim *nemo tenetur se ipsum* states that one of the minimum rights of a person is the right not to be forced to testify against oneself or one's loved ones or to confess guilt, with failure to give

such an instruction entailing the exclusion of his testimony. (Kalajdziev & others 2014, p.92)

Article 69, paragraph 2, of the CCP in RNM, states that "The accused shall first be taught in a clear manner regarding the right to remain silent, regarding the right to privately consult with a lawyer, and regarding the right to have a defense attorney of his own choosing during the examination" (CCP 2010)

A coerced confession is one that was obtained from a suspect or prisoner by compulsion, torture (including the use of enhanced interrogation methods), or other types of physical or psychological duress. A coerced confession may not be considered admissible as the telling of the truth depending on the level of compulsion. The individual being questioned might concur with the account given to them or even invent falsehoods to appease the interrogator and put an end to their agony. (Boffa & Castellania 2015)

In our legislation, the prohibition of coercing a confession of guilt from a person is expressly stated. According to Article 12, paragraph 1 of the CCP: "It is forbidden to extort a confession or any other statement from the accused or from another person participating in the procedure" (CCP 2010)

A confession must be an expression of the free will of the accused, and it has value only if it is given after properly instructed by the investigating authority. In this sense, the confession differs from a statement about the crime, that is, about the accusation because a confessions should always consist of facts that can be verified by pertinent evidence (Pavišić 2003). The prohibition of extorting a confession is also listed as a criminal offense in Article 142, paragraph 1 of the Criminal Code of the RNM (CC 1996)

It is necessary that the confession be voluntary in order for it to be considered admissible. This is one way to guarantee his right to a fair trial. More specifically, the non-acceptance of the forced confession or the forced participation in the settlement procedure are guarantees that the accused will not be treated as a "scapegoat", i.e. as a person who would accept criminal responsibility for a crime at any cost in an out-of-court procedure, solely inspired by law enforcement's need for an apparent positive result in crime prevention (Misoski & Ilic Dimoski 2014, p.7).

THE GUILTY PLEA IN THE CRIMINAL PROCEDURE LEGISLATION OF THE REPUBLIC OF NORTH MACEDONIA

In the RNM, with only minimal modifications, for a period of more than 34 years, the former SFRY Law on Criminal Procedure from 1977 was in effect, based on the model of the so-called mixed criminal procedure. It traces its roots back to Napoleon's French CCP (Code d'Instruction Criminelle) of 1808 and the resulting Austrian CCP (Strafprozessordnung) of 1873, with its significant amendments of 1852, which was implemented by the former Kingdom of Serbs, Croats, and Slovenes, that is, the Kingdom of Yugoslavia.

The RNM has made multiple revisions to the criminal procedural laws from gaining independence till the present. In other words, the CCP has undergone multiple revisions and additions since its introduction in the independent and sovereign Republic of Macedonia in 1997 (2002, 2004, and 2008), but all of them

are just a continuation of the procedures that were implemented from the former SFRY. The reform of criminal procedure legislation resulted in the enactment of the last Law on Criminal Procedure in 2010, which introduced a completely new model of criminal procedure, based on the Western ideology of human rights and the Anglo-American ideology of fair trial, according to the model of the so-called adversary (accusatory) procedure. These, in turn, are the foundations of international human rights standards, which today are legally binding for all countries (Kalajdziev & others 2018, p.6).

In the legislation of the CCP of the RNM, the guilty plea is regulated by several provisions. One of the most significant is Article 329 of the CCP, which reads: "The accused may submit a statement of admission of guilt in relation to all or individual crimes contained in the indictment within eight days from the receipt of the indictment"(CCP 2010).

An admission of guilt exists when the accused voluntarily submits a statement of admission of guilt in relation to all or individual criminal acts contained in the indictment. It can be utilized as evidence in the subsequent proceedings in this situation. In addition, our laws allow for the admission of guilt to be given at many phases of the legal process, including:

1. THE ADMISSION OF GUILT IN A PRELIMINARY PROCEDURE, AS PART OF THE SUMMARY PROCEDURE, AT AN EVIDENTIARY HEARING BEFORE A JUDGE OF A PRELIMINARY PROCEDURE

The first instance when the accused can plead guilty is in the preliminary procedure with the help of a plea bargain, which is regulated in Article 488 of the CCP (CCP 2010). Specifically, when the accused pleads guilty he should not be in suspense for a long time about the sanction that follows. The norms of procedure must be streamlined when the accused makes a confession. Acceleration refers to the non-production of evidence related to the factual situation and the procedure is straightforward, quick, and effective because the court only needs to issue the sanction. The effort to expedite the criminal procedure in situations where the factual situation is undeniable for both parties, when the prosecution has enough evidence in relation to the criminal-legal event, and when the judge will be able to render a well-founded, legal and fair verdict without presenting the obtained evidence was one of the reasons for accepting the plea bargain (Kalajdziev & others 2018, p.973-974).

Therefore, the judge of the preliminary procedure can, after a preliminary evaluation of the concluded plea bargain, where we have to mention that when submitting the plea bargain, a statement of admission of guilt is not required from the suspect, but the consent itself to sign the agreement is considered as an act by which the suspect does not dispute the crime charged against him and agrees with the proposed criminal sanction, when the judge determines that the conditions for the same have been met, he passes a verdict based on an agreement between the public prosecutor and the suspect during the previous procedure, the imposed

sanction in the verdict must not be different from the criminal sanction contained in the plea bargain.

2.PLEA OF GUILTY BEFORE THE TRIAL

The defendant must have already received the indictment from the public prosecutor's office. Following receipt, he has eight days to file the confession statement. The statement and the objection are submitted to a judge or council for the indictment's review, which is decided upon at a hearing for the indictment's evaluation.

Evaluation of the indictment is mandatory. It is performed ex officio or upon objection submitted by the accused or his counsel. The given guilty plea, regardless of whether it was submitted within 8 days after the receipt of the indictment or was given at a hearing for the evaluation of the indictment, without exception is subject to inspection by the court. The court is required to check the validity of the statement by the suspect by asking specific questions. It is also crucial to rule out any possibility that the suspect is providing the statement to protect someone else, as well as any possibility of delusion, fraud, intimidation, or other circumstances where the suspect may have been promised something in exchange for providing the statement for lucrative reasons and the like. The second aspect that must be checked by the court is the awareness of the suspect in terms of his health condition, the use of illicit substances, sedatives and other substances that may impair the awareness of the suspect and for that to have an effect on his will. The court is also required to determine whether the suspect is aware of the legal ramifications of entering a guilty plea, including the waiver of the right to appeal, the beginning of the agreed-upon criminal sentence, the implications for the property claim, and obligation to reimburse the costs of the criminal procedure. The court must examine the given statement in light of the existing evidence, which must unmistakably demonstrate the suspect's guilt, in addition to determining the suspect's voluntariness and awareness. The court will not accept a statement if it believes that it is not consistent with the gathered evidence that was provided to the court by the public prosecutor's office. The parties and the defense attorney are immediately informed of the court's decision about the statement's admissibility. The admission of guilt is documented in the hearing's minutes (Kalajdziev & others 2018, p. 703). According to Article 486, paragraphs 1 and 2, of the CCP, the suspect must have a defense attorney present throughout the settlement procedure, either one that he selects on his own or one that is appointed by the president of the appropriate court ex officio. A guarantee of equality of arms is provided by the requirement of defense throughout this process (Ministry of Internal Affairs, Manual on the Code on Criminal Procedure, 2012, p. 74)

The accused, the defense counsel, or the public prosecutor's office may request a postponement of the hearing if the judge or the council accepts the statement in order to perform a settlement procedure and submitting a settlement proposal. If the judge or the council does not accept the statement, it is noted in the minutes of the hearing, the present parties are informed and the hearing for the assessment of the indictment continues. In that case, neither the statement nor the

minutes of the hearing of the refusal can be used as evidence in the further proceedings, but will be closed in a separate envelope and separated from the case files.

3. PLEA OF GUILTY AT THE MAIN HEARING

The main hearing is conducted in accordance with the order specified in this law; it starts with the session's opening, followed by determining whether the summoned individuals are present, followed by determining the identity of the accused person, followed by the main hearing's opening speeches from the parties, and finally followed by the portion we are most interested in, which is instruction on the accused person's rights and the plea of the accused regarding his guilt. Following the plaintiff's opening statement, the president of the council of judges will specifically ask the defendant if he understands what he is accused of, and if he did not, he will briefly explain the content of the accusation in a way that is most understandable for the defendant. The judge will instruct the defendant about the law requiring him to give his own testimony or remain silent and will advise him to carefully follow the hearing's progress, in order to be able to present evidence in his defense, to ask questions of the co-accused, witnesses and expert witnesses, and to make remarks regarding their statements. The accused's statement regarding his guilt comes next, and this is the part that interests us. Article 380, paragraph 3, lays forth the rules for it: "The president of the council will call the accused to answer on all the criminal acts of the indictment, whether he feels guilty or not." (CCP 2010)
The accused is next asked to give his statement regarding all the criminal crimes listed in the indictment, whether he feels guilty or not, after the president of the council has given orders. Regardless of the crime's seriousness or nature, he may freely enter a plea of guilty to one or more of the charges. Such a power of the accused to admit guilt is neither new or unheard of; the previous Criminal Code likewise allowed for it. The fundamental innovation brought about by the new CCP is that the court can now announce a verdict at the main hearing without having to provide additional evidence, based on this recognition and under the circumstances established by the law. According to the new CCP, the evidentiary process has been scaled back, and in the subsequent evidentiary phase, just the information relevant to the sanction decision will be provided. A decision will then be made regarding the case's outcome based on the defendant's admission of guilt. In addition, if the defendant admitted guilt during the main hearing and the judgment or a portion of it was rendered as a result, in that case, the defendant is ineligible to appeal because the factual circumstances were incorrectly assessed (CCP 2010). If the accused does not express his guilt or innocence at all, or if he has not yet decided how to respond, or if he asserts that the charge's legal description does not encompass the entire incident, etc., the judge or the council's president ex officio should record the accused's plea of not guilty in the proceedings' minutes.

Although it is not expressly mentioned in the CCP, a conviction based on a guilty plea requires that the defendant's confession be comprehensive, which requires that the following requirements be met: 1. contain all material elements of the crime for which the accused is charged; 2. be without any grounds for excluding

its illegality; and 3. be without any foundation for excluding the accused's criminal liability. The confession is considered complete even if it does not include some allegations from the indictment, but they are irrelevant to the existence of the crime.

Several requirements must be satisfied before the confession can be used as the basis for a decision:

- That the statement was provided voluntarily, in accordance with the accused's free will and determination, and that it was not obtained through coercion or any other form of coercion, threats, or the promise of benefits of any kind, which is contrary to the principle of legality of evidence from Article 12 paragraph 1. Voluntariness includes two elements: a) that the accused is mentally capable of understanding his actions when he declares that he admits guilt and b) that the statement is not the result of a threat or a promise of any benefit, other than the anticipation that he will receive a lesser punishment as a result;
- The defendant's level of consciousness is determined by a number of factors: The defendant: (a) understands the significance of that act, i.e., he was aware of the procedural significance and consequences of the confession; (b) understands the potential repercussions for him with such a confession, i.e., that a verdict will be rendered and a sanction will be imposed on him;
- The statement must be unequivocal and clear, meaning it must not contain elements that would be a basis for excluding the existence of the criminal act.

STATISTICAL DATA ON VERDICTS MADE BASED ON GUILTY PLEAS DURING THE MAIN HEARING FOR THE PERIOD OF 2019-2021 IN THE RNM

According to data issued by the Public Prosecutor's Office of the RNM in their Report on the work of the Public Prosecutor's Offices of the RNM in 2019, judgments were rendered against a total of 7.585 people for 1.760 people based on guilty pleas made during the main hearing in accordance with Article 381 of the CCP (Report 2019), it accounts for 23.20% of all convictions for the year 2019, and in 2020, out of the 12.517 total convictions, 2.315 judgments were based on guilty pleas made at the main hearing (Report 2020), or it accounts for 18.49% of all convictions in 2020, which is a reduction of 4.71% from the previous year, while in 2021, out of the 12.856 total convictions, 3.075 judgments were based on guilty pleas made at the main hearing (Report 2022), accounting for 23.91% of the overall number of convictions, an increase of 5.42% from the previous year.

Table 1 – Verdicts made based on guilty pleas during the main hearing, in accordance to Article 381 of the CCP between 2019-2021

Year	Total number of convicted people	Judgments based upon a guilty plea	percentage of guilty-plea-based verdicts represented in court decisions	percentage change from the previous year
2019	7585	1760	23.20%	/
2020	12517	2315	18.49%	- 4.71%
2021	12856	3075	23.91%	+ 5.42%

From this data we can see that 21.86% of all conviction cases in the RNM between the years 2019 and 2021 on average resulted in judgments based on guilty pleas made during the main hearing. This is evidence that guilty pleas already play a significant role in how criminal cases are resolved in the country's justice system. Even though that is a sizable percentage, it is still far from the 90% of cases in the US that result in guilty pleas (United States Courts, Criminal Cases, *Pretrial*), indicating that there is still much work to be done to increase this number and get to a growing number of cases that will follow this course of action. This will help to shorten the time needed for their completion, which will improve the efficiency of the courts and potentially decrease the number of backlogged cases and cases that are delaye. This question was asked to the current Public Prosecutors working in the Higher Public Prosecutor's Office in Bitola as well as the judges in the Appellate Court in Bitola and they stated that there has to be room for improvement of the implementation of this institute in our legal system because of the numerous advantages it offers and the reason it isn't as of yet to that level might be because of the doubts that the suspect might have over these advantages and how the institute is portrait to them.

STATISTICS ON THE APPLICATION OF THE PLEA BARGAIN IN THE AREA OF THE COURT OF APPEALS AND THE HIGHER PUBLIC PROSECUTOR'S OFFICE IN BITOLA FOR THE PERIOD OF 2019-2021

According to information provided by the Public Prosecutor's Office of the RNM in their Report on the work of the Public Prosecutor's Offices of the RNM in 2019, this institution was used in a total of 272 cases in 2019. More specifically, the Bitola Higher Public Prosecutor's Office, which shares the same jurisdiction with the Bitola Appellate Court, concluded 45 plea bargains in total in 2019—16.54% of the total number of plea bargains. Out of those 45 plea bargains in total, 26 are after summary proceedings, 17 are during investigative proceedings, and 2 are after an indictment has been filed (Report 2019). On the other hand, in 2020, this institution was used in a total of 179 cases, which in comparison with 2019, is a reduction of 93 cases, or 34.19% from the previous year. In the area of the Court of Appeals, i.e. the Higher Public Prosecutor's Office in Bitola, concluded 26 plea bargains in total in 2020—14.52% % of the total number of plea bargains. Out of those 26 plea bargains in total, 14 are after summary proceedings, 12 are during investigative

proceedings, and not a single one is after an indictment has been filed (Report 2020).

Table 2 – Plea Bargains in the Republic of North Macedonia between 2019-2021

Year	Total number of plea bargains	Plea bargains concluded in the Higher Public Prosecutor's Office in Bitola	Summary proceedings	Investigation proceedings	After an indictment has been filed	Percentage share of the Higher Public Prosecutor's Office in Bitola in reference to the total number of plea bargains	Percentage change of the total number of plea bargains in relation to the previous year
2019	272	45	26	17	2	16.54%	/
2020	179	26	14	12	0	14.52%	-34.19%
2021	258	36	27	9	0	13.95%	+44.14%

Last but not least, according to information provided by the Public Prosecutor's Office of the RNM in their Report on the work of the Public Prosecutor's Offices of the RNM in 2021, this institution was used in a total of 258 cases in 2021, which in comparison with 2020, is an increase of 79 cases, or 44.14% from the previous year. In the area of the Court of Appeals, i.e. the Higher Public Prosecutor's Office in Bitola, concluded 36 plea bargains in total in 2021—13.95% of the total number of plea bargains. Out of those 36 plea bargains in total, 27 are after summary proceedings, 9 are during investigative proceedings, and not a single one is after an indictment has been filed (Report 2021). This question was asked to the current Public Prosecutors working in the Higher Public Prosecutor's Office in Bitola as well as the judges in the Appellate Court in Bitola and they stated that main problem would be a copious amounts of skepticism present in the suspects which they assumed might be because they aren’t informed enough about its advantages or it might be caused by the way the institute of the admission of guilt was presented to them by their defense attorneys.

CONCLUSIONS

The guilty plea institute is a critical component of the modern criminal procedure, which increases its efficiency, reduces the costs required for it, and has a major positive effect on the reduction of the workload of the courts and public prosecutor's offices, by conducting a special course of the procedure in the case of submitting a statement of admission of guilt and a plea bargain, which leads to the acceleration of the criminal proceedings.

The benefits of applying the institution of admission of guilt are supported by the fact that it has been adopted successfully in numerous Anglo-Saxon, continental, and countries with mixed legal systems.
When it comes to our system, in my opinion the implementation of the institute of pleading guilty can be improved upon in these areas:

- Education of the defense attorney's and the suspects, i.e., the accused, to allay their doubts over the use of the institute of the confession of guilt. Because the accused or suspected did not fully comprehend the significance or advantages that this institute can provide them, there is skepticism on their part. The skepticism may also arise from the fact that the institution of admission of guilt would not be in the advantage of the defense attorney's, due to the costs that would be incurred by the defense attorney's from conducting the proceedings. Therefore, their skepticism towards this institute should be overcome with appropriate educational meetings, seminars and workshops, with the goal of expanding and ensuring more equitable use of the institute of admission of guilt in our legal system.
- Introduction of more filters and greater control by the courts and public prosecutor's offices for a more complete and appropriate assessment of the confession of guilt by the suspect or the accused. This is done to avoid false or coerced confessions of guilt and protect this institution from abuse. In certain cases, the accused may be forced or willing to admit guilt for actions and deeds that he did not commit. This may be the result of the defense attorney's incompetence, the fact that the accused wants to avoid lengthy trials, or a combination of these and other factors. In order to obtain a more appropriate admission of guilt and thereby realize the fundamentals of the criminal procedure and of the law as a whole, revealing the true course of events and determining the proper punishment for criminals, more control and the introduction of filters are therefore required.
- There should be more emphasis given to the institute of admission of guilt when choosing the sentence. In particular, as we already indicated, it is recognized by law as a mitigating circumstance during sentence. However, we believe that it is applied too formulaically, and as a result, some legal adjustments as well as changes to the judicial procedure should be made in order to allow the institution of admission of guilt to be valued individually, or on a case-by-case basis. A guilty plea should signify something different based on a variety of elements, including the context in which it is made, its importance and role in resolving the criminal legal proceedings involved in the case, as well as a host of other considerations.

ABREVIATION
RNM – Republic of North Macedonia
CCP – Code of Criminal Procedure
CC – Criminal Code
SFRY – Socialist Federal Republic of Yugoslavia

REFERENCES

1. Boffa Christa & Castellania Palazz, 2015, *From Knights Court*, to the Ministry of Health
2. Etienne Margaret, 2005, *The Ethics of Cause Lawyering: An Empirical Examination of Criminal Defense Lawyers as Cause Lawyers*, The Journal of Criminal Law and Criminology, Volume 95, Issue 4 Summer, Northwestern University School of Law, Chicago, Illinois, USA,
3. Kalajdziev G., Misoski B., Ilic Dimoski D., Bozinovski A., 2014, *Effective defense in criminal proceedings in the Republic of Macedonia*, Open Society Foundation Macedonia Skopje,
4. Kalajdziev G., Lazetic G., Nedelkova L., Denkovska M., Trombeva M., Vitlarov T., Jankulovska P., Kadiev D., 2018, *Commentary on the code on criminal procedure*, Polyesterday, Skopje
5. Misoski B., Ilic Dimoski D., 2014 *New European tendencies for the recognition of the accused in the settlement procedure through the provisions of the Law on Criminal Procedure of the Republic of Macedonia*, 1.02 Review scientific article, UDC: 343.144: 340.13(497.7), Skopje,
6. Ministry of Internal Affairs, Bureau of Public Security, Training Center, 2012 *Manual on the Law on Criminal Procedure*, Skopje
7. Pavišić Berislav, 2003, *Komentar Zakona o kaznenom postupku*, DU E I & KR O NIK d.o.o., Rijeka
8. Public Prosecutor's Office of the Republic of North Macedonia, 2020, Report on the work of the public prosecutor's offices of the Republic of North Macedonia in 2019, Skopje
9. Public Prosecutor's Office of the Republic of North Macedonia, 2021, Report on the work of the public prosecutor's offices of the Republic of North Macedonia in 2020, Skopje,
10. Public Prosecutor's Office of the Republic of North Macedonia, 2022, Report on the work of the public prosecutor's offices of the Republic of North Macedonia in 2021, Skopje,
11. United States Courts, Criminal Cases, *Pretrial*, https://www.uscourts.gov/about-federal-courts/types-cases/criminal-cases

LEGISLATION

1. Code of criminal procedure,2010, Official Gazette of the Republic of Macedonia, , number 150/10; 100/12; 198/18
2. Criminal Code of the Republic of North Macedonia, 1996 "Official Gazette of the Republic of Macedonia number 37/96; 80/99; 4/02; 43/03; 19/04; 81/05; 60/06; 73/06; 7/08; 139/08; 114/09; 51/11; 135/11; 185/11; 142/12; 166/12; 55/13; 82 /13; 14/14; 27/14; 28/14; 115/14; 132/14; 160/14; 199/14; 196/15; 226/15; 97 /17; 248/18
3. Official Gazette of SFRY number 4/77; 74/87; 57/89; 3/90

Scientific Article
UDK 35.073.53(497.7)
35.073.53(497.5)

THE PUBLIC PROCUREMENT SYSTEM IN MACEDONIA IN THE ERA OF A GLOBALIZED SOCIETY

Dragan Spirkoski, Msc. in Economy
Faculty of Law, University "St. Kliment Ohridski" – Bitola
dragan_dar@yahoo.com
Mladen Karadjoski, PhD. Full Professor
Faculty of Law, University"St. KlimentOhridski" – Bitola
mladen.karadzoski@uklo.edu.mk

Abstract

The public procurement system aims to enable the transparent implementation of public procurement procedures and the procedures for awarding contracts for concessions and public-private partnerships, equal treatment of all participants in the public procurement system, to encourage competition and sustainable economic growth, to promoteapplication of appropriate models of public-private partnership and to ensure efficient legal protection.The main goal of this paper will be to investigate the legal and institutional framework of public procurement in the Republic of North Macedonia and compliance with EU Directives and best international practices in public procurement, concessions and public private partnership. The main methods that will be used in this paper are descriptive method, comparative method and content analysis method. The conclusions that will be drawn from the paper will be oriented towards improving the legal and institutional framework of the Macedonian public procurement system.

Keywords: public procurement, legal and institutional framework, EU Directives

1. Introduction

The public procurement market in the Republic of North Macedonia reached 8% of the country's GDP and 24.79% of the state budget in 2019 and 8% of the country's GDP and 23% of the state budget in 2020.[1]

The public procurement system aims to enable the transparent implementation of public procurement procedures and the procedures for awarding contracts for concessions and public-private partnerships, equal treatment of all participants in the public procurement system, to encourage competition and

[1] Биро за јавни набавки на РСМ „Стратегија за унапредување на системот на јавните набавки во Македонија за периодот 2022 – 2026 година", стр. 4 Скопје, Декември 2021

sustainable economic growth, to promote application of appropriate models of public-private partnership and to ensure efficient legal protection.

Legally-regulated relations between the public and private sectors send a signal to business entities to strengthen their competitiveness in order to be more successful and competitive.

The public sector that is guided by the principle of good governance and provides equal opportunities has the opportunity to choose the optimal offer on the market.[2]

2. Subject of research

The trend of developed countries and the countries of Southeast Europe, as well as the process of Macedonia's approach to the European Union, led to the establishment of a modern, efficient system of implementation of public procurement. Public procurements and their legal framework, as well as the consistent implementation of the laws that regulate this issue, represent one of the most important barriers to corruption, organized crime, and improper spending of state money.

The public procurement system in Macedonia is well developed, with a sound legal and institutional framework established. With the adoption of the new Law on Public Procurement and the corresponding by-laws for its implementation, as well as the Law on Public Procurement in the field of defense and security, the system of public procurement in the Republic of North Macedonia will further progress.

The subject of research is the legal and institutional framework of public procurement in the Republic of North Macedonia and compliance with EU Directives and best international practices in public procurement, concessions and public private partnership.

3. Legal and institutional framework of the public procurement system in Republic of North Macedonia

Legal frame

The Law on Public Procurement[3], which has been in effect since April 1, 2019, together with the by-laws, provided a solid legal framework for establishing a modern, transparent and efficient public procurement system.

The law reflects the basic principles of the Treaty establishing the EU for the free flow of goods, freedom of establishment, freedom to provide services, as well as the principles of economy, efficiency, competition between economic operators (EO), transparency, equal treatment of EO and proportionality. Also, the law requires the contracting authorities to respect the obligations for environmental protection, social policy and labor protection arising from the regulations in the Republic of North Macedonia, as well as from collective agreements and

[2] Исто, стр.5

[3] Службен весник на Македонија“ бр.24/19

international agreements and conventions ratified in accordance with the Constitution of the Republic of North Macedonia.[4]

The scope of the law is defined in accordance with the relevant provisions of Directives 2014/24/EU and 2014/25/EU, while contracts for public procurement in the field of defense and security are covered by a separate law.[5]

Some national provisions regarding transparency and the prevention of conflicts of interest exceed the requirements of the European Union and provide a solid basis for the effective implementation of the principles laid down in the Directives. It must be emphasized that some elements of the public procurement system in the Republic of North Macedonia are more advanced than some EU member states (for example, highly developed electronic system for public procurement (ESJN) and e-complaints system).[6]

The legal framework for public procurement is largely aligned with the Directive on Public Procurement in the Classical Public Sector and the Directive on Public Procurement in Sectoral Covered Activities of 2014, with a few inconsistencies. The most significant inconsistencies relate to the grounds for exclusion (especially the list of negative references as a basis for automatic exclusion, lack of "automatic cleaning" provisions and automatic exclusion of persons who participated in the preparation of the tender documentation).[7]

Adequate enforcement of the legislation is also vital to ensure general compliance with the basic EU procurement rules and principles.

National law, as well as the European framework for public procurement, do not contain provisions that facilitate emergency and strategic procurement in crisis situations (pandemic, natural disaster, state of defense, immediate large-scale terrorist threat). The specific requirements and procedural details regarding the initiation of the procurement procedure in such situations should be laid down in the national legislation governing crisis management based on objective criteria, to ensure their equal and consistent application in cases where the State declares a state of emergency or crisis by decision.

In the coming period, the remaining gaps in the legal framework should be filled to ensure full compliance with the 2014 Directives and further implementation of the 2019 Law on Public Procurement. Also, greater emphasis should be placed on strategic issues ("green", social and innovative procurement).[8]

[4] Биро за јавни набавки на РСМ „Стратегија за унапредување на системот на јавните набавки во Македонија за периодот 2022 – 2026 година“, стр. 6 Скопје, Декември 2021

[5] Службен весник на Македонија“ бр.180/19

[6] Биро за јавни набавки на РСМ „Стратегија за унапредување на системот на јавните набавки во Македонија за периодот 2022 – 2026 година“, стр. 7 Скопје, Декември 2021

[7] Исто, стр.8

[8] Биро за јавни набавки на РСМ „Извештај за активностите на Бирото за јавни набавки во функционирањето на системот на јавните набавки за 2021 година“, Скопје август 2022 година

Institutional framework

As for the institutional setting of public procurement in the Republic of North Macedonia, the main role is played by the Bureau of Public Procurement (BJN), a state administration body within the Ministry of Finance. BJN is a legal entity that performs activities related to the development of the public procurement system and ensuring rationality, efficiency and transparency in the implementation of public procurement. BJN is a policy-making body and a pillar of the national public procurement system. It is also a focal point for communication with the European Commission and other international organizations in the field of public procurement.[9]

Public procurement is a horizontal area, so the public procurement system includes a large number of stakeholders that contribute to its efficient functioning:

- The State Commission for Complaints on Public Procurement is an independent state authority with the capacity of a legal entity, responsible for the legality of actions and omissions for taking actions, as well as decisions as individual legal acts adopted in procedures above and below the EU thresholds. The decisions of the DKZJN can be contested before the Administrative Court.

- The Ministry of Finance is an organ of the state administration, which proposes regulations in the field of public procurement (although the BJN has the leading role in the practical preparation of the regulations, the Ministry of Finance is an authorized proposer before the Government of the Republic of North Macedonia) and is responsible for the system of public internal financial control.

- The Ministry of Economy is the competent institution in the field of public-private partnership and concessions, with the role of managing the development of the public-private partnership system by preparing proposals for the adoption of legal and other acts in the area, monitoring, analyzing and providing expert assistance and opinion regarding the conduct of proceedings.

- The State Audit Office is the supreme audit institution, with the authority for timely and objective reporting to the Assembly, the Government and other holders of public functions on the findings of the conducted audits. According to the PPL, the SAO audits the use and spending of funds for public procurement by the DO. SAO conducts a regularity audit and a performance audit. When conducting a regularity audit, among other things, audit teams check and evaluate the use of funds in accordance with legal regulations. Within these frameworks, an audit is carried out of the way of planning, implementation of public procurement procedures and their implementation in the year under audit.

- The State Commission for the Prevention of Corruption has simultaneous competence both in terms of prevention and suppression of socially harmful behavior. In the exercise of its powers, the SCCC makes

[9] Биро за јавни набавки на РСМ „Стратегија за унапредување на системот на јавните набавки во Македонија за периодот 2022 – 2026 година“, стр. 9 Скопје, Декември 2021

additional efforts for inter-institutional cooperation as a means of rapid exchange of information and documents. BJN is one of the 17 institutions that signed the Cooperation Protocol within the framework of the said cooperation.

- The Commission for the Protection of Competition is an independent state body with the capacity of a legal entity responsible for the implementation of the Law on Protection of Competition.

- The Administrative Court of the Republic of North Macedonia is competent to act on lawsuits filed by parties who are not satisfied with the decisions of the DKZJN. Given this special competence, the institution is of great importance in terms of legal protection in the procedure for awarding contracts for public procurement.[10]

The institutions involved in the public procurement process are ready to work according to the common provisions of EU regulatory norms and standards and are obliged to apply EU best practices and adopt a new approach in their work. In general, institutions have administrative and managerial staff, including civil servants as well as experts, trained to carry out their powers and responsibilities, but are limited in number of employees. All institutions use the necessary IT tools to perform their own functions. Some of them have already developed and implemented e-tools, such as registers, databases or e-systems in order to enable efficient and transparent implementation of their immediate tasks.[11]

Official cooperation between institutions is limited. Due to a small number of employees who are busy with current tasks, regular activities necessary for better coordination between institutions are postponed.

Administrative capacity appears to be a priority issue that needs to be addressed. There is insufficient capacity in the institutions to cover all immediate tasks within the current rates of existing staff in all institutions.[12]

Strengthening the cooperation between institutions. IT systems need to be connected to improve the exchange of data and to benefit from this exchange, thereby reducing the administrative burden and making processes more efficient.

A series of activities should be implemented and different mechanisms should be applied to improve the administrative capacity of the institutions that are key stakeholders in the public procurement system. They should include specific steps, but not limited to appropriate trainings, as well as legal requirements for the required minimum level of expertise of personnel in the institutions, etc.

Emphasis on the activities that should be undertaken should be emphasized in the direction of strengthening inter-institutional cooperation of the key institutions in the public procurement system.

---

[10] Биро за јавни набавки на РСМ „Извештај за активностите на Бирото за јавни набавки во функционирањето на системот на јавните набавки за 2021 година“, Скопје август 2022 година

[11] Биро за јавни набавки на РСМ „Стратегија за унапредување на системот на јавните набавки во Македонија за периодот 2022 – 2026 година“, стр. 9 Скопје, Декември 2021

[12] Исто,, стр. 12

4. The public procurement system in the Republic of Croatia

Legal frame

The legal framework of the public procurement system in the Republic of Croatia is based on the Law on Public Procurement[13] from 2017 and the Law on Amendments and Supplements to the Law on Public Procurement[14] adopted in 2022. This law contains provisions that are harmonized with the Directives of the European Union. "The determination and implementation of the legal framework based on the legislation of the European Union in Croatia has developed a system that allows to respect the basic principles in the implementation of public procurement, such as competition, equal treatment, prohibition of discrimination, proportionality and transparency."[15]

Institutional framework

The institutional framework of the public procurement system in the Republic of Croatia consists of two key entities:

- The Administration for Public Procurement and
- The State Commission for Control of Public Procurement.

The Administration for Public Procurement was established within the Ministry of Economy, Labor and Entrepreneurship of the Republic of Croatia. According to the Law, it has the authority to develop, improve, coordinate the entire public procurement system, to propose, prepare and coordinate the preparation of public procurement legislation, to analyze the implementation of regulations in the field of public procurement through the implementation of trainings, to submit a request for initiation of criminal proceedings, to develop the Government's PPP policy, to manage the Public Procurement Portal and to monitor electronic public procurements and the e-Bulletin for public procurements.[16]

"The State Commission for Control of Public Procurement is an independent, national body responsible for resolving complaints in public procurement, granting concessions and selecting a private partner in a public-private partnership. The State Commission decides upon the appeal on the legality of actions or omissions and decisions as individual acts adopted in the procedures for public procurement, concessions and public-private partnerships."[17] This body aims

[13] Narodnim novinama broj 120/2016
[14] Narodnim novinama broj 114/2022
[15] Sarac,J. (2011), „Razlozi za donošenje novoga Zakona o javnoj nabavi“ Ministarstvo gospodarstva, rada poduzetništva, Republici Hrvatskoj. www.nn.hr/lgs.axd?t=16&id=2238
[16] Portal javne nabave, Vlada Republike Hrvatske (2012), „Strategija razvoja sustava javne nabave u Republici Hrvatskoj“ 8 str . http://www.javnanabava.hr/stranica.aspx?pageID=193.
[17] Clanak 2. “Zakon o Drzavnoj komisiji za kontrolu postpuka javne nabave” (Naroden novine broj 21/2010)

to provide effective legal protection and promote the maintenance of the public procurement system based on the basic principles for public procurement established in the EU Directives in the field of public procurement.

In the context of this, I can state that the public procurement system in the Republic of Croatia represents a comprehensive legal and institutional framework with a high degree of compliance with the legislation of the European Union.

Conclusion

The law on public procurement in Macedonia is largely in line with the Directives of the European Union that regulate the field of public procurement, as well as the judgments of the European Court of Justice.

The current law enables contracting authorities to conduct public procurement transparently, efficiently and strategically. However, as in the member states, public procurement is also facing new challenges in our country, as it is increasingly expected that they enable obtaining the best value for public money invested in constantly decreasing budgets, taking advantage of the opportunities offered by digitization and new markets. , making a strategic contribution to horizontal policy goals and social values such as innovation, social inclusion, economic and environmental sustainability, reducing irregularities, and timely detecting and preventing fraud and corruption, as well as establishing responsible supply chains.[18]

The specific requirements and procedural details regarding the initiation of the procurement procedure in crisis situations should be laid down in national legislation governing crisis management based on objective criteria, to ensure their equal and consistent application in cases where the state declares a state of emergency or crisis by decision.

The institutional development of the public procurement system in Macedonia is carried out by all key stakeholders. Except for the Public Procurement Bureau, all interested parties in the state administration should contribute to greater coordination and communication between institutions to prevent corruption or possible errors and weaknesses in public procurement procedures.

Used literature

1. Биро за јавни набавки, Извештај за активностите на Бирото за јавни набавки во функционирањето на системот на јавните набавки во 2020 год.
2. Биро за јавни набавки на РСМ „Извештај за активностите на Бирото за јавни набавки во функционирањето на системот на јавните набавки за 2021 година“, Скопје август 2022 година
3. Биро за јавни набавки на РСМ „Стратегија за унапредување на системот на јавните набавки во Македонија за периодот 2022 – 2026 година“, стр. 6 Скопје, Декември 2021

[18] Биро за јавни набавки на РСМ „Стратегија за унапредување на системот на јавните набавки во Македонија за периодот 2022 – 2026 година“, стр. 1 Скопје, Декември 2021

4. Bovis, H.C., EU Public Procurement Law, Edward Elgar Publishing, Glos, 2007.
5. Закон за јавни набавки, Службен весник на РМ, бр.24/2019 Скопје.
6. Закон за јавните набавки во областа на одбраната и безбедноста Службен весник на Македонија“ бр.180/19
7. “Integrity in public procurement – good practice from A to Z”, OECD, Paris, 2007.
8. Камбовски, В., Наумоски, П., Корупција најголемо општество зло и закана за правната држава, Влабор, Скопје, 2002.
9. Zakon o javnoj nabavi, Nartoden novine br.120/2016
10. Zakon o izmjenama I dopunama Zakona o javnoj nabavi, Naroden novine br.114/2022
11. Portal javne nabave, Vlada Republike Hrvatske (2012), „Strategija razvoja sustava javne nabave u Republici Hrvatskoj“ 8 str. http://www.javnanabava.hr/stranica.aspx?pageID=193.
12. Sarac,J. (2011), „Razlozi za donošenje novoga Zakona o javnoj nabavi“ Ministarstvo gospodarstva, rada poduzetništva, Republici Hrvatskoj. www.nn.hr/lgs.axd?t=16&id=2238
13. Treaty of Nice, 2001.
14. Clanak 2. “Zakon o Drzavnoj komisiji za kontrolu postpuka javne nabave” (Naroden novine broj 21/2010)
15. Community Eco-Management and Audit Scheme, http://ec.europa.eu/environment/emas.
16. https://www.bjn.gov.mk/zakoni/
17. https://ted.europa.eu/TED/browse/browseByMap.do
18. https://www.bjn.gov.mk/wp-content/uploads/2018/11/Priracnik_za_javni_nabavki1.pdf

Scientific Article
UDK 004.8:305-055.1/.2
004.8:[305:316.647.8

EXAMINING THE INFLUENCE OF ARTIFICIAL INTELLIGENCE DEVELOPMENT ON GENDER STEREOTYPES

Mr Hakile Resulbegoviq, Msc
University of Donja Gorica
hakile.resulbegoviq@udg.edu.me

Irina Stamatović, LLM
Help - Hilfe zur Selbsthilfe
stamatovic.irina.llm@gmail.com

Abstract

This research paper critically explores the intricate relationship between the development of artificial intelligence and its impact on gender stereotypes, paying special attention to feminist theories, peace, and justice. Recognizing the pivotal role of AI technologies in shaping societal norms, it becomes imperative to scrutinize their potential repercussions on gender equality and the promotion of women's rights, within the framework of international human rights law, including SDGs as a global framework. This paper investigates how AI systems can either perpetuate or challenge prevailing gender stereotypes and biases, while elucidating their intersection with feminist theories of equality and empowerment. Moreover, it analyzes the potential of AI to foster a more harmonious and equitable society by promoting gender equality.

Key words: Gender equality, SDGs, AI, Gender biases, Human rights

Introduction

Artificial intelligence (AI) is rapidly transforming various aspects of our society, offering unprecedented opportunities for innovation and progress. However, as AI becomes increasingly integrated into our lives, it is imperative to critically examine its impact on societal dynamics and power structures. In particular, the influence of AI development on gender stereotypes has profound implications for achieving feminist objectives, peace, and justice (O'Neil 2017, 45). Gender equality and the empowerment of women are fundamental principles enshrined in international human rights law and are integral to the Sustainable Development

Goals (SDGs)[1] agenda. As we navigate the complex terrain of AI development and deployment, it is crucial to ensure that these advancements do not inadvertently reinforce existing gender biases and stereotypes (Buolamwini and Gebru 2018, 77-91). Instead, they should promote inclusivity, challenge societal norms, and contribute to a more equitable and just society. This research paper aims to shed light on the impact of AI development on gender stereotypes and explore the intersectionality between feminist theories, peace, and justice. By examining the intricate relationship between AI and gender, we identify risks and opportunities associated with AI technologies, with a focus on dismantling harmful gender stereotypes and promoting equality (Saldivar, Bernal, and Zeng 2021).

The ubiquitous presence of artificial intelligence (AI) in our society is undeniable, permeating various domains of our daily lives. While we are collectively aware of AI's transformative power, there is a significant knowledge gap regarding how exactly it is changing our society and the profound impact it can have. It is not merely the development and advancement of AI technologies that shape our future, but also our attitudes and beliefs towards them. Our perception, understanding, and ethical considerations surrounding AI play a crucial role in determining the outcomes and implications of its implementation (Anderson and Anderson 2020). As AI continues to evolve, it is essential for individuals, communities, and institutions to actively engage in understanding its mechanisms and potential effects. We must recognize that AI is not a neutral force, but rather a reflection of human biases and societal values that can either perpetuate or challenge existing power structures and inequalities. By fostering awareness, education, and critical discussions, we can shape our collective attitudes towards AI to ensure that its development and deployment align with principles of fairness, justice, and equality. Ultimately, our attitudes towards AI will be pivotal in determining whether it becomes a force that exacerbates societal divisions or one that fosters inclusive and equitable progress.

Human rights occupy a central position within the framework of international law, serving as fundamental principles that safeguard the rights and well-being of individuals. These rights, encapsulating concepts of dignity, equality, and justice, are enshrined in various international treaties and declarations, and gender equality, as an integral facet of human rights, emphasizes the need to ensure equal opportunities, rights, and freedoms for all individuals. Aligned with this objective, the Sustainable Development Goals (SDGs) have emerged as a comprehensive roadmap to tackle global challenges, with SDG 5 dedicated explicitly to achieving gender equality and empowering women and girls. The transformative potential of artificial intelligence adds a new dimension to the pursuit of gender equality, highlighting the interplay between technological advancements and human rights goals.

[1] Sustainable Development Agenda (2023). Online resource, available at: https://sdgs.un.org/goals

Human Rights: Promoting Gender Equality through the Sustainable Development Goals and the role of Artificial Intelligence

The sphere of human rights serves as a foundational aspect of international law, encompassing a range of rights and liberties that individuals possess inherently.[2] These rights, codified within international legal instruments, such as treaties and declarations, lay down the standards by which states and international actors are expected to adhere. As enshrined in the UDHR[3] and CEDAW[4], these legal frameworks establish the rights and responsibilities of states, promoting principles of equality, non-discrimination, and protection against human rights violations. In doing so, human rights provide a normative framework for accountability, ensuring that states are held responsible for upholding the rights of all individuals, irrespective of their gender.

Gender equality stands as a fundamental human right and an imperative precondition for achieving sustainable development. It is grounded in moral principles and serves as a strategic goal that fosters societal progress. Despite advancements, gender disparities persist globally, perpetuating various forms of discrimination and exclusion faced by women and girls. Addressing gender inequalities necessitates the deconstruction of entrenched social norms, stereotypes, and discriminatory practices. Gender equality not only empowers women and girls but also engenders social cohesion and augments economic productivity and growth. Moreover, it constitutes a vital component for realizing key developmental objectives, including poverty eradication, access to quality education, improved health outcomes, and environmental sustainability.

The SDGs[5], formulated by the United Nations in 2015, constitute a comprehensive and integrated framework designed to tackle global challenges and promote sustainable development. Within this framework, SDG 5[6] assumes particular significance as it explicitly aims to achieve gender equality and empower all women and girls. This goal underscores the imperative to eliminate gender-based discrimination and violence, ensure women's full participation in decision-making processes, and secure equal access to resources, education, and economic opportunities. By prioritizing gender equality, SDG 5 recognizes the centrality of this objective in attaining progress across all other SDGs[7], as gender disparities

[2] Office of the United Nations High Commissioner for Human Rights. "Human rights." https://www.ohchr.org/EN/Issues/Pages/WhatareHumanRights.aspx

[3] United Nations General Assembly. (1948). Universal Declaration of Human Rights. Retrieved from https://www.un.org/en/about-us/universal-declaration-of-human-rights

[4] United Nations. (1979). Convention on the Elimination of All Forms of Discrimination against Women. Retrieved from https://www.un.org/womenwatch/daw/cedaw/

[5] United Nations. (2015). Transforming our world: The 2030 Agenda for Sustainable Development. Retrieved from https://sdgs.un.org/2030agenda

[6] United Nations Development Programme. (n.d.). Goal 5: Gender equality. Retrieved from https://www.undp.org/sustainable-development-goals/goal-5-gender-equality

[7] United Nations Women. (2023). Gender equality and the Sustainable Development Goals. Retrieved from https://www.unwomen.org/en/news/in-focus/women-and-the-sdgs

intersect with multiple dimensions, including poverty, health, education, and climate action.[8]

The Sustainable Development Goals (SDGs) serve as a global framework for achieving sustainable development, encompassing various dimensions of social, economic, and environmental progress. Gender equality, SDG 5, is a crucial component that intersects with every aspect of the SDGs, including the creation and deployment of AI. Recognizing the pivotal role of gender, it is essential to ensure that AI development and deployment adhere to the principles of gender equality, addressing biases, promoting inclusivity, and empowering women to contribute actively to the achievement of the SDGs. The emergence of artificial intelligence technologies presents both opportunities and challenges in the pursuit of gender equality. AI has the potential to influence social norms, shape decision-making processes, and transform societal structures. However, the impact of AI on gender equality is contingent upon the principles, values, and biases embedded in AI systems (United Nations 2019). On one hand, AI can perpetuate existing gender stereotypes and biases if it is developed and deployed without adequate consideration for gender equality. On the other hand, AI can be harnessed as a transformative tool to challenge and overcome gender disparities by promoting inclusive and unbiased algorithms, ensuring diverse representation in AI development, and leveraging AI for gender-responsive policies [9] and interventions.

Attitudes towards gender play a crucial role in shaping societal perceptions, norms, and expectations regarding gender roles and equality. These attitudes can either reinforce existing gender stereotypes or foster a more inclusive and equitable society. Similarly, attitudes towards artificial intelligence (AI) encompass a spectrum of beliefs, ranging from optimism about its potential to address societal challenges, including gender disparities, to concerns about its unintended consequences and reinforcement of biases. Understanding and analyzing these attitudes is essential for promoting the responsible development and deployment of AI technologies that align with the principles of gender equality and human rights.

Methodology of the research and description of the sample

The study encompassed a sample of 208 young individuals in Montenegro, ensuring diverse participation across various social groups. With a specific focus on individuals aged 18 to 30, the research aimed to uncover their nuanced attitudes. The comprehensive questionnaire included 18 thought-provoking questions, complemented by 9 statements probing artificial intelligence and gender stereotypes. Participants utilized a 5-point Likert scale to express their agreement. The sample had a balanced gender representation: 44.2% males and 55.8% females, with an average age of 23.53.

[8] United Nations Development Programme. (2021). Gender equality. Retrieved from https://www.undp.org/gender-equality

[9] Daly, A., Hagendorff, T., Hui, L., Mann, M., Marda, V., Wagner, B., ... & Witteborn, S. (2019). Artificial intelligence governance and ethics: global perspectives. arXiv preprint arXiv:1907.03848.

In terms of regional distribution, the majority (59.6%) resided in the Central region, while 24% were from the Northern region and 16.3% from the Southern region. Education levels varied: 38.9% completed secondary education, 9.1% vocational education, 30.8% undergraduate studies, 20.7% master's studies, and one completed doctoral studies.

Only 13.5% reported formal education or training in artificial intelligence, suggesting reliance on alternative learning. 57.7% used AI in daily life, while 42.3% did not. Usage frequency ranged from periodic (39.9%) to rare (32.7%), often (15.4%), daily (11.5%), and continuous (0.5%). Respondents perceived AI's influence on decisions as moderately low on average (2.29 score).

When familiarizing themselves with AI, most participants relied on independent research (36.8%). Formal education (22.6%), reading (20.6%), practical application (10.8%), conferences (6%), and other avenues were mentioned.

Regarding specific AI tools, the majority used Generative Language Models (ChatGPT) (28.5%), followed by personal assistants (17.3%) and facial recognition technology (14.1%). Speech recognition, spam filters, and automatic content recognition were also mentioned but used more rarely.

Hypothesis evaluation:

The hypothesis that the development of artificial intelligence will deepen gender stereotypes (44.2%) is not supported by the majority of respondents who have expressed a different viewpoint.

The hypothesis that the development of artificial intelligence will deepen gender stereotypes was not supported by the majority of respondents in the study, as 44.2% expressed a different viewpoint. This finding aligns with existing literature that highlights the potential for AI to challenge and disrupt gender stereotypes rather than reinforce them. For instance, research of face analysis algorithms demonstrated that commercial gender classification algorithms exhibited accuracy disparities across intersectional categories, indicating the potential for bias and the need for increased awareness and corrective measures.[10] Furthermore, the study emphasized the role of feminist ethics in analyzing algorithmic systems and highlighted the importance of anticipatory analysis to uncover and address embedded gender norms, emphasizing as well the need for gender-inclusiveness guidelines, gender-sensitive language, and ways to make data-driven AI systems and their consequences explainable to society (Pierson 2018). These studies contribute to the understanding that AI can be a powerful tool for dismantling gender stereotypes and promoting more equitable outcomes when designed and implemented with awareness of potential biases and the principles of gender equality. While the majority of respondents did not support the hypothesis that AI development would deepen gender stereotypes, it is important to recognize that the 44.2% who expressed agreement with this viewpoint represents a significant portion of the sample. This finding underscores the need for continued attention to the potential biases and

[10] Balakrishnan, G., Xiong, Y., Xia, W., & Perona, P. (2021). Towards causal benchmarking of bias in face analysis algorithms. In Deep Learning-Based Face Analytics (pp. 327-359). Cham: Springer International Publishing.

gendered implications of AI technologies. It highlights the importance of adopting an unbiased approach in the development, deployment, and regulation of AI systems to ensure that they do not inadvertently reinforce existing gender stereotypes or perpetuate inequalities. This result signals the significance of ongoing efforts to promote awareness, education, and ethical accountability in the field of AI to foster more inclusive and equitable outcomes.

The hypothesis that the development of artificial intelligence will help overcome gender stereotypes (55.6%) is supported by the majority of respondents.

The hypothesis that the development of artificial intelligence will help overcome gender stereotypes was supported by the majority of respondents, with 55.6% expressing agreement with this viewpoint. This finding is consistent with existing research that highlights the potential of AI to challenge and disrupt traditional gender norms. Some recent studies (Newman and Ng 2020) have emphasized the role of natural language processing and machine learning in advancing feminist economics, showcasing the potential for AI to contribute to more inclusive and gender-responsive approaches in various domains. Additionally, it is key to discusses the importance of debiasing AI systems to address implicit biases and promote fairness (Saldivar, Bernal, and Zeng 2021). These findings suggest that AI, when developed with a gender-inclusive and ethical approach, can play a significant role in overcoming gender stereotypes and promoting greater gender equality.

The hypothesis that artificial intelligence will be programmed with gender stereotypes (51.5%) is supported by a slightly higher than half of the respondents.

The research findings indicate that slightly more than half of the respondents (51.5%) support the hypothesis that artificial intelligence will be programmed with gender stereotypes. This result highlights the need for careful attention to the potential biases embedded within AI systems. It underscores the importance of proactive measures to address and mitigate these biases during the programming and development stages to prevent the reinforcement or perpetuation of harmful gender stereotypes.

The hypothesis that artificial intelligence will be able to recognize and correct gender stereotypes (64.9%) is supported by a majority of respondents.

On the other hand, the majority of respondents (64.9%) supported the hypothesis that artificial intelligence will be able to recognize and correct gender stereotypes. This finding suggests optimism regarding the potential of AI to serve as a tool for identifying and rectifying gender biases. It aligns with the growing body of research that explores the use of AI for bias detection and mitigation, emphasizing the importance of ongoing efforts to develop robust and accountable AI systems that actively work towards challenging and eradicating gender stereotypes.

The hypothesis that artificial intelligence will be able to make unbiased decisions not based on gender stereotypes (63.1%) is supported by a majority of respondents.

The hypothesis that artificial intelligence will be able to make unbiased decisions not based on gender stereotypes (63.1%) is supported by a majority of respondents. This result signifies the optimism among participants regarding the

potential of AI to act as an impartial decision-maker, free from gender biases. It underscores the importance of developing AI algorithms and systems that prioritize fairness and equality, ensuring that decisions are made based on objective criteria rather than perpetuating gender stereotypes.

The hypothesis that artificial intelligence will be able to identify and remove gender stereotypes from advertising and media (66.4%) is supported by a majority of respondents.

The hypothesis that artificial intelligence will be able to identify and remove gender stereotypes from advertising and media (66.4%) is supported by a majority of respondents. This finding suggests that participants believe AI can play a pivotal role in challenging and eliminating gender biases in advertising and media representations. It highlights the transformative potential of AI in promoting more inclusive and diverse portrayals of gender, leading to greater media representation and empowering individuals who have historically been marginalized or stereotyped.

The hypothesis that artificial intelligence will contribute to creating a more equal society (59.2%) is supported by a majority of respondents.

The hypothesis that artificial intelligence will contribute to creating a more equal society (59.2%) is supported by a majority of respondents. This result highlights the positive outlook participants have regarding the societal impact of AI. It suggests that they perceive AI as a tool that can help address systemic inequalities and promote a more equitable society. However, it also emphasizes the importance of responsible development and deployment of AI technologies to ensure that they are aligned with human rights principles and actively work towards reducing disparities and promoting social justice.

The hypothesis that people will be willing to accept decisions made by artificial intelligence regarding gender equality (48.0%) is not supported by the majority of respondents who have expressed a different viewpoint.

The hypothesis that people will be willing to accept decisions made by artificial intelligence regarding gender equality (48.0%) is not supported by the majority of respondents who have expressed a different viewpoint. This finding indicates a level of skepticism or concern among participants about placing complete trust in AI-generated decisions regarding gender equality. It underscores the importance of addressing public perceptions, building transparency, and fostering understanding of the decision-making processes of AI systems to gain wider acceptance and promote confidence in their ability to contribute positively to gender equality.

The hypothesis that artificial intelligence promotes gender equality (65.9%) is supported by a majority of respondents.

The hypothesis that artificial intelligence promotes gender equality (65.9%) is supported by a majority of respondents. This finding reflects the positive perception of AI's potential to act as a catalyst for gender equality. It suggests that participants recognize the transformative power of AI in challenging traditional gender norms, breaking down barriers, and fostering a more inclusive society. However, it also emphasizes the need for continued efforts to ensure that AI technologies are developed and deployed in a manner that aligns with feminist

principles and human rights frameworks, to maximize their positive impact on gender equality.

Dicussion

Overall, the results of the study shed light on the complex relationship between artificial intelligence (AI) development and gender stereotypes, as well as their implications for achieving feminist objectives. The majority of respondents did not support the hypothesis that the development of AI would deepen gender stereotypes, suggesting a recognition of the potential for AI to challenge and disrupt traditional gender norms. Additionally, the findings revealed widespread support for the hypotheses that AI can make unbiased decisions, identify and remove gender stereotypes from advertising and media, and contribute to creating a more equal society. These results demonstrate an optimism regarding the transformative potential of AI in promoting gender equality. However, it is important to acknowledge the dissenting views expressed by a notable portion of respondents regarding the acceptance of AI-generated decisions on gender equality. This highlights the need for ongoing efforts to build trust, transparency, and accountability in AI systems, particularly in matters related to gender equality, emphasizing the importance of maintaining the basic egalitarian model of the internet that ensures equal status for all content and applications provided through it (Singh 2015). The study also revealed that a significant proportion of respondents believed that AI programming could be influenced by gender stereotypes, underscoring the importance of addressing biases in AI algorithms and ensuring that they are developed and deployed in a manner that upholds principles of gender equality and human rights.

The findings emphasize the need to adopt an unbiased approach in AI development, taking proactive measures to mitigate and eliminate gender biases. It also highlights the potential for AI to contribute positively to addressing gender stereotypes, promoting more inclusive representations in advertising and media, and fostering a more equal society. Nevertheless, it is crucial to remain vigilant in addressing concerns, promoting transparency, and ensuring that AI technologies are guided by feminist ethics and international human rights law to realize their full potential in advancing gender equality (Gurumurthy and Chami 2017). In addition to the findings of the study, it is essential to emphasize the critical role of gender equality as a precondition for peace, cooperation, and social progress. Gender equality is not only a fundamental human right but also a cornerstone of sustainable development and a catalyst for positive societal transformation. Achieving gender equality requires challenging and dismantling deep-rooted gender stereotypes and biases, which can be further perpetuated or challenged by the development and deployment of artificial intelligence (AI) technologies. Justice, in its broadest sense, should serve as the fuel for the transformative power of AI. By integrating principles of justice into AI systems, we can harness their potential to promote gender equality and social justice. It is crucial to recognize that AI, if not designed and implemented with a commitment to fairness and inclusivity, can inadvertently perpetuate existing power imbalances and inequalities. Therefore, incorporating

feminist theories and perspectives into the development and use of AI becomes imperative.

Ultimately, the findings of this research serve as a call to action for policymakers, AI developers, and researchers to recognize the profound implications of AI development on gender stereotypes. By adopting a feminist lens and embedding principles of justice, equality, and human rights into AI systems, we can harness their potential to create positive societal change and pave the way for a more inclusive, equitable, and peaceful future.

References:

1. Anderson, Crystal and Seth L. Anderson. "The social impact of artificial intelligence: A systematic review." *arXiv preprint arXiv:2008.08650* (2020).
2. Balakrishnan, Guha, Yuanjun Xiong, Wei Xia, and Pietro Perona. "Towards causal benchmarking of biasin face analysis algorithms." In *Deep Learning-Based Face Analytics*, pp. 327-359. Cham: Springer International Publishing, 2021.
3. Buolamwini, Joy, and Timnit Gebru. "Gender shades: Intersectional accuracy disparities in commercial gender classification." In *Conference on fairness, accountability and transparency*, pp. 77-91. PMLR, 2018.
4. Daly, Angela, Thilo Hagendorff, Li Hui, Monique Mann, Vidushi Marda, Ben Wagner, Wei Wang, and Saskia Witteborn. "Artificial intelligence governance and ethics: global perspectives." *arXiv preprint arXiv:1907.03848* (2019).
5. Gurumurthy, Anita, and Nandini Chami. "A feminist action framework on development and digital technologies." *APC ISSUE Papers* (2017).
6. Newman, Natascha and Roxana Ng. "How natural language processing and machine learning can advance feminist economics." *Feminist Economics* 26, no. 4 (2020): 147-156.
7. O'Neil, Cathy. Weapons of Math Destruction: How Big Data Increases Inequality and Threatens Democracy. Broadway Books, 2017.
8. Office of the United Nations High Commissioner for Human Rights. "Human rights." Available at https://www.ohchr.org/EN/Issues/Pages/WhatareHumanRights.aspx
9. Pierson, Emma. "Demographics and discussion influence views on algorithmic fairness." *arXiv preprint arXiv:1712.09124* (2017).
10. Saldivar, Hugo C., Anamary Bernal, and Yiming Zeng. "Debiasing AI systems: A review of the impact of bias and the role of human-centered AI in addressing it." *Frontiers in Artificial Intelligence* 4 (2021): 622247.
11. Singh, Parminder Jeet. "Net neutrality is basically Internet egalitarianism." *Economic and Political Weekly* (2015): 12-15..
12. United Nations. "Policy brief: Gender, artificial intelligence and the digital economy." Accessed 2019. https://www.unwomen.org/-/media/headquarters/attachments/sections/library/publications/2019/policy-brief-gender-artificial-intelligence-and-the-digital-economy-en.pdf?la=en&vs=4671.
13. United Nations Progress towards the Sustainable Development Goals: Towards a Rescue Plan for People and Planet, 25 July 2022-26 July 2023."

14.United Nations General Assembly. (1948). Universal Declaration of Human Rights. Retrieved from https://www.un.org/en/about-us/universal-declaration-of-human-rights
15.United Nations. (1979). Convention on the Elimination of All Forms of Discrimination against Women. Retrieved from https://www.un.org/womenwatch/daw/cedaw/
16.United Nations. (2015). Transforming our world: The 2030 Agenda for Sustainable Development. Retrieved from https://sdgs.un.org/2030agenda
17.United Nations Development Programme. (2023). Goal 5: Gender equality. Retrieved from https://www.undp.org/sustainable-development-goals/goal-5-gender-equality
18.United Nations Women. (2021). Gender equality and the Sustainable Development Goals. Retrieved from https://www.unwomen.org/en/news/in-focus/women-and-the-sdgs
19."Sustainable Development Agenda." 2023. Online resource. Available at: https://sdgs.un.org/goals.

Scientific Article
UDK 35.075:[616.98:578.834-036.21(100)
330.34:[616.98:578.834-036.21(100)

THE OUTCOMES OF GOVERNMENT QUALITY IN TIMES OF HEALTH CRISIS: EUROPE AND COVID-19

MARKO JOVANOVIC
Lund University
jovanovicvrcelj@gmail.com

Abstract

There has been much discussion on the relationship between health and economic development. However, not enough attention has been directed towards the effects that national governments have on the economy through the healthcare system. The recent case of the Covid-19 pandemic can give clear implications of the connection between government quality and the outcomes of the health crisis. This paper theoretically discusses the linkage of governments, health and economic development and examines the influence of government quality on the pandemic through a correlation analysis on a sample of forty-four European countries. The findings indicate that better-functioning governments had more effective responses to the pandemic and thus had fewer negative consequences. These results imply that policies should focus on government quality control as it can be beneficial to both developed and developing nations.

Keywords: health crisis, covid-19, pandemic, government quality, institutions, economic growth, development

Introduction

Economic growth is dependent on numerous endogenous and exogenous variables, among which geography may be considered most fundamental since it determines the natural environment from which a nation needs to develop (Rodrik, et al. 2004). Geography affects a country through various channels, with disease distribution perhaps being among the more prominent ones (Diamond 2012). Nations with unfavourable preconditions usually have developmental difficulties which can only be overcome through institutional change (North, Thomas 1973) that will address its issues in a proper manner. Hence, the primary role of governments is to create a prosperous environment, regardless of geographical circumstances, and to provide equality of opportunities for the whole population (Sen 1980; UNDP 1990).

Health takes an essential role in this framework. While it can be viewed as purely individualistic, it is also a public good, since the ill conditions of an individual can often compromise the health of the wider society (Quereshi, Xiong

2021). One of the most recent cases in which health needed to be addressed as a public good was the Covid 19 pandemic. Therefore, it can be argued that national governments should, through all their branches, take the central part in developing a well-functioning health system (Kesale, Swai 2023). Effective public health policies can not only provide better living standards but may also contribute to economic development (Strittmatter, Sunde 2013) making health a question of national, or even international (Gallup, et al. 1999), economic significance.

In his work, Bleakley (2007) illustrates why good governance and effective policies are especially important in times of health crisis. As an exogenous factor, institutions in place before unfavourable health events determine the final outcomes, from the number of lives saved to the long-term economic outcomes (Kahn 2020). Therefore, it can be considered that the quality of government institutions established prior to the Covid-19 pandemic largely affected the scale of its consequences. The international community had little power, while the majority of measures were decided and implemented through local governments (Lichtenstein 2021). The rapid virus transmission overwhelmed the health sector and with it being a serious life threat governments had to balance between the well-being of the population and the economy (Coman, et al. 2021). While all nations experienced the initial shock, the better-organized systems were quicker in finding the most adequate responses, which were adjusted over time (Nunes Silva 2022). This left countries with poor governance in a state of undeniable danger at all levels.

Thus, this paper will analyse the effect of government quality on the Covid-19 pandemic outcomes. It will be organized into three sections. The first one is formulated as a literature review reflecting on the global trajectory between institutions, health and economic development with the idea to see how institutions and well-being are interdependent and how good public health helps in establishing a favourable environment for economic development. The second section is a correlation analysis study between government quality and the effects of Covid 19 pandemic in Europe with the purpose of analysing whether better-functioning governments actually managed to tackle the pandemic more efficiently. The final section concludes and gives some global policy implications based on the European case.

Literature review

In their work, Acemoglu, et al (2003) argue that public health has multidimensional effects on development, as it can influence it both directly and indirectly. While they believe that the direct effects are not large, they acknowledge that ill conditions can lower productivity and life expectancy and thus diminish the returns on human capital investments. On the other hand, they find that diseases may have a larger influence on the economy by determining which institutions are formed. Furthermore, Almond (2006) notes that the health climate does not only affect humans during their life span but also in their prenatal condition and thus showing that public health should be viewed as a complex developmental question.

Multiple works argue that one of the key reasons for Africa's underdevelopment lies in poor health conditions that are determined by the geographical context (Bloom, Sachs 1998; Gallup, et al. 1999). However, as Rodrik,

et al. (2004) put it is highly unlikely that the question of substandard economic growth and low-income levels could be answered by blaming it on diseases such as malaria, which is not even necessarily fatal. Nevertheless, Bloom and Sachs (1998) insist that, due to the specific environment, diseases are not eradicated even if there are adequate public policies in place. However, throughout their work, they unintentionally indicate the presence of poor governance and weak institutions without acknowledging them as a reason for Africa's inferior state. This can make sense in the context of Acemoglu, et al. (2001) who while analysing the case of colonialism and development pinpoint that sometimes even solid and previously established institutions are unable to take root in an environment due to substandard health standards. Nevertheless, it is wrong to overlook the importance of institutions in reshaping the disease environment as Kapologwe, et al. (2023) showcase that one of the main reasons for Tanzania's health climate is weak governance and leadership. The urgency of this matter may be seen as health conditions of the past influence the outcomes of the future (Acemoglu, et al 2004: 26). Therefore, it often seems difficult to escape the vicious circle of poor health and bad institutions.

Unfortunately, since geography is unlikely to change, there is only one answer to this question and that is to improve governance. Acemoglu and Robinson (2012: 1-3, 48) find that if it was possible to rise health standards through institutions in 19th-century England and modern-day northern Nogales, it can be possible in other cases as well. This hypothesis goes in hand with the findings of Bleakley's (2007) case of hookworm eradication in the southern USA, where he notices that, while endogenous, health can be heavily influenced by exogenous factors such as good public interventions. Nevertheless, the opposite is also possible, as low-grade governance often leads to the decay of the health system and economic development which can be seen in cases of North Korea and Zimbabwe (Acemoglu, et al 2004: 18; Acemoglu, Robinson 2012: 400). While Sachs (2012) recognizes the benefits of good public health policies, both him and Diamond (2012) believe that the role of institutions in development is largely overexaggerated as they believe that governance plays only a partial role in development. While their point of view certainly has ground it does not give an adequate alternative to institutions through which well-being and economic development can be supported.

Therefore, high-quality state governance should be viewed as the quinte essential for the emergence of adequate healthcare systems (Kapologwe, et al 2023). Yet, in order for those systems to actually function that quality needs to be present at all levels, from the highest-ranking officials to the staff employed in it (Acemoglu, Robinson 2012: 482; Quereshi, Xiong 2021). Strittmatter and Sunde (2013) claim that the introduction of public healthcare in European countries had significant benefits for overall well-being and thus took a major part in generating an environment favourable to economic growth. Therefore, it might seem that too much effort is directed towards market reforms in underdeveloped countries, as other public interventions can potentially bring even greater results in terms of prosperity (Sachs 2001). Due to its complex interactions, the development of a public health system, along with good governance, without which it is unlikely to provide adequate care, should be the utmost priority. Allsop and Jones (2008) argue that while the final goal is similar, the path to good public healthcare is heavily

affected not only by state institutions but by culture and history as well. This indicates that the development of such systems is a complex and long-lasting process.

Government quality and Covid-19 in Europe

The European continent is often regarded to have the highest quality of institutions globally. Nevertheless, it was one of the regions that were most struck by the Covid 19 pandemic. Intergovernmental organizations, such as the European Union, failed to tackle the pandemic on a wider level, which left national governments to find their own path (Lichtenstein 2021). In such cases, independent governments take full responsibility for providing the most adequate response depending on the given circumstances (Kuhlmann, Saks 2008; Quereshi, Xiong 2021), thus giving room for even small differences in government quality to become essential (Kahn 2020). Since the nature of European governments has little variation, it was usually those minor distinctions that led to different results. As western administrative traditions fail to interpret the efficiency of responses, the necessary explanation may be in the pure functioning of governments, with better ones performing more efficiently (Anttiroiko, Haveri 2022; Nunes Silva 2022).

However, as Chang (2007; 2011) points out measuring institutions may be problematic since different institutional forms can serve the same or even multiple functions. While similar, even European government forms have their specificities that manifest through all national branches including the healthcare system (Burau, Vrangbæk 2008; Iarskaia-Smirnova, Romanov 2008). While this can result in some inaccuracies in measuring government quality this act is essential for being able to compare their efficiency.

Methodology and data

In order to find the connection between government quality and the outcomes of their approaches to the pandemic a correlation analysis will be conducted. The idea is to find and explain the relationship between government conditions before the pandemic and three parameters of the outcomes including the number of Covid-19 related deaths, vaccination rate and economic growth. The results will be shown in three separate figures which will be independently explained. The sample consists of 44 countries which will be divided into 2 groups, EU member states and non-EU countries.

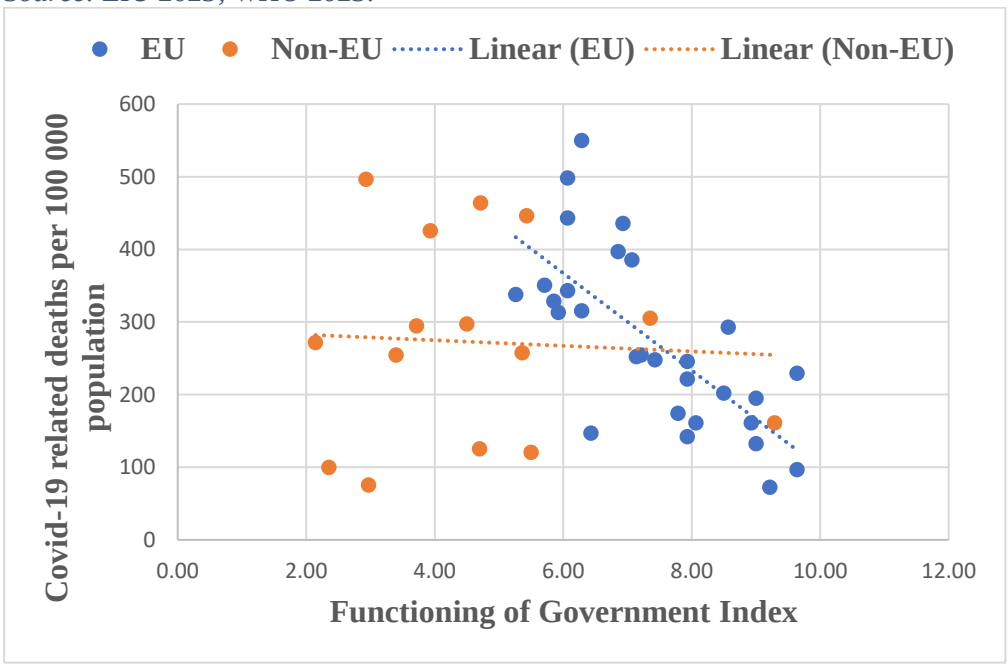
The Economist Intelligence Unit's *Functioning of Government Index* will be used as a proxy for governance quality, as it acknowledges a broad range of efficiency indicators, but excludes cultural aspects, such as freedom of speech, political participation, etc. The data used will be calculated as the average value of the *Functioning of Government Index* in the 5-year period between 2015 and 2019, in order to see the true conditions of national governments.

The rate of Covid-19 related deaths will be taken on the level per 100 000 population, while the vaccination rate will be taken as the percentage of the population that is fully vaccinated. Both variables are sourced from the World Health Organization and are considering the time period from the start of the

pandemic until now since they are still representing the outcome of pre-pandemic government quality. While the rate of economic growth will be taken from the World Bank Database for the year 2020 in order to analyse the effects of the immediate response, as long-term effects cannot yet be measured.

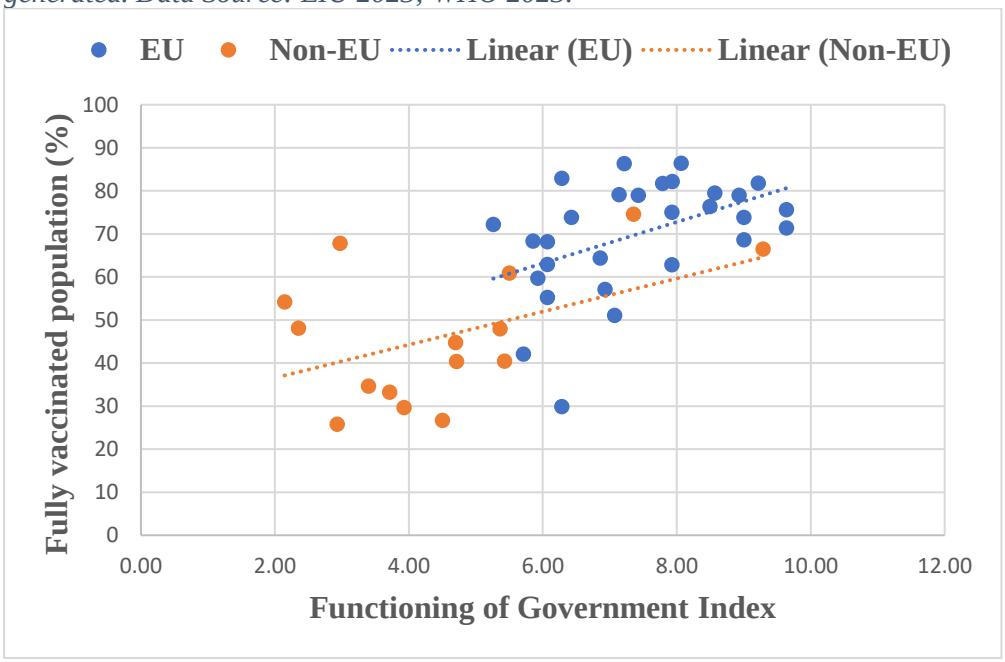
Results and interpretation

Figure 1: Correlation between the Functioning of Government Index and Covid-19 related deaths per 100 000 population. EU and non-EU states. Self-generated. Data Source: EIU 2023; WHO 2023.



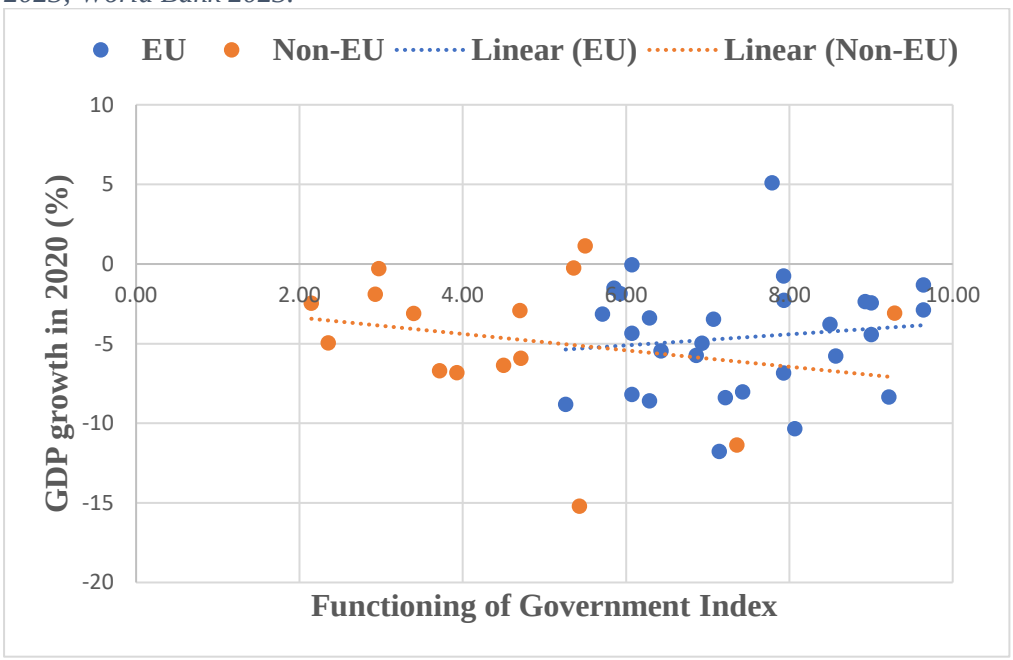
As *figure 1* indicates there is a decrease in the number of deaths per 100 000 population in EU member states as governments become better functioning. This shows that these governments were more effective in figuring out and implementing adequate measures in accordance with the lifestyle of their population. However, this relationship is not so strong in non-EU states. One of the potential reasons for this may be that their governments are mostly less functional than those of EU states and that they thus provided inaccurate data, both willingly and unwillingly. That said, most of the best-functioning governments had death rates that were significantly lower than the ones of average-quality governments. This shows that the way in which governments function may have played one of the crucial roles in protecting human lives.

Figure 2: Correlation between the Functioning of Government Index and the population fully vaccinated against Covid-19 (%). EU and non-EU states. Self-generated. Data Source: EIU 2023; WHO 2023.



In *figure 2* an upward trend in vaccination rates can be seen in both EU and non-EU countries, even though some outliers can be seen among the states with the lowest functioning governments. These results can be interpreted in two ways. The first one is that those governments which were better functioning were more efficient in providing vaccines to the population while giving them the freedom of choice to be vaccinated. While the second one indicates that these governments were also better at promoting the vaccination process to their citizens, which had more trust in their officials and therefore were more willing to receive the available vaccines. This relationship is crucial as it shows how governments and citizens can positively influence each other by building trust.

Figure 3: Correlation between the Functioning of Government Index and GDP growth in 2020 (%). EU and non-EU states. Self-generated. Data Source: EIU 2023; World Bank 2023.



While at first, it seems that *figure 3* does not show a significant relationship between governance quality and its response to the economic issues caused by the pandemic it is important to note that those countries with better-functioning governments usually have economies that are larger and more interdependent which leaves them more vulnerable to global crises. If that is taken into account it can be pretty astonishing that large economies managed to suffer to the same extent as smaller ones with government quality proving once more its importance. It is questionable how much would these economies actually suffer if their states were not functioning as well as they did in the pre-pandemic times. Even so, a weak upward trend can be seen in EU member states, which is contrary to non-EU countries.

Together, all three correlation analyses show that there is a significant link between government quality, the healthcare system and economic growth. However, this link is clearer in EU member states than in the countries outside of the Union. *Figures 1-3* also indicate that there might be a deep data accuracy problem in low-quality governments due to various reasons. Nevertheless, these insights are important as they show that in order to have a good response to potential crises institutions need to function efficiently.

Conclusion

Geography might play an important role in the initial disease environment. However, this should not be viewed as a curse, but rather an obstacle that could be

overcome through institutional improvements. Good governance is necessary to develop and maintain an effective healthcare system. Furthermore, government interventions that support the health care system can have multi-levelled benefits (Acemoglu, et al. 2003), including improvements in the economic environment which can stimulate growth. Nevertheless, for actual development to manifest a whole range of other quality institutions is needed (Bleakley 2007).

The correlation analysis conducted on EU and non-EU countries indicates that the development of policies concerning government quality control could be of great benefit to both developing and developed nations. Such policies should be implemented from the top down, meaning that they should take all levels of governance into account. These types of policies would be of service to the healthcare system as more accountable governments would put additional effort into discovering and implementing the most adequate solutions that could improve national health levels, which can in the long run strengthen economic development.

However, while this method gives significant implications, it is important to note that correlation does not always resemble causation. Thus, further research should focus on developing more advanced econometric models that can measure the exact effects of government quality on health systems, crisis management and economic development.

References

1. Acemoglu, D., Johnson, S. & Robinson, J. A. (2001). The Colonial Origins of Comparative Development: An Empirical Investigation, The American Economic Review, vol. 91, no. 5, pp.1369–1401
2. Acemoglu, D., Johnson, S., & Robinson, J. (2003). Disease and development in historical perspective. Journal of the European Economic Association, 1(2-3), 397-405.
3. Acemoglu, D., Johnson, S. & Robinson, J. A. (2004). Institutions as the Fundamental Cause of Long-Run Growth, Working Paper, 10481, National Bureau of Economic Research.
4. Acemoglu, D., Robinson, J. A. (2012). Why Nations Fail: The Origins of Power, Prosperity and Poverty, New York: Crown Publishers
5. Allsop, J., & Jones, K. (2008). Protecting patients: International trends in medical governance. In E. Kuhlmann & M. Saks. Rethinking Professional Governance: International Directions in Health Care (pp. 15-28). Bristol University Press.
6. Almond, D. (2006). Is the 1918 influenza pandemic over? Long-term effects of in utero influenza exposure in the post-1940 US population. Journal of Political Economy, 114(4), 672-712.
7. Anttiroiko, A.-V., Haveri, A. (2022) Local Actions to Combat Covid-19 Crisis: Contextual Insights into Local Institutional Responses to Covid-19 in Europe and the United States In C. Nunes Silva. Local Government and the COVID-19 Pandemic. A Global Perspective. Springer International Publishing.

8. Bleakley, H. (2007). Disease and development: evidence from hookworm eradication in the American South. The Quarterly journal of economics, 122(1), 73-117.
9. Bloom, D. E., Sachs, J.D. (1998) "Geography, Demography, and Economic Growth in Africa," Brookings Papers on Economic Activity, 1998:2, 207-295.
10.Burau, V., & Vrangbæk, K. (2008). Global markets and national pathways of medical re-regulation. In E. Kuhlmann & M. Saks. Rethinking Professional Governance: International Directions in Health Care (pp. 29-44). Bristol University Press.
11.Chang, H.-J. (2007). Understanding the Relationship between Institutions and Economic Development – Some Key Theoretical Issues., in H.-J. Chang (ed.), Institutional Change and Economic Development, New York: United Nations University Press, pp.17–33.
12.Chang, H.- J. (2011). Institutions and economic development: Theory, policy and history. Journal of Institutional Economics, 7(4), 473-498.
13.Coman, I.A., Elsheikh, D., Gregor, M., Lilleker, D., Novelli, E. (2021). Political communication, governance and rhetoric in times of crisis. In R. Mora Rodríguez and D.G. Lilleker. Political communication and COVID-19. Governance and rhetoric in times of crisis. Routledge.
14.Diamond, J. (2012). What Makes Countries Rich or Poor?, The New York Review of Books, Available
15.Economist Intelligence Unit. (2023). Democracy Index Data. Available at: https://data.eiu.com/login.aspx Accessed on: 2 March 2023
16.Gallup, J. L., Sachs, J. D., & Mellinger, A. D. (1999). Geography and Economic Development. International Regional Science Review, 22(2), 179.
17.Iarskaia-Smirnova, E., & Romanov, P. (2008). Culture matters: Integration of folk medicine into healthcare in Russia. In E. Kuhlmann & M. Saks. Rethinking Professional Governance: International Directions in Health Care (pp. 141-154). Bristol University Press.
18.Kapologwe, N.A., Swai, I.L., Kesale, A.M., Keniga, J. (2023). Leadership and Governance. In M.G. Anasel; N.A. Kapologwe; A. Kalolo. Leadership and Governance in Primary Healthcare: An Exemplar for Practice in Resource Limited Settings. CRC Press Taylor & Francis Group.
19.Kahn, L. (2020). Who's in charge? Leadership during epidemics, bioterror attacks, and other public health crises. Santa Barbara, CA: Praeger Security International.
20.Kesale, A. M., Swai, I.L. (2023). Management and Governance for Health Facilities. In M.G. Anasel; N.A. Kapologwe; A. Kalolo. Leadership and Governance in Primary Healthcare: An Exemplar for Practice in Resource Limited Settings. CRC Press Taylor & Francis Group.
21.Kuhlmann, E., & Saks, M. (2008). Conclusion: Health policy and workforce dynamics: The future. In E. Kuhlmann & M. Saks. Rethinking Professional Governance: International Directions in Health Care (pp. 231-244). Bristol University Press.

22.Lichtenstein, D. (2021). THE EU: The story of a tragic hero and the 27 dwarfs In R. Mora Rodríguez & D.G. Lilleker. Political communication and COVID-19. Governance and rhetoric in times of crisis. Routledge.
23.North, D. C. & Thomas, R. P. (1973). The Rise of the Western World: A New Economic History, Cambridge: Cambridge University Press
24.Nunes Silva, C. (2022). Local Government and the Covid-19 Pandemic: An Introduction. In C. Nunes Silva. Local Government and the COVID-19 Pandemic. A Global Perspective. Springer International Publishing.
25.Rodrik, D., Subramanian, A. & Trebbi, F. (2004). Institutions Rule: The Primacy of Institutions Over Geography and Integration in Economic Development, Journal of Economic Growth, vol. 9, no. 2, pp.131–165
26.Sachs, J. D. (2001) "Tropical Underdevelopment," NBER Working Paper #8119.
27.Sachs, J. D. (2012). Government, Geography, and Growth: The True Drivers of Economic Development, Foreign Affairs, vol. 91, no. 5, pp.142–150.
28.Sen, A. (1980). "Equality of What?". In The Tanner Lecture on Human Values, I, 197-220. Cambridge: Cambridge University Press.
29.Strittmatter, A., & Sunde, U. (2013). Health and economic development—evidence from the introduction of public health care. Journal of Population Economics, 26(4), 1549–1584.
30.Qureshi, S., & Xiong, J. (2021). Equitable Healthcare Provision: Uncovering the Impact of the Mobility Effect on Human Development. Information Systems Management, 38(1), 2–20.
31.United Nations Development Programme. (1990). Human Development Report. UNDP.
32.World Bank. (2023). World Bank Open Data. Available at: https://data.worldbank.org/ Accessed on: 2 March 2023.
33.World Health Organization. (2023). World Health Organization Coronavirus (Covid-19) Dashboard. Available at: https://covid19.who.int/data Accessed on: 2 March 2023

Scientific Article
UDK 343.13:347.965.42
343.988:343.91

IS RESTORATIVE JUSTICE AN ALTERNATIVE TO THE TRADITIONAL APPROACH TO CRIMINAL JUSTICE?

Ilija Jovanov, LL.M.
Student of the third cycle of academic studies - doctoral studies
Iustinianus Primus Faculty of Law – Skopje
University "St. Cyril and Methodius" – Skopje
ilija_jovanov@yahoo.com

Abstract

Using the principles and practices of restorative justice, crime and its effects are dealt with differently. The dehumanization that people frequently encounter in the conventional criminal justice system is addressed by restorative justice practices. Restorative justice views an act of crime as a violation of people and their relationships, as opposed to simply being a violation of a law. In several ways, restorative justice is different from contemporary criminal justice. First, it takes a broader view of criminal behavior; rather than viewing crime as simply breaking the law, it acknowledges the harm that offenders cause to victims, communities, and even themselves. Second, it involves both victims and communities in the fight against crime, as opposed to the government and the offender playing the key roles. Finally, it uses a different metric to determine success. It measures the extent to which the damage is repaired or avoided rather than the severity of the punishment meted out.

Keywords: victim, community, delinquent, criminal responsibility, restorative justice.

INTRODUCTORY REMARKS

The idea of punishment derives from the paternalistic and interventionist conception of the state, which holds that the state has the exclusive right to use force to dictate to its subjects the laws, processes, and penalties that can be applied to criminal acts. However, it has been disregarded in the development of contemporary criminal justice systems that supervision and discipline can be established as a response to aberrant behavior in the social community with minimal state interference, while at the same time being a more efficient response to crime. The fear of the social environment in which they live, which to a greater or lesser extent results in shame for the perpetrator, as well as the fear of the prison imposed by the state, are two reasons why citizens refrain from committing crimes.

To the best of our knowledge, **Albert Eglash** used the term "*restorative justice*" for the first time in the context of criminal justice in a number of articles

published in 1958. He proposed that there are three different types of criminal justice: *retributive justice*, which is based on punishment, *distributive justice*, which is based on the therapeutic treatment of offenders, and *restorative justice*, which is based on restitution. He emphasized that the victim is not allowed to participate in the justice system and that both the punishment and treatment models only call for the offender to be passive. Instead, they both place a strong emphasis on the actions of offenders. On the other hand, restorative justice emphasizes the negative consequences of offenders' behavior and actively involves both victims and offenders in the process of restitution and rehabilitation. (Van Ness and Heetderks Strong 2010, 21–22).

As one of the pioneers in the development of restorative justice theory, **Howard Zehr** is regarded by many as the "grandfather" of the practice. His interest developed as a result of his work with victim-offender reconciliation programs, and his writings—including books, speeches, articles, and teaching—have had a significant impact on the field. Restorative justice is described in this way by Howard Zehr in his widely read book *"Changing Lenses: Crime is a violation of people and relationships"*. It imposes duties to put things right. In the pursuit of solutions that foster repair, reconciliation, and reassurance, justice involves the victim, the offender, and the community." (Zehr 1990, 181). A restorative justice framework, where crime is viewed as a violation of people and relationships, is contrasted with a "retributive justice" framework, where crime is seen as an offense against the state.

According to **Tony Marshall**, it is "a process where all the parties with an interest in a specific offense come together to decide jointly how to deal with the offense's consequences and long-term effects." (Marshall 1999, 5).

Martin Wright has argued that the new model should be one "in which the response to crime would be, not to add to the harm caused by imposing further harm on the offender, but to do as much as possible to restore the situation. The community offers aid to the victim, and the offender is held accountable and required to make reparations. Attention would be given not only to the outcome, but also to evolving a process that respected the feelings and humanity of both the victim and the offender." (Wright 1991, 112). In particular in Europe, Martin Wright's extensive and significant body of work has helped to advance the theory and application of restorative justice.

1. ABOUT THE CONCEPT OF RESTORATIVE JUSTICE

Theoretically, victimology and criminology have recently embraced restorative justice as a new paradigm. The idea of restorative justice maintains that justice must make amends for the harms that crime has caused to individuals and communities while allowing parties to take part in the healing process. Programs for restorative justice give victims, offenders, and members of the affected community the chance to actively participate in the fight against crime. The government and legal experts act as facilitators of a process that seeks to achieve offender accountability, victim reparation, and full victims, offenders, and community participation. They take on a central role in the criminal justice system.

Restorative justice is an approach to conflict resolution (including criminality) that starts from the needs of the victim, the community, and the offender, bringing together all parties to the conflict to help them resolve their conflicts and problems together, peacefully, through dialogue, and reaching an agreement on how the resulting damage can be repaired or compensated. Restorative justice is restorative justice, which seeks to repair/compensate for the damage caused and repair broken relationships and enable the improvement of interpersonal relationships in the community. It also seeks to empower the victim and perpetrator and enable them to reintegrate into society. (Ćopić i Nikolić-Ristanović 2016, 29).

A powerful way to address not only the material and physical injuries caused by crime but also the social, psychological, and relational injuries is through a restorative process that involves all parties, frequently in face-to-face meetings. When a party is unable or unwilling to take part in such a meeting, alternative methods may be used to reach a restorative conclusion and undo the harm. These strategies may involve restitution, community service, and other reparative penalties to address the offender's responsibility. They can offer financial, emotional, and spiritual support and assistance when addressing the reintegration of the victim and offender. The objective is for the parties to exchange their personal accounts of what occurred, talk about who was harmed and how, and come to an agreement on what the offender can do to make up for the harm that the crime has caused.

According to its definition, restorative justice is a theory of justice that places a focus on mending the harm that criminal behavior has revealed or caused, and it holds that this can best be done through collaborative processes involving all parties.

Examining the negative effects of a crime and figuring out what can be done to undo the harm after the offender is made to answer for their actions are the goals of restorative justice. Accepting responsibility and taking steps to undo the harm constitute responsibility for the wrongdoer. In order to mitigate the risk of committing the same or another crime in the future, it is important to repair the harm caused by the crime and address its root causes. Restorative justice practices put more emphasis on the success of the harm caused by a crime being repaired than on the sentence that is given. Additionally, restorative justice aims to involve victims and survivors of crime - those who have been most directly impacted by a crime - in the legal system.

In other words, restorative justice places more of an emphasis on victims and the harms they have suffered than it does on offenders. Unlike the traditional criminal justice system, restorative justice empowers victims to take an active role in the process. The community also contributes significantly to the process by establishing moral guidelines, aiding in holding the offender accountable, supporting the parties involved, and offering chances to assist in mending the damage that has been done. After a crime has been committed, the victim can heal faster if they have the chance to make amends for the harm they have suffered, are fully involved in decision-making, and have the backing of their community.

While restorative justice can be applied to conflict resolution, it is important to strengthen intra-community relations and prevent new or escalating existing

conflicts that would require the intervention of judicial or other state systems. (Ćopić i Nikolić-Ristanović 2016, 29).

In the course of dealing with offenders and making amends for the harm they have caused; restorative justice includes victims of crime and the surrounding community. Restorative justice places less emphasis on retribution and punishment, which are essential components of the conventional view of criminal justice. In order to make the offender of the crime make some of the harm done to the victim and community right, restorative justice aims to involve the victims.

The evaluation of restorative justice by academics is favorable. The majority of research indicates that restorative justice reduces criminals' likelihood of reoffending. Since the 1990s, the application of restorative justice has expanded on a global scale.

2. METHODS OF RESTORATIVE JUSTICE

Meetings between the offender and the victim are necessary for restorative justice. Participants in many restorative justice systems are required to sign confidentiality agreements, particularly in victim-offender mediation and family group conferencing. Typically, these agreements specify that non-participants will not be informed of conference discussions. Confidentiality is justified by the idea that it fosters straightforward communication.

2.1. Victim-offender dialogue

Victim-offender dialogue is a process in which the offender who committed the crime and the victim of the crime, or surviving family members, meet in person in a secure environment. A facilitated victim-offender dialogue can offer a path to further healing and justice for some victims and survivors of severe violence and violation. While it's possible that not every survivor will be able to do this, for some, the opportunity to speak with the person who injured them or committed the act of violence can help them express some of the pain and trauma they've gone through. In addition, offenders are better able to comprehend the devastating consequences of their behavior and how they came to be capable of such behavior when they are able to listen to them, respond to them, and express the complexity of their feelings about what they have done. Some offenders will be able to "account" for their decisions and deeds to the survivor more effectively as a result of this improved understanding, and they will start to try to derive new, deliberate meaning from their experience. Those survivors who choose to speak with the perpetrator's victim believe they have finally said everything they needed to say to the perpetrator. This might be therapeutic all by itself. If forgiveness or reconciliation is not absolutely and unequivocally what the survivor wants, then victim-offender dialogue is not about those things. The two main objectives are for the perpetrator to fully comprehend the consequences of their actions and for the victim to feel heard.

2.2. Family group conferencing

Decisions about how to deal with a crime or delinquency are made in family group conferences with the participation of the community most impacted by the

crime, including the victim and the offender, as well as the family, friends, and key supporters of both. In addition to inviting the victim and perpetrator to the conference and explaining the procedure to them, the facilitator also asks them to identify important members of their support networks who will also be invited. All involved activities involve voluntary participation. To participate, the offender must confess to the crime. A skilled facilitator gathers the participants to talk about how the offense has harmed them and other people, as well as how the harm can be undone.

The conference usually starts off with the offender outlining the incident and each participant outlining how it affected their lives. Through these stories, the perpetrator is made aware of the human cost of his or her actions on the victim, the victim's loved ones, and the perpetrator's family and friends. The victim had the chance to share her thoughts and inquire about the offense. The victim is asked to identify the desired outcomes of the conference after a thorough discussion of the impact of the offense on those in attendance in order to help shape the obligations that will be placed on the offender. Finding the best way for the offender to undo the harm they have done can involve input from all participants. An agreement outlining the participants' obligations and expectations was signed by all parties before the session came to an end.

2.3. Restorative conferences

A mediated conversation between those who have hurt others and those who have caused them hurt takes place at a restorative conference. The goal of the conference was to give the victim(s) a chance to recover and the offender(s) a chance to take the lead in undoing any harm. The conference usually concludes with a written agreement outlining the specific steps that the offender(s) must take. It is a novel strategy that takes into account the opinions and desires of all parties to the conflict and seeks to resolve issues amicably and constructively by undoing the harm that has been caused.

Unlike victim-offender discussions and family group conferences, restorative conferences include a broader range of participants. The names and procedures for these community meetings vary widely. They are also known as restorative circles, restorative justice conferences, community renewal boards, or community responsibility conferences.

2.4. Circles of Support and Accountability

The safe reintegration of inmates, who are typically high-risk and high-need individuals who have been found guilty of sex crimes, is a primary focus of Circles of Support and Accountability models. These accountability and support groups were mostly run by volunteers. With the core group, volunteers build relationships (i.e., the convicted sex offender) that are founded on equality, reciprocity, and a contract (i.e, "covenant") to strive to create a dependable and long-lasting friendship.

The Circles of Support and Accountability models mainly involve a group of volunteers who meet a lead member once a week to discuss various reentry challenges, though specific models may vary depending on location and

jurisdictional needs. Professionals from the community are also necessary to make sure that these projects run smoothly; they train volunteers and support them while also holding core members accountable for their dedication to the project.

The Circles of Support and Accountability model, which adheres to the concepts of risk, need, and accountability, is employed to aid in lowering a person's likelihood of reoffending and thereby raising public safety. The principles of risk, need, and accountability can help staff concentrate resources where they will have the biggest impact on lowering recidivism and meeting the needs of those released from prisons, jails, and juvenile facilities when they are applied correctly and consistently.

2.5. Sentencing circles

Sentencing Circles (also known as Peacemaking Circles) involve all parties through the use of customary circle rituals and structures. The typical procedure is as follows: the offender signs up for the intervention, a healing circle is held for the victim, a healing circle is held for the offender, a sentencing circle is held, and finally, follow-up circles are used to track progress.

3. PRINCIPLES AND VALUES OF RESTORATIVE JUSTICE

Restorative justice is based on the following: any suffering or injury (victimization) is primarily a violation of people and interpersonal relationships, and only then a violation of the law. The following questions arise: What are the needs of the injured person, that is, to whom the damage was caused? Who is responsible for repairing the damage–that is, to repair the consequences of the injury? How can the damage be repaired, the consequences repaired, and the relationships damaged by abusive behavior repaired? (Ćopić i Nikolić-Ristanović 2016, 31).

Respect, inclusion, active participation, empowerment, repair (renewal), and transformation are the underlying tenets of the concept of restorative justice. (Ćopić i Nikolić-Ristanović 2016, 31).

The key values of restorative justice can be divided into three categories.

- Values that could be characterized as basic procedural guarantees (process values), namely absence of dominance, empowerment, listening with respect and appreciation, equal care for all participants, acceptance of responsibility, and respect for basic human rights.
- Values that make up the essence of a restorative approach: reestablishing human dignity, safety, relationships disrupted by conflict or other hurtful behavior, a sense of belonging to a community, freedom, emotions, care and empathy, respect, peace, and everything that can contribute to preventing future injustices.
- Values that can appear during the restorative process include apology, forgiveness, mercy, and remorse. (Ćopić i Nikolić-Ristanović 2016, 33).

The following values stand out in the academic literature as being those of restorative justice that are most important:

- The procedures for restorative justice must adhere to the rule of law, fundamental human rights, and rights guaranteed by state constitutions.

- To prevent discrimination, restorative justice must uphold the dignity of both victims and offenders.
- All parties must be fully informed of the process's goals, their rights during it, and its potential outcomes.
- All restorative justice programs and processes should involve thorough preparation of all participants, including legal representatives.
- Parties should be aware that they are free to end the process at any time.
- When a restorative justice option is put forth, parties must be given a reasonable amount of time to weigh their options.
- At any stage of the criminal justice system, including pre-trial diversion, plea and sentence agreements, the pre-sentence process, as part of the sentence, and as part of the reintegration process, including parole, referral to restorative justice processes is possible.
- All parties, including the victims, must voluntarily participate in restorative justice processes.
- The parties shouldn't be pressured into making a particular agreement.
- All parties should have an equal opportunity to participate in restorative justice processes.
- Restorative justice procedures must be impartial and fair.
- Restorative justice procedures should always be kept private. Informed decisions about how to uphold confidentiality can be reached by all parties.
- Support persons for victims and offenders should be permitted to attend meetings, provided that doing so does not endanger the safety and rights of any other party.
- Access to legal counsel should be provided to both victims and offenders at all stages of the proceedings.
- Children's participation should be subject to parental or guardian approval and be contingent upon their physical presence or that of another adult designated as having sole responsibility and authority for the protection of the child's rights and interests.
- When working with a child, care should be taken to make sure that he or she understands the process and participates effectively.
- Reparations and healing should be encouraged by restorative justice procedures.
- The terms of restorative justice agreements shouldn't be excessive compared to the harm they cause.
- The purpose of restorative justice procedures should be to deter future transgressions.
- Programs for restorative justice must address harm, needs, and obligations.
- Restorative justice procedures should allow for expressions of regret, shame, forgiveness, mercy, and compassion, but they shouldn't coerce these reactions.
- Programs for restorative justice should make sure that offenders are as close as possible to fulfilling the obligations brought about by the offense.
- Restorative justice procedures should, to the greatest extent possible, be culturally suitable for the parties concerned.

- Everyone involved in facilitating restorative justice procedures should have the appropriate training or experience.
- Where necessary, programs utilizing restorative justice ought to offer qualified interpreters.
- Programs for restorative justice ought to be created with the input of both victims and offenders.
- Regarding the procedures and outcomes of restorative justice, public safety should be taken into account.
- Programs for restorative justice ought to have well-defined, publicized objectives.
- Programs for restorative justice ought to offer a standard against which success can be evaluated.
- To encourage continuous improvement, restorative justice initiatives ought to be followed up on (through internal procedures) and assessed (through outside research).
- Programs for restorative justice should publish codes of conduct and standards.
- Programs that practice restorative justice should take precautions to protect participants.
- The establishment and maintenance of efficient grievance mechanisms should be a goal of restorative justice processes and programs.
- Programmes for restorative justice ought to have policies in place for handling disclosures involving other crimes.

4. WHEN IS RESTORATIVE JUSTICE USED?

Restorative justice is frequently viewed as a way to handle minor or infrequent crimes. Restorative justice can be applied as a procedure, though, even in situations involving violence or dishonesty, it is crucial to remember. It matters at what point the restorative justice process is implemented. Whether the restorative justice program or process should be implemented prior to the filing of a charge, during the pretrial period, before sentencing, or after the conclusion of sentencing will need to be carefully considered in each case. The appropriate restorative justice programs or processes must also be decided by the role players. Offenses involving violence may need to participate in the restorative justice process only before or after sentencing, but less serious offenses can be diverted without a trial.

The following phases of the criminal justice system can employ restorative justice:

- *Before Notice*: Restorative justice programs or processes may be used to settle disputes between parties that could otherwise result in criminal or civil proceedings. Before a formal intervention, victim support work may have been done.
- *Pre-trial*: After charges have been filed but before the scheduled trial date, restorative justice procedures or programs may be implemented. The prosecutor may decide to divert the case from a formal court hearing and

accept a deal reached through restorative justice. The case may be sent back to court if there is no agreement.

- *Pre-sentencing*: A restorative justice procedure or program may be incorporated. With various outcomes listed as requirements for a suspended or suspended sentence, this may inform a particular sentence.
- *Post-sentence*: A restorative justice process or program may be implemented after a person has served their sentence or as a part of a rehabilitation, reintegration, or pre-release program for the criminal justice system.

5. BENEFITS FROM RESTORATIVE JUSTICE

The most significant advantages of restorative justice stand out in the professional literature that discusses the idea of this type of justice.

- *Prevention of re-offending the law*

Research has shown that offenders who undergo restorative justice interventions have a lower reoffending rate than those who receive more conventional interventions.

- *Empowering victims*

Access to justice can be made easier through restorative justice procedures, and victims may feel more empowered as a result. Additionally, compared to other methods, it takes less time and costs less money. More opportunities exist for victim advocacy, restitution, and compensation.

- *Reducing the number of unsolved crimes and overcrowding in prisons*

The criminal justice system benefits from restorative justice because it helps cut back on backlogs, unnecessary expenses, and delays. Further reductions in taxpayer spending and prison overcrowding are also possible.

- *Increasing community participation in the resolution of conflicts*

State-level democracy is bolstered and deepened by community participation and involvement in restorative justice procedures.

- *Decreasing recidivism*

In addition to the rehabilitation of offenders, restorative justice also aims to lower recidivism. This, according to proponents, can stop repeat offenses and deter other potential criminals. Critics claim that restorative justice has little impact on crime rates.

6. CRITIQUES OF RESTORATIVE JUSTICE

New Zealand criminologist **Alison Morris** criticized the application of restorative justice, noting the following:

"…restorative justice erodes legal rights; restorative justice results in net-widening; restorative justice trivializes crime (particularly men's violence against women); restorative justice fails to "restore" victims and offenders; restorative justice fails to effect real change and to prevent recidivism; restorative justice results in discriminatory outcomes; restorative justice extends police powers; restorative justice leaves power imbalances untouched; restorative justice leads to vigilantism; restorative justice lacks legitimacy; and restorative justice fails to provide "justice". (Morris 2002, 596-615).

Another critique of restorative justice suggests that professionals are often excluded from restorative justice conversations. **Albert W. Dzur** and **Susan M. Olson** (2004, pp. 139-176) argue that this sector of justice cannot be successful without professionals. They claim that professionals can aid in avoiding problems that come up with informal justice and propose the theory of democratic professionalism, where professionals are not just agents of the state – as traditional understandings would suggest – but as mediums, promoting community involvement while still protecting individuals' rights.

Additionally, some critics such as **Gregory Shank** and **Paul Takagi** (2004, pp. 147-163) see restorative justice as an incomplete model in that it fails to fix the fundamental structural inequalities that make certain people more likely to be offenders than others. They and others question the structure of society and the fairness of institutional systems at their very core, pushing for addressing the root causes of many one-on-one offenses, as well as for creating a socio-economic system that will be more conducive to harmonious, healthy living in general.

7. IS A RESTORATIVE JUSTICE AN ALTERNATIVE SANCTION?

Restorative justice is not only accepted as an alternative to the criminal justice system in any given country, but rather, its various components are more or less incorporated into the system of state responses to criminality, leading to varying degrees of restorative justice realization. As a result, it is challenging to accept the dichotomous division of restorative and punitive systems that would exist entirely independently of one another. Instead, one should lean towards understanding the compatibility of these two systems, which leads to the approximate realization of the so-called maximalist concept of restorative justice.

It is incorrect to see restorative justice as the antithesis of a repressive system of state response to criminality. These aren't two distinct, independent systems of intervention; rather, they're two points on a continuum that are crucial components of one system. Additionally, it's important to remember that voluntariness is one of the fundamental criteria for using the restorative process; as a result, using these mechanisms is seen as an opportunity rather than an obligation.

8. JUSTICE IN RESTORATIVE JUSTICE

Constitutional democracies guarantee a set of rights and freedoms for all citizens. These rights and freedoms cannot be infringed unless by legally well-defined exceptions and according to clearly defined procedures. The criminal justice system safeguards rights and freedoms through a complex of formal rules and conditions, and by the involvement of lawyers who check whether these rules and conditions are being respected. For most restorative justice proponents, criminal justice procedures and outcomes may lead to legal justice but they may not accord with what is considered to be just: “The right punishment, according to some retributive theory will almost always be the wrong solution to the problem. By wrong I mean less just” (Braithwaite 2002, 150-167). At first, many restorative justice advocates avoided state control, fearing the state’s power to invade the process to the detriment of its informal, humane and healing potential. At times,

however, the scales were tipped so far from state control that legal guarantees were also lost. (Johnstone and Van Ness 2007, 570).

It is now almost generally accepted that a state-controlled legal framework is needed to locate restorative justice within the principles of a constitutional democracy. However, a broad range of interpretations remain, between the minimalist option, which sees the state as a marginal safeguard far removed from the restorative justice process, and the traditional criminal justice position, which locates the state as the central actor and stakeholder in the procedure. The state's position as a sort of victimized stakeholder was discussed above; the following section considers the function of the state as a (possibly coercive) safeguard. (Johnstone and Van Ness 2007, 570).

9. THE FUTURE OF THE RESTORATIVE JUSTICE SYSTEM

The fact that today's society is undergoing constant change cannot be denied. The modern world is changing quickly and drastically. Justice paradigms must adapt to social change in order to be consistent with prevailing ideologies and to reflect all the developments and discoveries in the fields of criminology and penology.

The concepts of risk and harm are gradually replacing the concepts of evil, malice, and malice in contemporary secular societies and will undoubtedly take center stage in future social and criminal policies.

Future crime control strategies will be heavily reliant on risk assessment, management, coverage, reduction, and prevention. A key aspect of how society responds to crime is likely to be how much harm is caused—physically, financially, and mentally. Such crime-control strategies place a strong emphasis on redress, reparation, and compensation. As well as efforts to stop them from happening again, all harmful actions will result in an obligation to indemnify. Therefore, it appears that victimology's future will both influence and be influenced by changes in the legal system, but it will also largely depend on how widely the idea of restorative justice is adopted and applied.

In addition, if a prediction about victimology's future can be made, we could say that it will develop into both a legitimate scientific field and a legitimate humanitarian endeavor.

CONCLUSION

From the aforementioned, it is clear that restorative justice calls for the full involvement and consent of everyone who was impacted by the crime in any way, including the victim, the offender, their families and friends, and members of the community. The next requirement is to assume complete and immediate responsibility for all process participants. Defendants have the chance to explain their actions, accept full responsibility, and participate in a process that determines how to take into account the needs of all stakeholders before they are brought before their victims and others who suffer the consequences of the crime.

This is why the restorative justice process focuses on the needs of the victim (what needs to be done to heal the trauma; to restore a sense of security), the

offender (what needs to be done so that evil never happens again, what needs to be made so that the offender behaves in accordance with the agreement reached), and members of the community (which will help them feel safe; what steps should be taken to improve the community so that crime is less likely to occur).

Instead of seeking revenge, restorative justice seeks to put things back to how they were before a crime was committed. This is done by using a variety of strategies, such as victim-offender mediation, apology, and/or reconciliation, as well as financial or other forms of reparation for the harm the victim has suffered.

Although restorative justice is viewed favorably, it is important to note that there are still insufficient avenues for its actual implementation. In other words, there are not enough mechanisms for putting a number of solutions into action, nor is there enough coordination between the actions of the relevant institutions, both of which are flaws that should be fixed.

Nevertheless, restorative justice, by applying its principles, provides restitution to victims and the community, encourages the reintegration of offenders, and strengthens ties between the victim, offender, and community—despite some disagreements and inconsistent implementation.

In the course of restorative justice, it is possible to view the offender's illegal behavior as a very serious offense that will be dealt with without excluding the offender from the neighborhood where he lives and works.

BIBLIOGRAPHY

1. Daniel W. Van Ness and Karen Heetderks Strong. 2010. *Restoring Justice – An Introduction to Restorative Justice*. 4th ed. New Province, N.J.: Matthew Bender & Co., Inc.
2. Howard Zehr. 1990. *Changing Lenses: A New Focus for Crime and Justice*. Scottdale, PA: Herald Press.
3. Tony Marshall. 1999. *Restorative Justice: An Overview*. London: Home Office Research Development and Statistics Directorate.
4. Martin Wright. 1991. *Justice for Victims and Offenders*. Philadelphia: Open University Press.
5. Sanja Ćopić i Vesna Nikolić-Ristanović. 2016. *Priručnik o najboljim praksama primene restorativnih pristupa u interkulturalnom kontekstu*. Beograd: Viktimološko društvo Srbije: Prometej.
6. Allison Morris. 2002. *Critiquing the Critics: A Brief Response to Critics of Restorative Justice*. Oxford University Press: The British Journal of Criminology. Vol. 42, No. 3: pp. 596-615.
7. Albert W. Dzur and Susan M. Olson. 2004. *Revisiting Informal Justice: Restorative Justice and Democratic Professionalism*. Law & Society Review, Vol. 38, No. 1: pp. 139-176.
8. Paul Takagi and Gregory Shank. 2004. *Critique of Restorative Justice*. Social Justice, Vol. 31, No. 3: pp. 147-163.
9. John Braithwaite. 2002. *In Search of Restorative Jurisprudence*, in L. Walgrave (Ed.) Restorative Justice and the Law. Cullompton: Willan Publishing: pp. 150-167.

10.Gerry Johnstone and Daniel Van Ness. (2007). *Handbook of Restorative Justice*. Willan Publishing.

Scientific Article
UDK 343.8(497.115)
343.261(497.115)

PUNISHMENT OF IMPRISONMENT UNDER THE CRIMINAL LEGISLATION IN THE REPUBLIC OF KOSOVO

PhD (C) Kosovare Sopi

University ‘’St Kliment Ohridski’’Bitola

Email: Kosovaresopi@gmail.com

Abstract

Any type of punishment is considered as a coercive measure to prevent the person from committing a criminal offense, or if the criminal offense has been committed, the punishment is presented so that the person is punished in relation to the criminal offense committed. In criminal law, justice is considered when the offender is given the deserved punishment. Punishment of life long imprisonment or punishment of imprisonment is considered as the most severe punishment for the perpetrator of the criminal offense, where in my paper I will focus on punishment of imprisonment in the Republic of Kosovo. Punishment of imprisonment is one of the main punishments provided by the Criminal Code of the Republic of Kosovo.

In this paper, I will address the changes in the punishment of imprisonment according to the criminal codes in Kosovo and the imposition of the punishment of imprisonment in the judicial practice, statistical data obtained from the Basic Courts of the Republic of Kosovo. In addition, this paper will rely on research methods such as comparative descriptive and statistical.

Keywords: Notion of punishment of imprisonment, changes of punishment of imprisonment according to criminal codes, punishment of imprisonment by the basic courts of the Republic of Kosovo.

Methods used in this paper are: Descriptive and comparative method

That according to this method we will describe the punishment of imprisonment foreseen according to the penal codes issued in Kosovo and through this method we will make a comparison of the punishment of imprisonment that is foreseen in these penal codes, seeing the differences but also the similarities of the punishment of imprisonment.

Statistical method

Through the statistical method, I will better explain the data that was provided to me by the statistics officer within the judicial council regarding the punishment of imprisonment during the first six months of 2019 in the basic courts in Kosovo, where I will present these in a tabular manner given by looking at which offenses the punishment of imprisonment was mostly imposed.

1. Notion of punishment of imprisonment

1.1 Elaboration of punishment of imprisonment under criminal law

Punishment of imprisonment holds an important place in criminal law, punishment of imprisonment is rightly considered one of the graver punishments, because we are talking about freedom removal, movement restriction and real separation from the outside world. Historically, the punishment of imprisonment was first provided in the French Penal Code in 1791, and then the punishment of imprisonment has spread throughout the penal codes of Europe and the world.

In criminal law, the codification of the punishment of imprisonment is considered a very big achievement, because until it was achieved that the punishment of imprisonment was issued instead of this sentence, the death penalty was applied and it was also allowed to use harsh, barbaric punishments, using many primitive methods, thus mistreating the prisoners in various forms, up to the most inhumane, using violence that often resulted in the death of the persons who were in suffering of punishment. The purpose of all punishments is to prevent the commission of crime or criminal offenses through these coercive measures, and in case of criminal offenses, then in accordance with the type of the offense committed, the punishment is also given[1].

As in every criminal code, in the Criminal Code of the Republic of Kosovo, punishment of imprisonment has an important place, even though there are various punishments that are foreseen in the Criminal Code as alternative and complementary punishments, we can say that most of the criminal offenses are foreseen punishment of imprisonment. The handling of this punishment is the result of the perception that this sanction is more appropriate and effective of the state's response to criminal offenses that are considered serious, such as those that contain elements of violence, organized crime, criminal offenses of murder, criminal offenses of trafficking in persons or intoxicants such as drugs, alcohol, etc.[2] Punishment of imprisonment according to the criminal law in the Republic of Kosovo is one of the principal punishments and is the second type of punishment with deprivation of liberty, that is, in the first place is punishment of life long imprisonment and then there is punishment of imprisonment.

According to the current Criminal Code of Kosovo of 2019, the minimum and maximum punishment of imprisonment is defined in article 42, where the punishment of imprisonment cannot be imposed for duration of less than thirty days

[1]I. Salihu - *Criminal Law, Pristina*, 2015, pp. 444 -446

[2]F. Krasnqi - *Introduction to Criminal Law*, Gilan 2021 page 137

nor more than twenty-five years.[3] Executions of punishment of imprisonment are sent to correctional centers for execution of punishment of imprisonment.[4]

1.2 The purpose of the punishment of imprisonment

[5] Punishment of imprisonment includes the purposes of its imposition; firstly the deprivation of liberty to a certain person is intended to protect society from criminality and at the same time to reduce recidivism or repetition of criminal offenses. [6]The purpose of the punishment has a personal character to the perpetrator of the criminal offense so that the punishment to this person is imposed in order to stop him from committing other criminal offenses and at the same time to educate that person so that after serving the sentence they will return as a useful person for society. Apart from the personal character, the purpose of the punishment has a general character for the whole society to influence the citizens to refrain from committing criminal offenses, as well as to create a sense of responsibility among citizens and educate them with the spirit to respect all legal norms or all legality.[7]

According to the Criminal Code of the Republic of Kosovo, the purpose of punishment includes mixed theories of punishment, according to Article 41 of the Criminal Code; there are 4 points of the purpose of punishment which are:

1) To prevent the perpetrator from committing criminal offenses in the future and to

rehabilitate the perpetrator;

2) To prevent other persons from committing criminal offenses;

3) To provide compensation to victims or the community for losses or damages caused by the criminal conduct;

4) To express the judgment of society for criminal offenses, increase morality and strengthen the obligation to respect the law.[8]

As foreseen on this legal provision, the Criminal Code of The Republic of Kosovo, for the purpose of the punishment, includes special preventive measures related to the perpetrator of the criminal offense and to prevent him from continuing to commit criminal offenses and rehabilitate him in the correctional institutions.

From point two it can be seen that this point has a general character in the prevention of other citizens from committing criminal offenses and from point three this provision represents an important role for the compensation of victims of crime because it is a fact that at the time of committing criminal offenses we have two parties in the process, the perpetrator of the offense and the injured party. By the

[3]I. Salihu - *Criminal Law*, Pristina, 2015, pp. 444 -446
[3]F. Krasnqi - *Introduction to Criminal Law,* Gilan 2021, page 137
[3] Code. No. 06/L-74 *Criminal Code of the Republic of Kosovo*, 2019, pg 10
[4] Law no. 04/l-149 *on execution of penal sanctions*, August 28, 2013 Pristina, pg 3
[5]‘’N.Mandela's rules’’, *UNDOC United Nations Standard Minimum Rules for the Treatment of Prisoners*, pg 3
[6]A. Çela, N. Peza, I. Elezi, G. Gjika, *Albanian Criminal Law*, Tirana 1973, pg 108
[7]B. Ukaj *Punishments in the criminal law of Albania* Pristina 2006 pg 216
[8]Commentary on the Criminal Code of Kosovo p. 189

commission of the criminal offense the injured party has been caused health or property damage by the perpetrator and the injured party must rightly be compensated by the offender.

The fourth point talks about social judgment and respect for the law, which is of a general nature. Special attention is now being paid to this topic because the entire role of the state apparatus is to raise the awareness of citizens in respect of the law because the higher the awareness of the citizens, the lower the level of criminality committed.

2. Punishment of imprisonment under the Criminal Code of Kosovo

2.1 Change of the punishment of imprisonment under the penal codes of Kosovo of 2003, 2013 and 2019[9]

2.1.1 According to the Provisional Criminal Code in the Republic of Kosovo, punishment of imprisonment is defined in Article 38 of this code, which reads:

- The punishment of imprisonment may not be shorter than fifteen days or longer than twenty years.
- The punishment of imprisonment is imposed in full years and months and, in cases where the term is up to six months, in full days.
- When the court pronounces a punishment of imprisonment of up to three months it may order that the punishment of imprisonment be replaced with a fine or, upon the consent of the perpetrator, with community service work.

2.1. While the prison sentence has undergone changes in the issuance of the new Criminal Code of the Republic of Kosovo in 2013 and the punishment of imprisonment is presented in Article 45 and defined as follows:[10]

-[11] The punishment of imprisonment may not be shorter than thirty (30) days or more than twenty five (25) years.

- The punishment of imprisonment is imposed in full years and months and in cases where the term is up to six (6) months, in full days.

2.1.3 Whereas, according to the latest Criminal Code of the Republic of Kosovo of 2019, the punishment of imprisonment is written in Article 42 and defined as:[12]

- The punishment of imprisonment may not be imposed for a term shorter than thirty (30) days or more than twenty five (25) years.
- For criminal offenses for which the law foresees the punishment of life long imprisonment, the court can impose a punishment of imprisonment up to thirty five (35) years.
- The punishment of imprisonment is imposed in full years and months and in cases where the term is up to six (6) months, in full days.

[9] Provisional Criminal Code *UNMIK/REGULATION*/2003/25, July 6, 2003 pg 165
[10] CODE NO. 04/L-082 *Crimina*l, July 13, 2012, page 11
[11]R. Hoxha *Theoretical-practical aspects of the execution of criminal sanctions in Kosovo* (1945-2014), Tirana 2015 pg 71
[12] CODE NO. *06/L-074 Criminal*, January 14, 2019 p. 10

As written above, it is easy to see the changes that the punishment of imprisonment has undergone in the three criminal codes of Kosovo, starting with the minimum setting of the days that in the temporary criminal code of 2003, the duration was 15 days and the maximum of 25 years, but it is worth noting that in this code, it is dedicated to a small sentence of imprisonment of up to 3 months, the court was able to pronounce any other lenient sentence such as a fine or community service general.

While according to the criminal code of 2013 there are differences with the previous code, starting from the end of the days which has been increased from 15 as it was before to 30 days, the 25 years has remained the same and the last paragraph has been removed, which writes about the prison sentence, the court could impose any of the alternative sentences.

While in the criminal code of 2019, the last code issued in the Republic of Kosovo, it is noted that there are changes and the second point has been added, which refers to criminal offenses that are punishable by life imprisonment. The court can impose a prison sentence of up to 35 years, in terms of days, 30 days and no more than twenty-five years has remained the same as in the previous code, and the imposition of this sentence has remained the same as that which is pronounced in full days.

3. Pronouncement of punishment of imprisonment in the Basic Courts of the Republic of Kosovo in 2019

3.1 Total punishments of imprisonment imposed in the Basic Courts of the Republic of Kosovo in the period of the first six months of 2019, according to the type of criminal offense.

Table No.1

	NAME OF THE CRIMINAL OFFENSE	TOTAL
	Crimes against international law /Criminal offenses against humanity and values protected by international law - Trafficking in persons	2
	Criminal offenses against life and body - Intimidation 23 - Harassment 10 - Assault 27 - Light bodily injury 89 - Grievous bodily injury 11 - Participation in a brawl 1	162
	Criminal offenses against liberties and rights of persons - Infringing inviolability of residences and premises 1 - Infringing privacy in correspondence and computer databases 1	2
	Criminal offenses against sexual integrity - Rape 2 - Providing premises for prostitution 4	7
	Criminal offenses against marriage and family - Changing the family status of a child - Violating family obligations 1	4

	- Prevention and non-execution of measures for protecting children	
	Criminal offenses against public health	2
	- Transmitting contagious diseases 1 - Production and distribution of tainted medical products 1	2
	Narcotic drug offenses - Unauthorized possession of narcotic drugs, psychotropic substances or analogues	20
	Criminal offenses against the economy - Counterfeiting stamps of value 1 - Organizing pyramid schemes and unlawful gambling 5 - Avoiding payment of mandatory customs fees or excise fees 1	7
0	**Criminal offenses against property** - Theft 70 - Theft of services 1 - Aggravated theft 132 - Theft in the nature of robbery 1 - Robbery 3 - Unlawful occupation of real property 3 - Destruction or damage to property 5 - Arson 4 - Fraud 11 - Blackmail 1 - Usury 2 - Breach of trust 1	236
1	**Criminal offenses against the environment, animals, plants and cultural objects** - Forest theft 16	16
2	**Criminal offenses against the general security of people and property** - Causing general danger 8	8
3	**Weapon offenses** - Unauthorized ownership, control or possession of weapons 4 - Use of weapon or dangerous instrument 4	8
4	**Criminal offenses against security of public traffic** - Endangering public traffic 77 - Driving while impaired or intoxicated 4	81
5	**Criminal offenses against the administration of justice and public administration** - False report or charge 1 - Falsifying documents 3 - Contempt of court 2 - Failure to execute court decisions 1 - Legalization of false content 6 - Escape of persons deprived of liberty 4	17
6	**Criminal offenses against public order** - Obstructing official persons in performing official duties 11 - Attacking official persons while performing official duties 13 - Removing or damaging official stamps or marks 2	26
	Official corruption and criminal offenses against official	2

7	**duty** - Failure to report or falsely reporting property, revenue/income, gifts, other material benefits or financial obligations 2	
	TOTAL PUNISHMENT OF IMPRISONMENT ISSUED IN THE FIRST SIX MONTHS OF THE YEAR (2019) [13]	621

Referring to table number one of the data received from the judicial council for basic courts, regarding the imposition of punishment of imprisonment for the offenses listed according to table number 1, it appears that punishment of imprisonment during the time period of the first six months of 2019 totaled 621 punishments of imprisonment.

This punishment was pronounced mostly in the chapter of criminal offenses against property, in 236 punishments of imprisonment imposed, as well as for the chapter of criminal offenses against life and body in 162 punishments of imprisonment pronounced, also for the chapter of criminal offenses against traffic safety, 81 punishments of imprisonment imposed for criminal offenses against public order 26 punishments of imprisonment and for other chapters of the offenses imposed punishment of imprisonment, you can find them in the above table marked.

Conclusion

In this scientific research ,the imposition of prison sentences in the Republic of Kosovo has been addressed .Analyzing in different periods of time the prison senteve according to the Criminal Codes which have been in force starting from the Criminal Code of 2003,2013 and finally according to the Criminal Code od 2019 which is in force. And from the analysis of these criminal codes ,we can easily conclude that the punitive policy of prison senteces has been different and more and more the minimum of the prison sentence has been increasing but also it'is masimum.

From the analysis of the data provided by the judicial council ,it is very clear that the prison sentence has been pronounced for all categories of criminal offenses.It should definitely be emphasized that there has been an increase in crime in general in the Republic of Kosovo and therefore it has determined to increase the time period of the prison sentence.According to the details that have been treated in this study,we recommend that you make a structure of the penal policy,taken and analyzed whether the prison sentence fulfills it's postualtes or whether these perpetratoirs of criminal offenses who are given this sentence are reintegrated ,we also recommend to see how the imisition of this sentence affects the prevention of recidivism of the perpetrators of criminal offenses.

Bibliography

1. ''N.Mandela Rules'' page 3 UNDOC United Nations Standard Minimum Rules for the
2. A. Çela, N. Peza, I. Elezi, G. Gjika, Albanian criminal law Tirana 197
3. B. Ukaj Sentences in the criminal law of Albania, Pristina 2006

[13]*Statistical data sent by the statistics officer at the judicial council of Kosovo* on 12.06.2023

4. Code. No. 06/L-74 Criminal Code of the Republic of Kosovo, page 10, 2019
5. Commentary on the Criminal code of Kosovo, edition 1 I.Salihu, H.Zhitja, F. Hasani
6. F. Krasnqi Introduction to Criminal Law, Gjilan 2021
7. I. Salihu Criminal Law Pristina, 2015
8. Law no. 04/l-149 on the execution of criminal sanctions, August 28, 2013 Pristina
9. Provisional Criminal Code, July 6, 2003, p. 16
10.R. Hoxha Theoretical-practical aspects of the execution of criminal sanctions in Kosovo (1945-2014), Tirana 2015
11. Statistical data sent by the statistics officer at the judicial council of Kosovo on 12.06.2023
12. The Criminal Code of Kosovo of 2013
13.Treatment of Prisoners

Scientific Article
UDK 327:911.3
339.923:061.1Брикс

BRICS VERSUS THE GLOBAL WEST IN THE LIGHT OF CURRENT GLOBAL REALIZATIONS

Zoran Vasileski, M.Sc
PhD candidate at the Institute for Security, Defense and Peace - Faculty of Philosophy - Skopje
zorvas74@gmail.com

Abstract

In recent years, the world has obviously been going through enormous global geo-economic and geopolitical changes and turmoil. Bearing in mind that the multilateral system after 1945 as well as "Paxamericana", the Western liberal-capitalist system, which is in serious decline, as well as the huge rise of the BRICS group with African countries shyly freeing themselves from the new neo-colonialism, opportunities for redefinition are opening up. of their own roles in the world order.

All of that led to a slowdown in economic growth, blocking of international exchange and turnover, as well as reduced energy needs and an increase in energy prices. The global pandemic of Covid 19 contributed to not only an economic, energy, health crisis, but also in the field of security, especially with the outbreak of the military conflict in Ukraine.

The world simply cannot survive without economy and business, which cannot progress without development, and the war in Ukraine further dynamizes the started tectonic geopolitical upheavals and disturbances in which a completely new picture of the world is observed. With the emergence of the conflict, all the possible negative aspects of the world's development dynamics were shown, regardless of whether it was somewhere moving slower, somewhere faster. And because of that, there is currently no sustainable development in terms of energy, economic, financial, health and educational prosperity, which of course brings the world into a position of regression and stagnation.

Therefore, it is obvious that whenever the conflict ends, a new redistribution of power in the world order is in sight, which creates new challenges in geopolitics.

Keywords: geopolitics, redistribution of power, energy, world order, covid 19

Introduction

Geopolitical processes are constantly changing, maturing, transforming, because geopolitics is a relationship between geographic space and politics. Through it, international relations are explored, as well as the actors in those processes, which contribute to changing the position and power of those actors.

With the action of certain parties, the global political processes change, but also increases their power. The geopolitical process enables a hierarchical organization of space. J. Taylor considers that the geopolitical order is a set of geopolitical codes in which a single matrix is largely present, namely that the codes are the result of practical, geopolitical inference. It contains a set of political geographical assumptions that complement the foreign policy of the state.[1] There are as many geopolitical codes as there are countries, and the codes of the strongest countries have an influence on neighboring countries, on countries in the region, on the continent or in the whole world, if the country is strong and powerful. The big powers, especially the USA, China, Russia... compete not only on the European, but also on the world stage, who will have a greater influence, not only in determining geopolitical processes, but also in security. Big games are played, with a well-prepared strategy to knock out the competition on every field. The USA has the support of its allies, the EU. They are in the stage of realignment, of increasing their influence on European soil, especially in Asia. That is why the support of the USA to Ukraine is great, in order to achieve the key strategic goal - dominance in every field, especially economic and security.

Globalization, deterritorialization of capital, increase in production, consumption, change in the organization of global space, change in perceptions of the organization of space, in the perception of security, indicate the possible directions of development of modern relations in the world, and whoever understands this well can to restructure and take a step forward.

The ideology of globalization is the ideology of rich and highly developed countries, primarily the United States.[2] Globalization contributes to the increased circulation of people, capital, services, ideas, values. The stronger and stronger, the greater the power.

The formation of BRICS (acronym of the first letters of the member countries Brazil, Russia, India, China and South Africa) is to be an alternative and balance to the Western economic systems in the spheres of cooperation, such as finance, economy, security, politics, culture... but also joint action in the fight against drug trafficking, money laundering, terrorism and corruption. The unifying element among the member countries is certainly the rapid economic growth and progress in the light of the new multipolar world order. In the beginning, these countries had sustained rates of high economic growth that infused them with economic optimism for their future, and opponents of BRICS were of the opinion that the countries were too diverse to belong to such a grouping and that it was all just a marketing ploy by Goldman Sachs. ” which grew into a platform for international cooperation similar to the G7.

The influence of the BRICS countries is great, if the population, natural resources and territory they have are taken into account. The group has concluded an agreement called Contingent Reserve Arrangement, which is a protective mechanism for defense against global economic pressures in terms of liquidity, and

[1] Taylor, P.J. (1993). Political Geografy, Longman Scientific&Tehnical,Essex, str.74

[2] Vukadinovic, R. (1999). Globalization and global American policy. Political thought XXXXVI, br.1, str.24-41

since 2015 the member states have initiated the creation of a parallel collection system similar to the SWIFT system.

What is BRICS?

BRICS (eng. BRICS) is an international political organization of leading developing powers and the successor of the previous BRIC organization, which was abolished with the inclusion of the South African Republic (SAR) in 2010. The first five member countries are Brazil, Russia, India, China and SARA (BRICS = Brazil, Russia, India, China and South Africa). With the exception of Russia and China, the other BRICS members are developing countries that are considered emerging powers due to their large economies and significant influence in regional and international developments. Almost one half of the world's population lives in them.

The BRICS countries, according to China's views, are defenders and advocates of developing countries and advocates of world peace.[3]

In September 2006, the foreign ministers of the original four BRICS members (Brazil, Russia, India and China) met in New York, beginning a series of high-level meetings.[4] As a whole, the members of the organization met for the first time on May 16, 2008 in Yekaterinburg, Russia. BRICS has been holding annual summits since 2009, and the last one was this year in JAR.

BRICS, representing 40 percent of the world's population on three continents, with economies at various stages of development, is united by a common desire for a world order that member states believe better suits their interests and growing power. The theme of their 15 The summit was BRICS and Africa, and it took place at a time when the continent has once again emerged as a diplomatic battleground for the United States, Russia and China, who are vying for economic and diplomatic influence.

"We will call on the international community to refocus on the issue of development, promote a greater role for the BRICS cooperation mechanism in global governance, and strengthen the voice of the BRICS,"[5] Chinese President Xi said in an article published in South African media.

It has been confirmed that interest in the block is growing. New member countries are already the Argentine Republic, the Arab Republic of Egypt, the Federal Democratic Republic of Ethiopia, the Islamic Republic of Iran, the Kingdom of Saudi Arabia and the United Arab Emirates.

Currently, the member countries of this economic bloc account for 31.5% of the world's GDP, and if you add to this 26% of global oil production, 50% of iron ore, 40% of corn and 46% of wheat, this economic bloc becomes highly competitive. in the world market compared to western countries. In addition to this, BRICS member countries intend to establish their own Internet cable connection for direct communication, the so-called BRICS cable. At the summit in Brazil in 2014,

[3] Business Day, посетено август 2023

[4] Briks information portal, посетено во август 2023

[5] https:// kanal5.com.mk. start Briks samit.., август 2023

the members signed agreements on cooperation in military defense, education and oil products.[6]

The priorities of BRICS!

BRICS member countries, when talking about global economic development, emphasize that their greater economic protection from economic shocks is needed, especially the changes brought about by the Covid-19 pandemic.

Every newly rising power in the world is building a world order with its own institutions and its own currency. The Interbank Cooperation Mechanism was introduced in 2010 to facilitate cross-border payments in local currencies between BRICS banks. Higher interest rates in the West and the debt crisis in the United States have raised concerns among other countries about their dollar-denominated debts, as well as the possible fall of the dollar in the event of a collapse of the world's leading economy. Otherwise, trade in local currencies is ongoing between the BRICS countries, so that 80% of the trade between China and Russia is carried out in rubles and yuan, while the trade for the purchase of energy between Russia and India is carried out in rupees and rubles. The member countries of the group, according to this, develop and upgrade their own payment system for transactions without converting their own currency into dollars.

At the same time, work is also being done on a BRICS crypto-currency with a strategic alignment of the development of the digital currencies of the Central Bank, which will be promoters of the interoperability of currencies as well as economic integration. That is why they are also in favor of circumventing the Swift system in order to avoid Western sanctions.With the expansion of the BRICS group, the process of de-dollarization will certainly play a key role in the global move, due to the fact that the member countries continue to reject the greenback in mutual trading and use of their own currencies.

China is pushing for oil trade to be denominated in yuan, and Saudi Arabia's entry into BRICS could bolster this ambition and potentially change the dynamics of global oil trade. Trade relations between these two countries are based on mutual economic benefit with China's "Belt and Road" initiative worth several trillion dollars, but also on Saudi Arabia's "Vision 2030" initiative. According to this, there are obvious advantages in the cooperation between these countries, which on a long-term basis will be buyers and importers of gas and oil, while European customers will increasingly find alternative sources of energy such as solar and wind energy.

BRICS will be able to reach a level of self-sufficiency in international trade by avoiding other world global unions. Unlike others, the BRICS currency union will not be united by common territorial borders, but will be able to produce a wider range of commodities and goods than any existing monetary union. This is an artifact of geographic diversity as well as an opening to a degree of self-sufficiency

[6] https://respublika.edu.mk/ blog/ politika- new brix composition

that painfully avoids currency unions defined by geographic concentration, such as the Eurozone, which is home to a trade deficit of $476 billion in 2022.[7]

BRICS cannot be ignored in future scenarios

The strategies for specialization and internationalization of production are being revised. States and strong and powerful companies are reorganizing and increasing investment in new technologies such as robotics and artificial intelligence. According to this, the geo-economic and political processes in the world are moving towards a more decentralized, ultra-technological globalization.

The current geo-economic order is predictably marked by greater rivalry in the interstate system and mistrust between political and economic actors, but also by the deepening, by the dominant actors, of global militarization, which can strengthen greater systemic chaos.

An enlarged BRICS will be hard to ignore. One of the main points of discussion in the coming period between the strongest economies and the BRICS countries could be bridging the gap in their interests on environmental issues and setting priorities.

Three directions emphasize the direction for the new geoeconomic and geopolitical processes. These are business, i.e. GDP growth and development, new markets and adjustment policy... The green economy also plays a significant role, because it is connected with an ecological transition in production and sustainable development, which contributes to economic growth, to the adaptation of capitalism to A "cleaner" model, although socially unequal, or a transition to a new model, which implies a radical change in the ecological, social and geo-economic matrix.

Adaptation to "green" capitalism will contribute to deep geopolitical and geoeconomic processes. At this critical juncture, it is essential to create broad democratic and transformative platforms that bring together activists, committed citizens and social organizations seeking to prevent the destruction of ecosystems and the multiple inequalities that the COVID-19 crisis has brought to light. There is no single recipe, but multiple routes to escape capitalist globalization and articulate a new globalization of trans-local movements. Many of them are already underway and are trying to rediscover transnational solidarity and internationalism, expanding future horizons.[8]

As the world grows unstable in several domains, the risk of crises accelerates, which in turn have an impact on geopolitical cooperation and socioeconomic risks related to the supply and demand for natural resources.[9]

BRICS and the geoeconomic activities of the great powers USA and China

[7] Htpps:// novamakedonija.com.mk/Macedonia/politika/the BRICS currency can change the dominance of the dollar,

[8] Bringel,B (2022) Global chaos and the new geopolitics of pauer and resistances, st. 271-279

[9]WolrdeconolGloballRisks.Percepcion Survey 2002- 2023.s10

As European soil is waiting to see what will happen with the Ukrainian counteroffensive, the US is making plans for dedicated action in the Asian part. The more the Russian power will be reduced by the war in Ukraine, and therefore in the world, due to the sanctions, the more the American plans shift to confronting China, i.e. they pay great attention to the action of strengthening their geo-economic and geo-political positions in this part of the world. The US has allies for that.

According to analyst M. Stefanov, Russia is rejected from any serious action, and the battle between the three powers USA, China, Russia, is being fought on the European and Eurasian stage.[10]

By strengthening the military potential of the Far East, as well as alliances with regional powers that are China's neighboring states, through the conclusion of a series of seriously significant agreements with these regional allies (Philippines, Japan and Australia) in the name of China's strengthened military and economic power accepted the new military arrangements with the United States. The US has secured its own nuclear submarines by starting with the construction of basic infrastructure in the Indo-Pacific region, with the aim of reducing possible Chinese military action with an increased presence of US troops in the entire island belt east of Taiwan. On the other hand, what is China's impetus for foreign economic performance?

China, according to CHINA DAILY,[11] has stepped up efforts to stabilize external economic and trade performance while improving the trade structure with a series of policy measures, with which the country is expected to further strengthen enterprises in the foreign trade sector while establishing stronger cooperation with advanced countries. and economically developed countries. These efforts will contribute to the expansion of Chinese trade and are conducive to global economic strengthening and better geo-economic positioning of the country. This is confirmed by the fact that Chinese trade grew by 4.8 percent annually, and by 1.44 billion dollars in the first quarter of 2023.[12]

The expansion of BRICS gains weight especially after the escalation of the rivalry between the US and China, but also because of the changes in international relations that are happening especially because of the consequences of the war in Ukraine. The offer by China and official Beijing to form an alternative world order is met with positive acceptance and approval by the global south (countries from South America and Africa), as well as by many economic analysts at the recently held summit in Johannesburg, who point out : "many countries feel marginalized in the international system, which is dominated by the interests of Washington and its super-rich allies".[13]

---

[10] Stefanov, M. American forces are rapidly preparing for war with China.Gepolitika news.visited August 2023

[11] What is the Chinese impulse for foreign trade performance? New Macedonia. election 67 May 2023

[12] also

[13] Htpps:// novamakedonija.com.mk,economic/ economy/ standing, cohesion and coherence

Conclusion

The new geoeconomic and geopolitical processes are a reality, and therefore all actors in international geopolitical relations, as well as the population of the planet Earth, whose lives are affected by these processes, should be confronted. The world's geopolitical processes, which lead to the redistribution of power and influence, are influenced by various factors, primarily by geo-economic processes, the process of globalization, deterritorialization, the new organization of spaces, the use of renewable energy sources, and the strengthening of capacities. of the states. The processes are in the stage of creation and maturation, so at this moment it is difficult to talk about the future. It is important to understand that the progress of technology and the creation of a good and sustainable strategy for conquering new spaces are important.

Literature

1. Albert, M. (2000). From Defending Borders towards Managing Geographical Risks? Security in a Globalized World. Geopolitics.
2. Bringel, B. (2022). Global Chaos and the New Geopolitics of Power and Resistance. s. 271 –279WorldeconolGlobal Risks. Perception Survey 2022-2023.s10
3. Glassner, M.I. (1995). Political Geography.Wiley&Sons. New York.
4. Jean, C. (1995), Geopolitica, Editori Laterza, Roma-Bari.
5. Luttwak, Edward N. (1990). "From geopolitics to geo-economics", The National Interest, Summer
6. Newman, D. & Kliot,N. (1999). Globalization and the Changing World Political Map. Geopolitics.
7. Stefanov, M. American forces are rapidly approaching the war with China. Geopolitics news. Accessed May 2023
8. Plevnik, J. (2001). "The significance of geopolitics and geoeconomics in international relations." International Studies, vol I, no. 2-3
9. Taylor, P.J. (1993). Political Geography, Longman Scientific&Technical, Essex, p.74
10. Vukadinovic, R. (1999). Globalization and global American politics. Politickamisao, vol. XXXVI, no. 1. p. 26-41

Other sources

11. Business Day, August 2023
12. BRICS information portal, accessed August 2023
13. What is China's momentum for foreign trade performance? New Macedonia. Choice. May 6-7, 2023.
14. https://kanal5.com.mk/pochna-samitot-na-briks-putin-vo-jar-go-isprati-lavrov/a596846, accessed August 2023
15. https://macedonian.trtbalkan.com/world/shto-e-briks-i-kako-funcjonira-8996582, accessed August 2023
16. https://novamakedonija.com.mk/makedonija/politika/valutata-na-briks-mozhe-da-ja-raznisha-dominacijata-na-dolarot/, August 2023

17.https://respublica.edu.mk/blog/politika/noviot-sostav-na-briks-voved-vo-nov-globalen-poredok/ visited August 2023
18.World Economic Forum. Global Risks, Perception Survey 2022 -2023.
19.World Economic Global Risks.Perception Survey 2022-2023.s10

Professional Article
UDK 35.075:004.8
004.8:17

ADVANCEMENT OF INSTITUTIONS THROUGH ARTIFICIAL INTELLIGENCE – KEY TO A BETTER FUTURE

Zoran Risteski, Msc. In Law
Faculty of Law, University of "St. Kliment Ohridski" – Bitola
risteski_zoran@yahoo.com

Saso Dodovski, Msc. In Public Administration
sasodod@yahoo.com

Abstract

In this paper, we will explore the use of artificial intelligence for the advancement of institutions and their contribution to a better future. We will examine various strategies and approaches for the implementation of artificial intelligence in institutional systems, aiming to improve efficiency, transparency, and decision-making power. The results reveal that the integration of artificial intelligence can enhance the functionality and reputation of institutions, laying the foundation for a better future.

Key words: artificial intelligence, institutions, better future.

INTRODUCTION

Artificial intelligence (AI) represents a technological advancement that opens up countless possibilities for the improvement of all aspects of human society. In this context, the use of artificial intelligence in institutions has the potential to generate significant changes and shape society towards a better future. This paper explores the importance and role of strong institutions as catalysts for development and stability, and how artificial intelligence can be applied to enhance their functionality. Through analysis of examples, research, and cases of successful implementation, it investigates how artificial intelligence can contribute to the improvement of institutions and create stronger, efficient, and accountable decision-making mechanisms. At the same time, this paper examines the challenges and shortcomings associated with the introduction of artificial intelligence in institutions, including ethics and legal aspects. Possible risks and concerns regarding privacy, security, discrimination, and resistance are explored, and proposals for balanced approaches and solutions that need to be considered when implementing artificial intelligence in institutions are provided. Artificial intelligence (AI) refers to the field of computer science that focuses on the development of systems capable of performing tasks that would typically require human intelligence. It encompasses

various techniques and methods, including machine learning, natural language processing, computational reasoning, and more.

Applications of artificial intelligence

Artificial intelligence has a wide range of roles and applications. Some of them include:

• Automated decision-making: AI can analyze large volumes of data and assist in the decision-making process, leading to improved results and efficiency in various institutions.

• Task automation: AI can be used to automate various routine or complex tasks, freeing up time and resources for institutions to focus on critical or creative tasks.

• Natural language understanding: AI can understand and interpret natural languages, enabling communication and interaction between humans and machines in a natural way.

• Prediction and analysis: AI can predict and analyze data, helping institutions recognize trends, anticipate and respond to problems, or contribute to process and service improvement.

• Robotics: AI can be integrated with robotics, enabling the development of autonomous systems and robots capable of performing various tasks and operations.

These are just a few examples of how artificial intelligence can be applied in different institutional contexts. The potential for AI is vast, and its applications continue to expand as technology advances and new possibilities emerge.

Analysis of the role and significance of institutions in society and various aspects of their functionality

The institutions play a vital role in society and have significance in multiple aspects. Here are some analyses and factors regarding their role and significance:

1. Protection of rights and freedoms: Institutions such as the legal systems and the police have the task of protecting the basic rights and freedoms of citizens. They ensure access to justice, enforce laws, and prevent abuses and violations.
2. Ensuring stability and order: Institutions support order and stability in society. They apply laws and regulations, enforce rules and procedures, and ensure the normal functioning of institutions and systems.
3. Fulfilling obligations and responsibilities: Institutions have the responsibility to fulfill their obligations to citizens and society. They manage public resources, implement policies and programs, and work to improve conditions in society.
4. Fighting corruption and injustice: Institutions play a critical role in combating corruption and injustice. They conduct investigations, punish corruption, and protect the rights of the affected parties.
5. Development and progress: Institutions stimulate development and progress in society. They facilitate the private sector, support entrepreneurship, invest in education and healthcare, and create conditions for economic and social advancement.

In conclusion, institutions are crucial for achieving a stable and functional society. They support the rule of law, guarantee principles of justice and impartiality, and represent pillars of democracy and trust in the system. To be effective and strong, institutions need to be independent, competent, transparent, and open to citizen participation and accountability.

Within the scope of this topic, the importance of artificial intelligence (AI) in supporting strong institutions is emphasized. AI can be used for processing and analyzing large amounts of data, detecting irregularities and corruption, handling complex experiences, and converting information into usable knowledge. Techniques such as machine learning and data analysis can assist institutions in efficiently and quickly resolving problems and making decisions based on objective facts.

From the overall analysis, it can be concluded that institutions, supported by artificial intelligence, play a vital role in improving society. By introducing new technologies and innovative approaches, we can enhance the functionality and efficiency of institutions and create a better future for all citizens.

The challenges facing institutions and the need for their strengthening

Institutions face various challenges that necessitate their strengthening. Some of the key challenges include:

1. Corruption and injustice: Corruption and injustice pose significant obstacles to the functioning of strong institutions. Institutions need to be capable of combating corruption and implementing measures to address injustice as it erodes citizens' trust and diminishes the effectiveness of institutions.
2. Rapid technological advancement: Technological advancements, including new technologies like artificial intelligence, present new challenges for institutions. They must adapt their systems and processes to harness the benefits of technology and address the associated challenges.
3. Complex problems and global challenges: Institutions grapple with complex problems and global challenges such as violence, crime, environmental issues, and international crises. They need to develop capacities for implementing a multidisciplinary approach and collaborating with other institutions to address these challenges.
4. Resource constraints: Institutions face the challenge of limited resources. Financial constraints and a lack of qualified personnel can hinder their ability to fulfill their mandates. Therefore, increased support from governments, the international community, and other organizations is needed, along with mechanisms for efficient and responsible utilization of available resources.
5. Technological and informational challenges: The development of artificial intelligence and other technologies may bring challenges related to data privacy, cyber-attacks, and information manipulation. Institutions need to employ state-of-the-art security protocols and be capable of safeguarding citizens and information from potential risks.

By strengthening institutions, we can overcome these challenges and improve societal conditions. This requires investment in training and development of qualified personnel, support for the development and implementation of new

technologies, and the establishment of mechanisms for accountability and oversight of institutions. Only through strong institutions can we achieve a future where justice, peace, and stability are ensured.

Application of artificial intelligence for enhancing institutions

The application of artificial intelligence can significantly contribute to the advancement of institutions. Here are a few specific examples of how AI can be utilized:

1. Process automation: Artificial intelligence can be used to automate routine and repetitive tasks within institutions. For instance, automated classification and processing of documents, generation of reports and analyses, anomaly detection, saving time and resources.
2. Data analysis: AI enables institutions to extract meaning and patterns from large amounts of data. Through techniques such as machine learning and data analysis, institutions can identify trends, recognize anomalies, and predict opportunities and challenges.
3. Crisis prediction and response: Artificial intelligence can assist institutions in predicting and responding to crises. For example, analyzing social media and other sources of information using AI can help in early detection of potential violent activities or natural disasters and aid in taking preventive measures.
4. Decision support: AI can aid institutions in the decision-making process. Machine learning algorithms and data analysis can extract information from various sources and provide high-quality analysis and recommendations, facilitating decision-making processes within institutions.
5. Security and surveillance: Artificial intelligence can be leveraged to enhance security and surveillance within institutions. Advanced pattern recognition algorithms and video analytics can enable institutions to monitor public spaces and identify potential lawbreakers or illegal activities. Additionally, AI-based cybersecurity systems can detect and prevent cyber-attacks and information misuse.

These are just a few examples of how artificial intelligence can be applied to enhance institutions. By adopting this technology, institutions can become more efficient, improve their responsiveness and predictability, and strengthen their decision-making and oversight capabilities.

Ethical and legal aspects related to the use of artificial intelligence in institutions

Ethical and legal aspects related to the use of artificial intelligence (AI) in institutions are of paramount importance. Here are several key aspects to consider:

1. Data Privacy: The use of AI in institutions often involves the collection and analysis of personal data. Respecting individuals' privacy and ensuring data protection within the framework of legal and ethical principles is crucial.
2. Profiling and Discrimination: AI has the potential to create and use profiles of individuals, which can lead to discrimination or unfair treatment. Institutions should exercise caution when using machine learning algorithms and implement socially and ethically responsible policies to prevent discrimination and injustice.

3. Accountability and Transparency: When AI is employed in institutions, mechanisms for accountability and oversight should be established. Accountability should be attributed to the organization or institution utilizing AI, rather than solely focusing on algorithms or models. Additionally, ensuring transparency and explainability of AI-driven decisions, especially those affecting individuals' rights and freedoms, is essential.

4. Regulatory Frameworks: Safeguarding citizens, protecting privacy and ethical principles should be supported by appropriate regulatory frameworks. Institutions should adhere to specific legal standards and regulations governing various aspects of AI usage. This includes laws on data protection and privacy, anti-discrimination laws, as well as laws on oversight and accountability. Regulatory frameworks should be dynamic and adaptable to the rapid technological advancements in the field of artificial intelligence.

In conclusion, institutions need to have a clear awareness of the ethical and legal challenges associated with the use of artificial intelligence. They should be committed to developing policies and procedures that protect individuals' rights and freedoms, ensure transparency and accountability, and comply with regulatory standards. Only through such an approach can institutions effectively leverage artificial intelligence to improve services and support the ideal of a better future with strong institutions.

Advantages and outcomes of using artificial intelligence in institutions

The use of artificial intelligence (AI) in institutions can offer numerous advantages and lead to the following positive outcomes:

1. Improved efficiency and productivity: AI can automate various tasks and processes within institutions, reducing the time and resources required for their execution. This results in greater efficiency and improved productivity.

2. Enhanced service quality: AI can provide advanced algorithms and data analysis, leading to better and more accurate decision-making. Institutions can enhance their services by delivering dedicated and personalized experiences to their users.

3. Faster and accurate data analysis: AI can analyze large volumes of data quickly and extract valuable insights and patterns. This enables institutions to perform rapid and accurate analyses, aiding them in decision-making and planning processes.

4. Enhanced security and surveillance: AI can be used for monitoring public spaces, recognizing inappropriate behavior, and detecting legal violations. This can improve security and the ability of institutions to respond to potential issues.

5. Innovation and progress: The use of AI enables the exploration of new problem-solving approaches and the discovery of new opportunities. This stimulates innovation and progress within institutions, opening up new perspectives and solutions that bring positive changes to society.

6. Economic effects: The use of AI in institutions can have positive economic effects. Task automation and process optimization can reduce costs and improve operational efficiency. This can lead to increased profits, improved

financial stability, and the ability of institutions to invest in new initiatives and projects.

Overall, the use of artificial intelligence in institutions offers numerous advantages and outcomes. From improving efficiency and service quality to supporting decision-making and enhancing security, AI has the potential to transform the way institutions function and provide a better and brighter future.

Challenges and questions related to the implementation of artificial intelligence in institutions

The implementation of artificial intelligence in institutions faces several challenges and shortcomings that need to be addressed:

1. Expert knowledge and training: Alongside the introduction of artificial intelligence, there is a need for training and expertise in this field. Institutions should provide training to their members and engage professionals who will introduce artificial intelligent systems and assist in their implementation and management.
2. Economic aspects: The implementation of artificial intelligence can be costly and resource-intensive, involving investments in development, infrastructure, and support. Institutions need to consider the economic aspects and ensure adequate resources for successful implementation and functioning of artificial intelligence.
3. Unpredictability and errors: Despite advancements, artificial intelligence can be subject to unpredictability and errors. In some cases, systems may make incorrect decisions or provide inaccurate results. Institutions should be aware of the possibility of errors and implement mechanisms for control and correction.
4. Ethical challenges: The introduction of artificial intelligence in institutions brings forth ethical challenges, including questions of privacy, fairness, and moral implications. Institutions should develop ethical principles and apply them in all aspects of using artificial intelligence.
5. Dependence on tech giants: The implementation of artificial intelligence can lead to dependence on major technology companies that develop and control this technology. This can create imbalances in the influence and control of artificial intelligence in institutions. Institutions should be aware of this dependence and consider alternative approaches to the development and use of artificial intelligence.
6. Privacy and security: The introduction of artificial intelligence in institutions can raise concerns about data privacy and security. In many cases, artificial intelligent systems work with large amounts of data, and challenges may arise in protecting personal information and user data. Institutions need to take these challenges into account and implement appropriate measures to protect privacy and data security.
7. Impact on jobs: The introduction of artificial intelligence can have an impact on jobs and employees in institutions. Some traditional job positions may be replaced by automated systems and robots. Institutions should consider reskilling employees and creating new job positions focused on artificial intelligence and its various aspects.

These challenges and shortcomings are just some of the aspects that need to be considered when implementing artificial intelligence in institutions. There are

many other challenges that need to be experienced and resolved based on the specific needs and context of institutions. Critical thinking, planning, and an approach dedicated to ethics and good governance are essential for successfully overcoming these challenges.

To ensure successful implementation of artificial intelligence in institutions, it is necessary to develop a compromise between technology, legal and ethical frameworks, human resources, and organizational culture. At the same time, active dialogue should be maintained with stakeholders, including citizens, academia, legal experts, and experts in the field of artificial intelligence.

Only by addressing these challenges and overcoming the shortcomings can artificial intelligence be successfully integrated into institutions and bring significant benefits and improvements to their functioning and the execution of their tasks.

PROCESS OF IMPLEMENTATION

The process of implementing artificial intelligence in institutions consists of several phases that ensure the successful adoption and utilization of this technology. Here are a few phases that need to be considered:

1. Planning: In this phase, the goals, needs, and expectations of implementing artificial intelligence are defined. The specific requirements of the institution are analyzed, and a strategy for implementation is created.
2. Development: In this phase, artificial intelligent systems are developed and programmed based on the institution's needs. Models and algorithms for data processing and decision-making are developed and trained.
3. Testing: After the development phase, various testing and evaluations are conducted to verify the performance and efficiency of artificial intelligence. Different scenarios are examined, and potential errors and issues are identified.
4. Monitoring: After successful testing, artificial intelligence is introduced into the operational environment of the institution. The system's performance is monitored, data is collected, and results are analyzed. Regular checks and supervision are required to ensure that the system operates properly and delivers satisfactory results.

These phases are crucial to ensuring the successful and effective implementation of artificial intelligence in institutions. It is recommended to have a plan to address potential challenges and provide the necessary resources and support for each phase. Additionally, good communication and collaboration between the artificial intelligence development team and different departments within the institution, which will use and work with the system, are important.

Each phase of implementation requires careful attention and approach, as well as continuous improvement and adaptation of the artificial intelligence system. Only through constant monitoring and updating of technologies and processes can their effective and successful implementation in institutions be ensured.

Finally, it is important to note that the implementation of artificial intelligence in institutions is a long-term and ongoing process. Over time, with the development of technology, new challenges and opportunities may arise, which need to be addressed and responsibly applied.

CONCLUSION

Artificial intelligence represents a powerful tool with the potential to enhance the functioning of institutions and contribute to a better future. Through the use of artificial intelligence, institutions can strengthen their capacities and achieve greater efficiency in fulfilling their tasks.

Artificial intelligence enables institutions to perform tasks faster, accurately, and with greater precision. It can aid in problem identification and prediction, support strategic decision-making, and establish effective mechanisms for supervision and control.

However, the implementation of artificial intelligence in institutions is not without challenges and drawbacks. Ethical and legal issues, as well as data security and privacy, should be primary concerns when using this technology. Additionally, there are challenges in training and acceptance of artificial intelligence by human resources.

To successfully implement artificial intelligence in institutions, a good strategy and planning are required, as well as collaboration and communication among different departments within the institution. Implementation should be accompanied by continuous monitoring and updating over time to address new challenges and technological developments.

With proper use and application, artificial intelligence can contribute to a better future by strengthening institutions and improving conditions and quality of life for citizens. To convey a message of trust and responsibility, institutions should apply artificial intelligence while respecting ethical standards and legal frameworks. Only through a responsible and balanced approach can artificial intelligence be a powerful means of improving institutions and creating a better future for all.

REFERENCES:

1. Acemoglu, D., & Restrepo, P. (2019). The Race Between Man and Machine: Implications of Technology for Growth, Factor Shares, and Employment. American Economic Review, 109(7), 2491-2529.
2. Bostrom, N. (2014). Superintelligence: Paths, Dangers, Strategies. Oxford University Press.
3. Brynjolfsson, E., & McAfee, A. (2014). The Second Machine Age: Work, Progress, and Prosperity in a Time of Brilliant Technologies. W. W. Norton & Company.
4. European Commission. (2018). Ethics Guidelines for Trustworthy AI. Retrieved from https://ec.europa.eu/digital-single-market/en/news/ethics-guidelines-trustworthy-ai
5. Floridi, L. (2019). The Logic of Information: A Theory of Philosophy as Conceptual Design. Oxford University Press.
6. Russell, S. J., & Norvig, P. (2016). Artificial Intelligence: A Modern Approach. Pearson.
7. World Economic Forum. (2018). The Future of Jobs Report 2018. Retrieved from https://www.weforum.org/reports/the-future-of-jobs-report-2018

Professional Article
UDK 305-055.1/.2:332.146.2(497.7)
305-055.1/.2:502.131.1(497.7)

2030 AGENDA– GENDER MAINSTIMING IN THE REPUBLIC OF NORTH MACEDONIA AS A CONTRUBTION TO THE SUSTAINABLE DEVELOPMENT

Liljana Jonoski, PHD Student
Prof. d-r. Svetlana Veljanovska

Abstract

The goal of introducing the concept of gender equality of women and men in all institutions is to reduce the gap between women and men in all parts of society, which should rely on the best national and international practices, because gender equality is one of the key aspects for prosperity of the whole society and obligation for the state arising from the Sustainable Development Agenda 2030. The Agenda 2030 is one of the basic tools through which the United Nations aims to transform the world towards long-term sustainable development through defining and striving for achievement of 17 different goals. To what extent the Republic of North Macedonia, in accordance with the policies it creates, contributes to the achievement of the goal no. 5 - gender equality, is the main topic of this paper which covers findings of the current state, but also the main challenges that we face as a state and as citizens towards its achievement.

Key words: *sustainable development, gender equality, Agenda 2030*

Introduction

In September 2015, all 193 member states of the United Nations adopted a plan to create a better future for all, setting the course for the next 15 years to end extreme poverty, inequality, injustice and protect our planet. The Sustainable Development Goals are the basis of the "Agenda 2030" and they are easily applicable in the local contexts of communities. The Sustainable Development Goals includes:

Picture 4 – UN Sustainable development goals

Based on assessed scope of 30 documents (21 at state, 2 at regional, 2 at city and 1 at municipal level), finding suggests that the alignment of Sustainable Development Goals with national strategic development planning in North Macedonia is at 83 per cent (see Diagram 1). Full compliance is observed with Goals 4 (Education), Goal 6 (Water), Goal 7 (Energy), Goal 9 (Infrastructure and Industrialization) and Goal 16 (Inclusive governance), in which all global targets are reflected in assesses policy planning of the country. The least integration is found to be in Goal 10 – 50% (Inequalities between and within countries). Lack of coverage in SDG 10 can be explained by the fact that some of the targets are tracked and regulated by international community (10.a. Special and differential treatment developing countries; 10.b. ODA and other flows, 10.6. Developing countries representation and voice and 10.c. Remittances transaction cost). Some Goal 14 targets (14.6. Fisheries subsidies; 14.b. Access of smallscale artisanal fishers) are considered as relevant for North Macedonia and recommended to be included into planning, monitoring and reporting agenda of national sustainable development and SDGs. Some of the targets are reflected in several sectoral and sub-national documents (list of those found in some 6-to10 documents is listed below). This speaks for their relevance and prioritization in the country across sectoral areas. At the same time 17 targets are completely missing on reviewed documents and need to be analyzed for their relevance to country context and integration into strategic planning system for the remaining decade of SDG implementation in 2020 - 2030 (for example 2.c. Food commodity markets; 10.1. Growth bottom 40; 10.7. Migration and mobility policies; 11.5. Disaster impact reduction; 12.2. Sustainable management of natural resources; 12.3. Reduce food losses, etc (See Table 1)

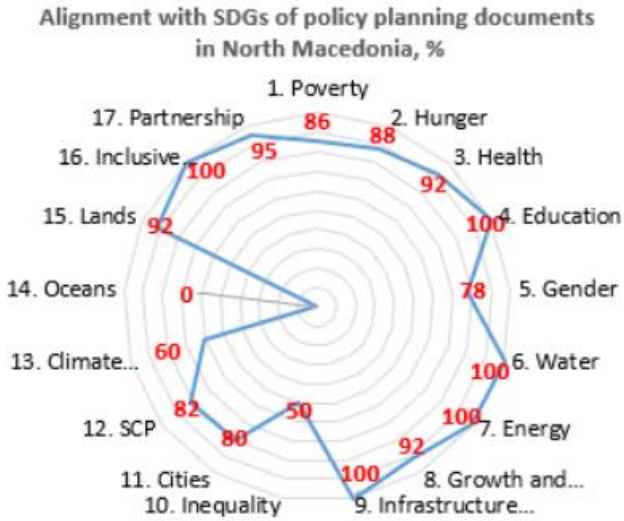


Diagram 1 – Overall alignment with National SDGs and Agenda 2030 profile in North Macedonia (source: Rapid integrated assessment of key national policy development planning-North Macedonia)

All reviewed policy documents	% covered	Coverage	Global
1. Poverty	86	6	7
2. Hunger	88	7	8
3. Health	92	12	13
4. Education	100	10	10
5. Gender	78	7	9
6. Water	100	8	8
7. Energy	100	5	5
8. Growth and Jobs	92	11	12
9. Infrastructure and industrialization	100	8	8
10. Inequality	50	5	10
11. Cities	80	8	10
12. SCP	82	9	11
13. Climate change	60	3	5
14. Oceans	0	0	10
15. Lands	92	11	12
16. Inclusive governance	100	12	12
17. Partnership	95	18	19
	83	140	**169**

Table 1 – Coverage of SDGs in all reviewed policy documents (source: Rapid integrated assessment of key national policy development planning-North Macedonia)

1. Agenda 2030 and National Council for sustainable development

The 2030 Agenda integrates all three dimensions of sustainable development (economic, social and environmental), representing a major shift from the approach of more fragmented parallel processes towards a comprehensive and universal agenda for population, planet and prosperity in general, based on peace,

inclusiveness, strong and committed governance and global partnership. The adoption of the Agenda 2030 by the Republic of North Macedonia in 2015 took place in the context of a long-term political crisis, which was resolved by early elections at the end of 2016. The new Government, elected in mid-2017, focused on solving the obstacles to the country's Euro-Atlantic integration. After signing the Treaty of Friendship with Bulgaria in 2017, the historic Prespa Treaty with Greece in 2018 resolved the decades-long name dispute. These agreements and progress in key reform areas unblocked the Euro-Atlantic process, with NATO membership and the start of EU accession negotiations taking place in early 2020. The country was also targeting another critical goal, ie. developing good regional relations as the main basis for peace, stability and economic development. (Link: https://northmacedonia.un.org/mk/sdgs)

The government has embraced the 2030 Agenda as a "universal framework for strengthening collective action towards common goals and challenges", with "reduced inequality" and "leaving no one behind" as key principles underpinning its activities. The political-regulatory environment is largely defined by the Euro-Atlantic integrations, which have been the strategic priority of every Government since independence in 1991.

1.1. National Council for sustainable development

The National Council for Sustainable Development (NCSOR) was established in 2010 as an advisory body of the Government with the mission of creating and maintaining conditions for the implementation of the "National Strategy for Sustainable Development" which provides direction and a roadmap for balanced economic, social and environmental development of the state with the aim of integration into the European Union. The National Council is chaired by the Deputy President of the Government of North Macedonia responsible for economic issues and coordination of economic sectors and it has representatives from all relevant ministries, executive representatives from municipalities, as well as representatives from academic institutions and the private sector. The main task of the Council is to ensure compliance during the implementation and monitoring of the national Strategy for Sustainable Development, as well as the implementation of the Sustainable Development Goals of the United Nations in North Macedonia, through sustainable development programs of individual ministries. The implementation of the SDGs in the Republic of North Macedonia is coordinated and monitored through the mechanism with the Technical Working Groups (TRG) that are formed in the National Council for Sustainable Development.

Members of the National Council for Sustainable Development are:

- The Deputy President of the Government of the Republic of North Macedonia responsible for European issues;
- The Minister of Environment and Physical Planning;
- The Minister of Local Self-Government;
- The Minister of Economy;
- The Minister of Labor and Social Policy;
- The Minister of Agriculture, Forestry and Water Management;

- The Minister of Finance;
- The Minister for Information Society and Administration;
- The Minister of Transport and Communications;
- The Minister of Foreign Affairs;
- The Minister of Education and Science;
- The Minister of Health;
- The Minister of Justice;
- Representative from the Macedonian Academy of Sciences and Arts;
- Representative from the Chamber of Commerce of North Macedonia;
- Representative from the Chamber for Information and Communication Technology of North Macedonia;
- Representative from the Chamber of Commerce of the Northwest part of North Macedonia;
- One expert on sustainable development, two specialists in economics, one expert in the field of social development and one expert in environmental protection, proposed by the following state universities: University of St. Cyril and Methodius in Skopje, University of St. Kliment Ohridski - Bitola, Gotse Delchev University - Shtip, the State University of Tetovo and the University of Southeast Europe – Tetovo.

The members of Council are also members of the Assembly with the right to vote, at the proposal of the Assembly of the Republic of North Macedonia. The members of the Technical Working Group can also participate in the work of the Council, with the right to discuss but without the right to vote. If necessary, other ministers, directors and experts on specific issues may be invited to the meetings of the Council, without the right to vote. The National Council for Sustainable Development works in sessions. It meets at least twice a year. A session of the Council can be held if the majority of the total number of members is present at the session and the Council decides with a majority of votes from the total number of members present at the session. (http://www.greendevelopment.mk/mk/NCSDandTWG.aspx)

2. Agenda 2030, gender equality and gender mainstreaming

The motto "Leave no one behind" implies taking into account the safety needs of all and ensuring access to justice for all. Measures to ensure gender equality are an integral part of the effective rule of law, ensuring access to justice for all and the existence of effective, accountable and inclusive institutions. In all contexts globally, women and girls are affected by insecurity, harmful practices, violence and conflict. Women's insecurity is often reinforced by intersecting forms of discrimination based on factors such as their age, race, ethnicity and religion, disability, social class, sexual orientation and/or gender identity. For example, poor rural women often face particular barriers in accessing security and justice services. To be effective, the security and justice sectors must provide services that address the diverse security and legal needs of women and girls. For institutions to be accountable and inclusive, the justice sector must respect the representation of women and girls and ensure their involvement in the society and decision-making

processes. A core part of the vision of Agenda 2030 is to "Achieve gender equality and empower all women and girls", expressed in SDG 5 (Table 2). The targets of SDG 5 include ending discrimination against women and girls, eliminating all forms of violence against all women and girls, and ensuring women's full and effective participation and equal opportunities for leadership at all levels of public life. Agenda 2030 recognizes that achieving gender equality and empowering women and girls make a crucial contribution to progress in all the goals and targets: "The achievement of full human potential and of sustainable development is not possible if one half of humanity continues to be denied its full human rights and opportunities." (Schluchter, Serrano, Bastik, OSCE, Policy Brief, 2019, 3-5)

Achieve gender equality and empower all women and girls
5.1 End all forms of discrimination against all women and girls everywhere
5.2 Eliminate all forms of violence against all women and girls in the public and private spheres, including trafficking and sexual and other types of exploitation
5.3 Eliminate all harmful practices, such as child, early and forced marriage and female genital mutilation
5.4 Recognize and value unpaid care and domestic work through the provision of public services, infrastructure and social protection policies and the promotion of shared responsibility within the household and the family as nationally appropriate
5.5 Ensure women's full and effective participation and equal opportunities for leadership at all levels of decision-making in political, economic and public life
5.6 Ensure universal access to sexual and reproductive health and reproductive rights as agreed in accordance with the Programme of Action of the International Conference on Population and Development and the Beijing Platform for Action and the outcome documents of their review conferences
5.a Undertake reforms to give women equal rights to economic resources, as well as access to ownership and control over land and other forms of property, financial services, inheritance and natural resources, in accordance with national laws
5.b Enhance the use of enabling technology, in particular information and communications technology, to promote the empowerment of women
5.c Adopt and strengthen sound policies and enforceable legislation for the promotion of gender equality and the empowerment of all women and girls at all levels

Table 5 – Targets for SDG 5

Women and girls cannot enjoy full equality unless they enjoy security and justice. Ending discrimination, violence and harmful practices against women and girls, providing equal access, equal participation and opportunities for leadership and enforcing gender equality laws require a security and justice sector that works according to the principles of good governance. An effective security and justice sector operating according to such principles enables women to become more equal partners in decision-making and development. This entails integrating gender equality in the provision, management and oversight of security and justice. As such, achieving SDG 5 requires connected progress on SDG 16 (Peace, justice and strong institutions). Gender-specific targets are mainstreamed across Agenda 2030.

Even where gender is not explicitly highlighted in a goal or target, "systematic mainstreaming of a gender perspective" is identified as necessary. This means that in any action to implement the 2030 Agenda, whether legislation, policies or programmes, the implications for women, men, girls and boys should be carefully assessed at each stage and level. Women's as well as men's concerns and experiences should be an integral dimension of the design, implementation, monitoring and evaluation of policies and programmes (OSCE Policy Brief on "A Security Sector Governance Approach to Women, Peace and Security" for a fuller discussion of the Women, Peace and Security Agenda, 2020, 7-14)

Effective gender mainstreaming within the security and justice sector needs to recognize how sexual and gender-related discrimination interact with other forms of discrimination. The 2030 Agenda is not the only policy framework linking gender equality to security and justice. SDG 5 targets reflect commitments made in the 1995 Beijing Declaration and the 1979 Convention on the Elimination of All Forms of Discrimination against Women. The Women, Peace and Security Agenda had already placed the importance of gender equality in conflict, peace processes and post-conflict settings high on the international agenda. With the focus on inclusivity in SDG 16 and on equal participation in SDG 5, the 2030 Agenda affirms Women, Peace and Security norms on the importance of women's full participation in all stages and spheres of peace processes and conflict resolution. (UN – Department of peace operations, 2020, 13-23)

3. The economic empowerment of women and girls and the sustainable development goals

Economic empowerment of women is one of the key preconditions for advancing gender equality. Low participation in the labor market, the gender gap in wages, unrecognized domestic work, as well as limited access to resources and management positions are significant factors that prevent the realization of the full potential of women and girls and their equal participation in all social spheres. 2030 Agenda treats gender equality from several aspects including goals and tasks in various areas which fulfillment is expected to improve the economic position of women. In the context of gender equality in North Macedonia, especially with regard to the economic empowerment of women, several goals and tasks of the Agenda can be singled out as the most relevant and are the subject of this analysis. Goal 5, which was already mentioned and analyzed is dedicated to achieving gender equality and empowering women and girls, includes two tasks (5.4. and 5.a.) that refer to the improvement of the position on the labor market and in economic relations. In addition, 2030 Agenda through objective 8 and task 8.5. strives to achieve full and productive employment and decent work for all women and men, as well as equal pay for equal work, which will directly contribute to the improvement of the economic position of women.

The stated objectives relate to the economic empowerment of women and will measure and value unpaid domestic work, the degree of promotion of the distribution of domestic responsibilities, the degree of implemented reforms that will give women equal rights and access to economic resources, access to property and control over land and other forms of property, financial services, heritage and

natural resources, according to the national laws. In addition to these, and indirectly related to the economic position of women, and thus equality, are the goals of eradicating poverty in all its forms (goal 1), eradicating hunger and achieving food security, better nutrition and promotion of sustainable agriculture (goal 2) and reducing inequality within and between countries (goal 10). Initial indicators for monitoring the goals for the economic empowerment of women in AOR are presented in table 3. (National Voluntary Review Report of North Macedonia, 2020, 42-48)

Tasks	Indicators
Goal 5.4. Recognition and valuation of the unpaid housework (caring for children, the elderly and people with special needs), by providing public services, infrastructure and social policies protection and promotion of distribution of responsibilities in the family	5.4.1. Percentage of time spent in unpaid homework and care (for children, the elderly and people with special needs) by gender, age and location.
5.a. Implement reforms that will give them equal rights of women to the economic resources and access to ownership and control on land and other forms of property, financial services, heritage and natural resources, in depending on national laws	5.a.1. (a) Percentage of citizens with ownership or rights to agricultural land and other forms of property, financial services, heritage and natural resources, depending on national laws. Percentage of citizens with property or securing the rights to agricultural land (from the total agricultural population) by gender; and (b) participation of women among the owners or holders of rights for agricultural land according to the type of ownership 5.a.2. Percentage of countries where the legal framework (including customary law) guarantees equal rights of women's ownership of land and/or control over land
Goal 8.5. By 2030, achieve full and productive employment and decent work for all women and men, including youth and people with special needs, as well as equal pay for equal work.	8.5.1 Average earnings (per hour) of employed women and men according to profession, age and special needs (persons with special needs) 8.5.2 Percentage of unemployment, divided by gender, years and special needs (persons with special needs)

Table 6 – Economic empowerment of women in SDGs

4. To what extent are national data and statistics sufficient for monitoring and reporting towards the Sustainable Development Goals?

Indicator 5.4.1. that is, the time spent in unpaid domestic work and care can be partially monitored through the Time Use Survey, which the State Statistical Office conducts every five years. This survey shows the gender distribution of time spent in domestic duties, and the data is comprehensive and shows that women

mostly take care of domestic duties and children, regardless of whether they are employed, unemployed or inactive in the labor market. (State Statistical Office, Survey for Time Use, 32-55). Survey data are disaggregated by time, gender, age, and marital status, but do not show respondents' location, ethnicity, and income, as predicted by the indicator. The Agency for Cadastre and Real Estate is the competent state institution that has the data relevant for monitoring indicator 5.a.1. Although it has data on the percentage of ownership or rights to property (real estate) and agricultural land broken down by gender, the Agency does not publish this data on its website. These data should be public for all citizens in order to be use in different purposes as well as a basis of researches and monitoring processes. This is also one of the recommendations identified from this analysis as a conclusion of this paper.

The Indicator 5.a.2. (Percentage of countries where the legal framework (including customary law) guarantees equal rights of women's ownership of land and/or control over land) for task 5.a. it is also traceable, as it implies an assessment of the legal framework governing ownership. According to the principles of the Constitution of the Republic of North Macedonia, citizens have the right to property and the right to inheritance and "no one can be deprived or limited of ownership and the rights arising from it, except when it is a matter of public interest determined by law. (Constitution of the Republic of North Macedonia (1991), Economic, Social and Cultural Rights, Article 30)/ In this context, it can be said that formally and legally there are no laws that limit women's right to property. However, there is indicative data that only a quarter of the owners of agricultural land and real estate are women. (UN Women, Women and Men in North Macedonia, 2022, 15-78). It indicates potential shortcomings in the implementation of the regulation, as well as the need for additional research to identify the reasons for the large gender gap in land ownership.

The Indicator 8.5.1 (Average earnings (per hour) of employed women and men according to profession, age and special needs (persons with special needs)) for the achievement of the goal 8.5., is partially measurable through the existing data of the State Statistical Office. The State Statistical Office has published several publications which include the average earnings of female and male employees, by profession and age, but the earnings are not distributed according to how much women and men are paid per hour, and there is also no data on persons with special needs. On the other hand, research shows that women from ethnic minorities would work for the lowest incomes (Reactor – Research in action, 2019, 54-65) and hence the importance of the State Statistical Office in collecting and operating the data on the employment and incomes of women from ethnic minorities. The rate of employment and income should be distributed according to the municipalities, in order to identify local environments where additional measures and policies are needed to stimulate the economic activity of women.

4. Political participation and inclusion of women in decision making processes reviewed through SDG goals

Women's political involvement is a basic human right guaranteed by the United Nations Universal Declaration of Human Rights, the Convention on the Elimination of All Forms of Discrimination and the Beijing Platform for Action. International instruments recognize the various barriers that affect the degree of political participation of women and expect member states to introduce measures and mechanisms to equalize political participation between women and men. According to numerous studies, women are more likely to support laws and measures that promote equality, improve the status of women, social programs, education and health (Wittmer, D. E., & Bouché, V. (2013), (245-275). Researches in North Macedonia confirm that women members of the councils in municipalities give higher priority to issues related to health, social issues, education and investments in social infrastructure (Foundation for democracy Westminster in North Macedonia, 2019, 127-152). However, the involvement of women in politics and in leadership positions remains a challenge and, although significant steps have been taken to advance the participation of women in political life, the gender gap remains a challenge in key political positions (ministerial and mayoral positions), as well as in management positions in state and public institutions.

When we look through the goals for sustainable development, the political participation of women is measured through the following indicators (Table 4):

Tasks	Indicators
5.5. To ensure full and effective participation of women and equal leadership opportunities for all levels of decision-making in the political, economic and public life	5.5.1. Percentage of women in Parliament and councils in local governments 5.5.2. Percentage of women on management positions
16.7. To ensure responsible, inclusive, participatory and representative decision-making processes at all levels.	16.7.1. Percentage of positions (by gender, age, persons with special needs and population groups) in public institutions (national and local legislative bodies, public administration and judiciary) in relation to national allocations 16.7.2 Percentage of population that believes that decision-making is inclusive and participatory by gender, age, people with special needs and population groups

Table 7 – Political participation and inclusion of women in decision-making processes

The involvement of citizens in decision-making and the degree of civil participation are one of the key indicators of the openness and democracy of a society. North Macedonia, as part of the Open Government Partnership initiative, stands for open, transparent and reliable institutions that communicate and cooperate with citizens. It would also be mentioned here the fact that there is progress in the creation of strategic documents in accordance with the goals for sustainable

development, so if the previous strategy for gender equality 2013-2020 was not at all correlated with sub-goal 16.7. and indicator 16.7.2., the new strategy for gender equality for the period 2022-2027 has included the participation of women in management, supervisory boards, managerial positions, defense, and for the first time, climate change has been discussed from a gender perspective. (Ministry of labor and social affairs, National Strategy for gender equality 2022-2027, (2022), 14-25). The insufficient collection of gender-disaggregated data continues to represent one of the main challenges of the institutions, and this, on the other hand, threatens the presentation of the real picture and progress of the state towards the goals of sustainable development related to gender equality.

Conclusions

Gender equality in the 2030 Agenda for Sustainable Development (SDG) is a matter of great importance. The Sustainable Development Goals (SDGs) treat gender issues in a sensitive manner and build expectations that gender equality will be considered as a priority in the new global sustainable development policy of countries. At the national level, the Republic of North Macedonia strategically approaches enabling gender equality through a series of significant policy development measures, reflected mostly in the Strategy for Gender Equality 2022-2027 and the National Action Plan 2022-2024, but also in other reports for measuring the progress of the economic and political inclusion of women in social trends.

Gender equality by 2030 requires urgent action in the direction of removing many rooted causes of discrimination that limit women's rights in the private and public spheres of life. The commitment to advance gender equality has led to improvements in some areas, but the thesis of a world in which every woman and girl enjoys full gender equality still falls short.

Achieving the goals of the 2030 Agenda requires the strong involvement of public sector institutions, including those within the security and justice sectors, as well as their oversight mechanisms, including national human rights institutions. Activities to achieve the SDGs can be an incentive for states to check the effectiveness and accountability of their institutions in relation to each of the SDGs. Meeting the specific goals of the SDGs in the most of the countries will require some degree of institutional transformation of the oversight, governance and services of security and justice sector institutions. Conversely, if the security and justice sectors operate in ways that reinforce inequality and exclusion, this will prevent the state from achieving the SDGs.

References

1. UNDP: North Macedonia: Implementing Sustainable Development Goals: Rapid integrated assessment of key national policy development planning, 2020, Report for North Macedonia

2. National Council for sustainable development, http://www.greendevelopment.mk/mk/NCSDandTWG.aspx .

3. Schluchter, A.L.; Serrano, L. A and Bastick, M. (2020) "The 2030 Agenda for sustainable development, the security sector and gender equality", Policy Brief, OSCE
4. Malone D.M. (2018) "On SDG 16: Peace, justice and strong institutions", Our World, 14 May, https://ourworld.unu.edu/en/sdg-16-peace-justiceand-strong-institutions ;
5. Martínez-Solimán, M. and Fernández-Taranco O. (2017) "Sustainable development and sustaining peace: Two sides of the same coin", UNDP, 20 July, https://www.undp.org/content/undp/en/home/blog/2017/7/20/Sustainable-development-and-sustaining-peace-Twosides-of-the-same-coin.html
6. Council of Europe (2018) "European judicial systems: Efficiency and quality of justice", CEPEJ Studies No. 26, Strasbourg: Council of Europe
7. Equal Measures 2030 (2018) "Data driving change. Introducing the EM2030 SDG Gender Index", Woking: Equal Measures 2030, p. 7; H. M. Nygård (2018) "SDG 16 Data Initiative: 2018 global report", SDG 16 Data Initiative Global Reports 2, Oslo: SDG 16 Data Initiative
8. International Women's Development Agency (2016) "The global goals: Women, peace and security", Melbourne: IWDA
9. UN – Department of peace operations, (2020) "Gender equality and Women, Peace and Security", Resource Package, https://peacekeeping.un.org/sites/default/files/gewps19_respack_v7_eng_digital.pdf
10. National Voluntary Review Report of North Macedonia, (2020), Department for sustainable development in the Government of North Macedonia; https://sustainabledevelopment.un.org/content/documents/26950VNR_2020_North_Macedonia_Report_Macedonian.pdf
11. State Statistical Office (2015), Population and social statistics: Time use survey; https://www.stat.gov.mk/Publikacii/2.4.15.20.pdf
12. State Statistical Office (2023), "Women and men in North Macedonia" https://www.stat.gov.mk/PrikaziPoslednaPublikacija.aspx?id=23
13. Jovanovski, B., Zdravev, D., Shkrielj, S., Ilikj, S. (2016), Gender equality in Republic of Macedonia and the Agenda for sustainable development –Analysis, pp. 20-40
14. Constitution of Republic of Macedonia (1991), Economic, social and cultural rights, article 30, http://www.sobranie.mk/ustav-na-rm.nspx
15. Reactor – Research in action (2010). Women in Macedonian economy, http://www.reactor.org.mk/CMS/Files/Publications/Documents/Nacionalna%20-%20mak%20FINAL.pdf
16. Foundation for democracy Westminster in North Macedonia, (2019), "Women's participation in politics in North Macedonia – Study and research papers" pp. 127-152
17. National Strategy for gender equality 2022-2027, (2022), Ministry of labor and social policy in North Macedonia, Official Gazette no. 170/2022
18. The Convention on the Elimination of all Forms of Discrimination Against Women – CEDAW (1987), United Nations General Assembly, http://www.ohchr.org/Documents/ProfessionalInterest/cedaw.pdf

19. Wittmer, D. E., & Bouché, V. (2013). The limits of gendered leadership: Policy implications of female leadership on “women’s issues”. Politics & Gender, 9(3), pp. 245-275
20. Stefanova-Stojanovska, A., Shopova-Magdincheva, M. (2022) “Gender equality – human right and basic for prosperity and sustainable world”; Yearbook of Faculty for Tourism and Business Logistics, pp. 50-60

Professional Article
UDK 341.123:502.131.1]:340.137(497.7)
341.123:332.146.2]:340.137(497.7)

REPUBLIC OF NORTH MACEDONIA PARTNERSHIP – AGENDA 2030

Ljuben Andrijašević, M.Sc
Faculty of Law - Kicevo
"St. Kliment Ohridski" University, Bitola
ljubenandrijasevikj@gmail.com

Ph, D. Sasha Dukoski
Faculty of Law - Kicevo
University "Sveti Kliment - Ohridski" Bitola
sasadukoski@hotmail.com

ABSTRACT

Human rights, stability, and peace are essential catalysts for sustainable development in terms of the rule of law.

Today we live in a world in which the differences are getting bigger. Some regions enjoy constant peace, prosperity, and security, but other regions are in an unending cycle of violence and conflict.

The Sustainable Development Goals, which are the basis of the United Nations 2030 Agenda, aim to end inequality, injustice, and extreme poverty and protect the entire planet. Promoting justice and peace is one of the 17 global goals. which make up the program for sustainable development until 2030.

The purpose of this paper is an analysis of the extent to which the processes of harmonizing domestic planning documents and the legal framework regarding the practical application of goal 16 in the Republic of North Macedonia have been initiated, through the prism of the United Nations Agenda 2030.

Keywords: Peace, justice, strong institutions, Agenda 2030, goal 16, and sustainable development.

INTRODUCTION

In the modern world, peace, justice, and strong institutions are crucial for achieving sustainable development. It is Agenda 2030 that represents a strategy whose main goal is not only to promote but also to ensure progress concerning these three aspects.

Peace, in addition to ensuring the stability and security of nations, also enables economic progress and growth. On the other hand, justice or fairness refers to the elimination of poverty, the reduction of economic and social injustices, the protection of human rights, and the promotion of gender equality. But to achieve peace and justice, strong institutions and governance systems are necessary, which in themselves ensure the rule of law, inclusive participation, and accountability of all actors involved.

The basic code of ethical behavior in a corporate society in respect of civil society refers to supporting social institutions, economic actors, and educational systems in the community, cooperation, and support of the work of the local community and institutions that protect the environment.[1]

The United Nations as the largest multilateral international organization has a key role in developing and safeguarding strong institutions by creating legal mechanisms, building capacities, and providing technical assistance, thereby helping to support sustainable development, given the fact that it lays the foundation for stability, legality and efficiency in the work of states and their institutions.

The founders of the United Nations and the authors of the UN Charter started from the urgent need of the world to ensure lasting peace and cooperation in the world after the end of the Second World War.

Within the framework of the 2030 Agenda, there are several indicators and goals related to peace, justice, and strong institutions, so an example of one of them is Goal 16 - Peace, justice and strong institutions. It is about a goal that has its aim to ensure access to justice for all, responsible institutions, and to develop an economic and legal environment, so in correlation with this, internal law, state management, and justice are the main components of this goal.[2]

To achieve this Goal 16, the United Nations is committed to supporting Member States in capacity building and institutional reforms, as well as providing support to legal systems and public services, which includes technical assistance, financial assistance, expertise, and transfer of knowledge, as well as to ensure respect for the basic rights and freedoms of all people.

Through Agenda 2030, the world community recognizes the importance of peace, justice and strong institutions as important aspects for achieving sustainable development and progress of all nations.

To ensure peace, justice, and strong institutions, active participation and engagement of all states, non-governmental organizations, the business sector and civil society is required. That is, only through joint efforts and cooperation can we make progress and create a world in which people can live in peace and with trust in competent authorities.

[1]International Trade Law, Ph. D, Sasha Dukoski, Kichevo 2014, page 346;
[2]International organizations, Ph. D, Gjorgi Tonovski, European University-RM, Skopje (Faculty of Legal and Political Sciences), Skopje, 2006, page 49;

Agenda 2030 represents a kind of strategy and vision for achieving peace, justice and strong institutions within institutions, which in themselves are interdependent.

Interdependence is often a vague term used in various, contradictory ways, like other political words such as nationalism, imperialism and globalization.[3]

Implementation of goal 16 of the 2030 agenda in the republic of north macedonia

The main priority of the Government of the Republic of North Macedonia in the past few years is the reform in the justice sector, which refers to strengthening its independence, impartiality, efficiency, responsibility, transparency and quality. However, there are other national priorities such as: creating an open society and restoring trust in public institutions by promoting a peaceful and inclusive society, ensuring equal access to the justice system and improving the transparency and accountability of public institutions.[4]

The Republic of North Macedonia is committed to protecting children from neglect and abuse, so in this regard, 2019 was significant for this country when a turning point occurred, because no more children are living in institutional facilities, which process was conducted according to the National Strategy for Deinstitutionalization for the period from 2018 - 2027. In this context, to support its commitment to the protection of children, the Government of the Republic of North Macedonia adopted a National Strategy for the Prevention and Protection of Children from Violence 2020-2025 and an Action Plan to Reduce All Forms of Violence Against Children 202- 2022.

In the area of the independence of the judiciary, the strengthening of the rule of law and judicial institutions, as one of the main priorities of the Government, the most important activity is the implementation of the Justice Sector Reform Strategy 2017-2022 with an Action Plan, the implementation of which is monitored by the Monitoring Council the implementation of the Strategy for reforms in the justice sector, chaired by the Minister of Justice. Because of this, from 2017 onwards, amendments and additions have been made to certain laws, and at the same time a completely new Law on the Judicial Council has been adopted, amendments and additions have been made to the Law on Courts, to the Law on the Academy for Judges and Public Prosecutors, adopted is a new Law on the management of the movement of subjects in the courts, a new Law on Public

[3]Understanding International Conflicts, Introduction to Theory and History, Joseph S. Nye, Jr., Academic Press Skopje, 2008, page 269;

[4]https://epi.org.mk/wp-content/uploads/2020/07/%D0%A1%D0%B5%D0%B2%D0%B5%D1%80%D0%BD%D0%B0-%D0%9C%D0%B0%D0%BA%D0%B5%D0%B4%D0%BE%D0%BD%D0%B8%D1%98%D0%B0-%D0%94%D0%9D%D0%9F.pdf , page 94;

Prosecution, a Law on the Council of Public Prosecutors and the Law on the Protection of Personal Data. Namely, the term "judicial authority" in the most general sense of the word represents a set of institutional processes through which collective decisions are made that are bound.

In addition to these, in 2019 a new Law on Prevention and Protection against Discrimination was adopted, based on which the Parliament is required to establish a new Commission for Prevention and Protection against Discrimination, as the most important state body for ensuring protection against discrimination and promoting equality for all.

In the interest of improving access to justice for all, the Parliament also adopted the following laws: the Law on Misdemeanors, the Law on Free Legal Aid and the Law on Administrative Disputes. The Law on Free Legal Aid guarantees first and second-degree legal aid for citizens who do not have sufficient funds. In 2019, the costs for notary procedures and execution were also reduced, and other activities are underway to improve the legal framework and strengthen the judicial system, where we also meet with a combination of permanent training of judges, public prosecutors, judicial and the public prosecutor's officers organized by the Academy of Judges and Public Prosecutors of the Republic of North Macedonia, to ensure the implementation of the legal regulation.[5]

To harmonize national standards in criminal justice with international standards, the Republic of North Macedonia has been cooperating with the Agency for Fundamental Rights (EAOP) since 2017. In addition to this, in 2010 the Government concluded a Cooperation Agreement with Eurojustice (EUROJAST), which somewhat led to successful and long-term cooperation in the field of criminal justice.

The improvement of conditions in prisons is another priority of the Government, so the prison in Idrizovo has been renovated, and improvements have been made in the women's department at the "Idrizovo" KPD, the Bitola prison and other facilities. Through the implementation of the National Strategy for Combating Terrorism and the National Strategy for the Prevention of Violent Extremism, the Government is also working to strengthen the capacities of staff in correctional and penal institutions for early recognition and detection of violent extremism and radicalization.

In 2019, amendments were made to the Law on Prevention of Corruption and Conflict of Interest, with which law the Government reasonably expects to have an improved ranking of the Republic of North Macedonia in the index of perception of corruption. North Macedonia has an active role in the prevention and fight against human trafficking, for which five mobile teams have been formed, which are composed of police officers, social workers and members of the civil society, as a result of which the number of identified potential victims and victims of human trafficking.

[5]International Judiciary, Svetlana Veljanovska and Nikola Tuntevski (2022), Iris Struga, Iris Struga. ISBN 978-996-105-400-1, page 1;

In terms of the strategic-legislative framework, since 2016, various strategic-legislative initiatives have been undertaken in the direction of strengthening institutions and the formation of an inclusive and peaceful society.

The reforms in the justice sector that started in 2017 led to the modification of several strategic-legislative frameworks, namely: first, the Law on the Judicial Council, which was drafted following the opinions of the Venice Commission; secondly, the Law on the Council of Public Prosecutors, which has been amended and supplemented due to the expansion of the prosecutors' powers, promotion of transparency and determination of the responsibility of the members of the Council; thirdly, a new Law on free legal aid was adopted to enable citizens who are without sufficient means to exercise their rights before the courts, administrative bodies and other state bodies such as the Constitutional Court, the Ombudsman and other institutions fourthly, drafted are amendments and additions to the Law on Notary and the Law on Execution, which provide support to citizens concerning the high costs of execution and notary procedures.

As part of the Government's efforts to improve public administration and promote transparency, the following strategic acts have been prepared: Public Administration Reform Strategy and Action Plan 2018-2022, Strategy and Action Plan for Open Data 2018-2020, National Plan for Quality management in the public sector 2018-2020 and Strategy for the protection of personal data 2017-2022.

For the sake of further compliance with the legal framework of the EU legislation, the Republic of North Macedonia introduced the principle of non-punishment of victims of human trafficking and child victims of trafficking through amendments and additions to the Criminal Code, in December 2018.

Union appears and acts in some real-political international conditions, where the dominant role belongs to the nation-states.[6]

The Government of North Macedonia is fully committed to the implementation of the UN Global Compact for Safe, Orderly and Regular Migration.

Meanwhile, the Law on Prevention of Money Laundering and Financing of Terrorism and the Law on Free Access to Public Information has been revised for greater transparency of democratization and economic development.

In order to strengthen trust in public institutions at all levels among citizens and create an atmosphere of transparency and trust in the processes of EU and NATO integration, the Government also developed a Strategy for Transparency 2019-2021.

To improve the quality and availability of public services, in 2019 the Government launched the National Portal for e-Services, which is managed under the web address uslugi.gov.mk, which portal provides basic information on 707 services that are offered at the local and central level for citizens and legal entities.

Regarding the strengthening of fiscal transparency and education of taxpayers and citizens, the Ministry of Finance established three online platforms,

[6]EUtopia, Goran Ilic, Grafo Prom – Bitola, Bitola, 2012, page 171;

namely: a) Capital expenditures of budget users; b) Open financing, and c) Public debt.

From an economic point of view, the economic power of individual national economies in the world, traditionally throughout history, was reflected through their participation in the total international exchange in the world[7].

National open government partnership action plan 2021-2023

The 2030 Agenda for Sustainable Development is a call for transformative action by all countries in order to achieve peace and prosperity for all people and protect the planet.[8]

The work of open government is the continuous commitment and this action plan contains part of the possible ambitious efforts to promote the transparency and accountability of the Government, the Parliament, and the judiciary.[9]

There is a connection between the commitments from the Action Plan and the goals established in Agenda 2030, especially in goal 16, "Peace, justice and strong institutions", which was also the goal of the Government of the Republic of North Macedonia during the preparation of the action plan itself.

SDG 16 is the central pillar of the 2030 Agenda's approach to peace and security: it aims to "Promote peaceful and inclusive societies for sustainable development, ensure access to justice for all and build effective, accountable and inclusive institutions at all levels".[10]

The government has foreseen the fulfillment of 23 commitments, through which it will work directly towards achieving the progress towards achieving Goal 16 of the 2030 Agenda, in order to contribute to the improvement of the efficiency, transparency and accountability of the institutions, promotion of access to justice, access to information and protection of fundamental rights, and also towards reducing corruption.

The connection between the action plan and Agenda 2030 can be found in the section on "Open Government" in the following points:

Point 1. Transparency, accountability, proactivity and inclusiveness, in such a way that the commitments of the Government of the Republic of North Macedonia concerning this point are directly related to Goal 16, Target 16.10, To ensure access to information and protection of fundamental freedoms, following the national legislation", Target 16.6 "To develop effective, accountable and transparent institutions at all levels", Target 16.5 "Significant reduction of all forms of corruption and bribery".

Point 2. Prevention of corruption and promotion of good governance, in such a way that the commitments of the Government of the Republic of North

[7]International Economy, Irena Kikerkova, Faculty of Economics Skopje, 2003, page 129;
[8]https://www.osce.org/files/f/documents/8/1/475712.pdf;
[9]https://www.mioa.gov.mk/sites/default/files/pbl_files/documents/ogp/publikacija-nap-otvorena_vlast_2021-2023-mk_za_web_final.pdf , page 15;
[10]https://www.osce.org/files/f/documents/8/1/475712.pdf;

Macedonia about this point are directly related to Goal 16, Target 16.5, "Significant reduction of all forms of corruption and bribery".

Point 3. Promotion of the delivery of public services, in such a way that the commitments of the Government of the Republic of North Macedonia concerning this point are directly related to Goal 16, Target 16.6 "To develop effective, accountable and transparent institutions at all levels", Target 16.3 "Promoting the rule of law at the national and international level and ensuring equal access to justice for all".

Point 4. Promotion of the protection of sex workers and people who use drugs, in such a way that the commitments of the Government of the Republic of North Macedonia concerning this point are directly related to Goal 16, Target 16.3, Promotion of the rule of law at national and international level and ensuring equal access to justice for all".

The development of the National Action Plan for Partnership for Open Government for the period 2021-2023 (NAP5) is directly related to the "Open Judiciary" section, which refers to the commitments to an open judiciary in terms of the improvement of the electronic court portal (www.sud.mk), improving public relations of the courts, improving the quality and availability of data and information on the functioning of the Judicial Council, strengthening the supervisory role of the Judicial Council on the transparency of the courts, improving and unifying the structure of the reports of courts and the quality of data and improvement of the electronic system for basic and continuous training of judges, which commitments are in line with Goal 16, Target 16.6 "To develop effective, accountable and transparent institutions at all levels" and Target 16.10 "Yes" ensure access to information and protection of fundamental freedoms, under national legislation".

All previously stated commitments and their connection with the correctly named targets from Goal 16, contribute to: improving access to public information through more efficient implementation of laws and better information of citizens; to improve access, use and utilization of public information and data; for improving access to public information through more efficient implementation of laws and better information of citizens; towards the prevention and fight against corruption and the protection of the public interest by increasing the accountability and responsibility of the elected persons towards the citizens; towards the improvement of the planning, implementation and monitoring of public services, which will contribute to increasing the satisfaction of citizens from the experience of the delivered public services; towards improving the knowledge and skills of citizens for providing electronic public services in a fast and effective way; for improving the measures of the institutions for records and for ensuring better access to services and greater awareness of the victims of human trafficking; for the promotion of equal treatment and easier access to health care rights of people who use drugs and increased intersectoral cooperation; for suppression of discrimination, unequal treatment and violation of human rights of people who use drugs and sex workers by the police; for the improvement and simplification of the procedure for realizing social protection rights for socially endangered categories

of citizens without conducting expensive court proceedings and restoring trust in the social protection system; to improve the public responsibility of all stakeholders in the judiciary by improving and increasing the volume and quality of data on the court portal; for increasing the openness of the courts in the Republic of North Macedonia through regular sharing of information with the media and the public; and, for increasing the openness of the Judicial Council of the Republic of North Macedonia by improving the quality and availability of data and information about its operation.

CONCLUSION

The evolution of multilateral diplomacy and the Organization is closely related to the evolution of the nation-state system, dating back to the Treaty of Westphalia in 1648.[11]

In September 2015, all 193 members of the United Nations, including the Republic of North Macedonia, adopted a plan to create a better future for all, for 15 years, ending in 2030, with which plan they determined the roadmap for the next 15 years, with a clear and necessary goal set as their essence, namely to put an end to poverty, which is perhaps too pronounced, especially as a result of the covid pandemic, then to put an end to injustices and inequality, to strengthen the principle of the rule of law, to promote human rights, justice and peace as much as possible, through an integrative approach to consistent realization and implementation of the established 17 goals of Agenda 2030 within the domestic national systems and legislations.

In order to respect the 2030 Agenda, it is a fact that the Republic of North Macedonia, starting in 2015, took various measures in the direction of their implementation, paying particular attention to Goal 16, which is named "Peace, Justice, and strong institutions".

The key challenges that follow for this country are the strengthening of the rule of law and the judiciary as a key challenge, in a way that the focus of the Government will be with an emphasis on the adoption of new laws, but also on changing the mentality and the way the key institutions operate. The Government of the Republic of North Macedonia is clear in its intentions that it will continue efforts to strengthen the capacity and independence of the judiciary, as well as institutional mechanisms for protection against discrimination, prevention of human trafficking, and protection of victims of trafficking, as well as for the promotion of equal rights and opportunities for all citizens.

The member countries of the United Nations, including the Republic of North Macedonia, it is obvious that can meet the development goals of the United Nations until 2030, maybe not in full, but they certainly can to a large extent, the

[11]Multilateral Diplomacy and the United Nations Today, Second Edition, James P. Muldoon Jr., Joanne Fagot Aviel, Richard Reitano and Earl Sullivan, Joint Stock Company for the Publishing of Textbooks and Teaching Aids Educational Work - Skopje, ul. "Dimitrie Chupovski" no. 15 Prosvetno delo AD – Skopje, Napredok Printing House – Tetovo, 2009, page 27;

authorities in that direction are mainly responsible to create and enable space and mechanisms for their realization, especially for the consistent promotion of the rule of law, human rights and suppression of corruption, which in my opinion cannot be a utopia, because measures are taken daily by the competent institutions, to a certain extent in any case separately, so that there is nothing left for the societies, except today and in the future to be more and more inclusive, to be more honest for all citizens and to improve capacity in order to achieve all this, which is not that they do not own.

The essence is that everything depends on the person himself, because it is the person who is a reflection of the work and trust of all of us in an institution, because whether and to what extent the principle of the rule of law, the protection of human rights and the suppression of corruption.

Society cannot change if we all remain unchanged, on the contrary, for society as a whole to change for the better, we must all change less, in our approach to problems, our mentality, and our work habits, because society represents a sum of all of us, so the attitude towards life, towards work, towards responsibility, towards oneself and one's family depends on the person. Although, at the moment, the Republic of North Macedonia, from a practical point of view, the satisfaction of the citizens is not yet at the level that it needs to be in terms of the fulfillment of the goals of the 2030 Agenda, and in this direction, they have undoubtedly undertaken and established a multitude of measures and mechanisms, however, remain for a few more years, with the hope of a better and greater implementation of the same in this country.

LITERATURE

1. Multilateral Diplomacy and the United Nations Today, Second Edition, James P. Muldoon Jr., Joen Fagot Aviel, Richard Reitano and Earl Sullivan, Joint-Stock Company for publishing textbooks and teaching aids Prosvetno Delo - Skopje, ul. "Dimitrie Chupovski" no. 15 Prosvetno delo AD – Skopje, Napredok Printing House – Tetovo, 2009.
2.https://konekt.org.mk/klub-na-odgovorni-biznisi/united-nations-global-compact/sdgs-and-10-principles/celi-na-odrzhliv-razvoj/.
3. https://northmacedonia.un.org/mk/sdgs/16.
4. https://www.osce.org/files/f/documents/8/1/475712.pdf.
5. https://www.peace-ed-campaign.org/hr/the-contributions-of-peace-education-to-sdg-16-peace-justice-and-strong-institutions/.
6. https://zamisli2030.ba/bs/mir-pravda-i-snazne-institucije/.
7.https://hr.economy-pedia.com/11039241-goal-16-peace-justice-and-strong-institutions-sdg.
8.https://www.mioa.gov.mk/sites/default/files/pbl_files/documents/ogp/publikacija-nap-otvorena_vlast_2021-2023-mk_za_web_final.pdf.
9.https://epi.org.mk/wp-content/uploads/2020/07/%D0%A1%D0%B5%D0%B2%D0%B5%D1%80%D0%BD%D0%B0 -

%D0%9C%D0%B0%D0%BA%D0%B5%D0%B4%D0%BE%D0%BD%D0%B8%D1%98%D0%B0-%D0%94%D0%9D %D0%9F.pdf.
10. International Economy, Irena Kikerkova, Faculty of Economics, Skopje, 2003.
11. EUtopia, Goran Ilic, Grafo Prom - Bitola, Bitola, 2012.
12. International organizations, Prof. Dr. Gjorgi Tonovski, European University - RM, Skopje (Faculty of Legal and Political Sciences), Skopje, 2006.
13. International Judiciary, Svetlana Veljanovska and Nikola Tuntevski (2022), Iris Struga, Iris Struga. ISBN 978-996-105-400-1.
14. Understanding International Conflicts An Introduction to Theory and History, Joseph S. Nye, Jr., Academic Press Skopje, 2008.
15. International Trade Law, Sasha Dukoski, Kichevo 2014.

Professional Article
UDK 343.61-055.2
364.63-055.2:341.24
364.63-055.2:340.13(497.7)

FEMICIDE, DEFINITION, CAUSES AND TYPES

MSc Daniela Trajkovski Kolevski (PhD student)
Faculty of Security Skopje, University of St. Kliment Ohridski Bitola
trajkovski_daniela@hotmail.com

MSc Natasha Sekulovska
Law office of attorney m-r Natasha Sekulovska Bitola
natashasekulovska@yahoo.com

Abstract

We are witnessing an increasing number of murders of women and girls like here in Republic of North Macedonia as well as in the world. Violence against women and girls will never stop. Women are the most frequent victims of violence and murder in the family and relationship.

Femicide is the most extreme manifestation of abuse and violence from men to women. It occurs as a result of any type of gender-based violence, such as physical assault, rape, forced motherhood or genital mutilation.

Although the world should be ashamed of the past when women were killed, maimed, suffered violence, it still happens today. The perpetrator is always a man. The girl, the woman is seen as the property of the man, she is killed because she is female and out of hatred towards women.

In this paper we will give a definition of femicide, the types of femicide and the reasons will be listed. We will refer to history and state the need for a separate Femicide Crime.

In the paper, we will include a conversation with a psychologist about the possible reasons for killing a woman.

Keywords: *femicide, murder, violence, victim, woman, crime,*

Introduction

1. Definition of the term femicide and historical review

The term "femicide" refers to a specific type of homicide in which a man kills a woman, girl, or girl because she is female. Unlike other types of murder, femicides usually occur in the home as a result of gender-based violence. They are also categorized under hate crimes because they occur in a context in which the female has been stigmatized for years.[1]

[1] https://mk.warbletoncouncil.org/feminicidio-480, seen 22.06.2023, 01:15

According to Diana Russell, who is credited with popularizing the word "feminicide" ("femicide" in English), some of the same motives for these murders are anger, hatred, jealousy, and happiness.

The word "femicide" is disputed; There are authors who argue that it includes any murder of a female victim, regardless of the gender of the perpetrator or their motivations.[2] Femicide is the most extreme manifestation of abuse and violence from men to women. It occurs as a result of any type of gender-based violence, such as physical assault, rape, forced motherhood or genital mutilation.[3]
The first documented use of the term 'femicide' was in a book by John Corry (1801) called A Satirical View of London at the Commencement of the Nineteenth Century where it was used to refer to the killing of a woman. It was not until 1976, however, that the term was reintroduced publicly in the modern age by violence against women feminist pioneer, expert and activist, Diana Russell, at the International Tribunal of Crimes Against Women to bring attention to violence and discrimination against women.[4]

The United Nations defines femicide/feminicide as "the gender-based killing of women", which can take many forms, such as: intimate partner murder, murder of women accused of witchcraft/sorcery, killing women in the name of "honour", killing women in armed conflicts, killing women due to dowry, killing as a result of sexual orientation or gender identity, etc.[5]

Diana Russell used the term femicide for the first time at the first International Tribunal for Crimes Against Women held in 1976 in Brussels, whose purpose was to point out to the public the many types of crimes, both violently brutal and precise and complexly discriminatory, perpetrated against women of all cultures and in every social context (Russel & Van De Ven, 1976). Gender politics exist even in the murders of women, we could see that during the burning of women for witchcraft (cases of punishment for heresy, that is, teaching contrary to the church was connected with the confiscation of the property of the convicted), starting from 1484.[6] In its early iteration by Russell, femicide was defined as "the murder of women by men motivated by hatred, contempt, pleasure, or a sense of ownership of women" and "the misogynistic killings of women by men." Most recently, this definition evolved to its most commonly-used form as "the killing of one or more females by one or more males because they are female" as stated by Russell in her introductory speech presented to the United Nations Symposium on Femicide on November 26, 2012.[7]

---

[2] Ibid
[3] https://mk.warbletoncouncil.org/feminicidio-480, seen 22.06.2023 , 01:17
[4] https://femicideincanada.ca/about/history seen 22.06.2023, 01:24
[5]Elena Dimushevska, Analysis of femicides, Murders of women in the Republic of North Macedonia 2017-2020, Skopje September 2021 https://glasprotivnasilstvo.org.mk/wp-content/uploads/2021/12/Femicid_14_MK.pdf
[6] Angelina Stanojoska , https://meduza.mk/fem-101/femitsid-od-spaluva%D1%9Aeto-na-klada-do-zhenskite-infantitsidi/ seen 22.06.2023, 01:19
[7] https://femicideincanada.ca/about/history, seen 22.06.2023, 01.25

Becoming an essentially political term, femicide refers to the killing of women because of their inferior position in a patriarchal heteronormative society. Femicides occur as a result of inter-partner violence, honor killings, due to dowry, in the actions of organized criminal groups, during military conflicts, occur as infanticide (of female children), gender-based selective feticide, murders such as as a result of genital mutilation (cutting off, infabulation or any other mutilation in whole or in part of the labia majora and labia minora or the clitoris of a woman), murders of women accused of witchcraft or sorcery, murders as a result of misogyny, murders due to sexual orientation and gender identity.[8]

Professor Angelina Stanojoska explains for the web portal "Meduza" why femicide is a political term. She says, "The women who were 'chosen' to be referred to as witches were based on a pre-made profile, with characteristics that indicated that they were women who believed in natural laws and not in the teachings of the church, that they did not behave according to the social expectations of that time, that is, they try to live free from the then church and patriarchal state restrictions. Namely, those women lived alone, had pets (mostly a cat) which for the church were the demon in animal form, cultivated medicinal plants, had no children.,,[9]

The global health pandemic of covid-19 has increased the risk of gender-based violence. In the first three months since the beginning of the pandemic, several European countries, as well as the countries of the Western Balkans, have announced statistics for an increase in the number of reports of domestic violence by as much as 30-40%. The systems for protection of women victims were reorganized in order to provide emergency assistance and support to the victims. In The Republic of North Macedonia saw an increase in reports of domestic violence, especially after ending the state of emergency and reducing movement ban measures.[10]

A total of 87,000 women were intentionally killed in 2017. More than half of them (58 per cent) 50,000─were killed by intimate partners or other family members, meaning that 137 women across the world are killed by a member of their own family every day. More than a third (30,000) of the women intentionally killed in 2017 were killed by their current or former intimate partner─someone they would normally expect to trust. Based on revised data, the estimated number of women killed by intimate partners or other family members in 2012 was 48,000 (47 per cent of all female homicide victims). The annual number of female deaths worldwide resulting from intimate partner/family-related homicide therefore seems be on the increase. The largest number (20,000) of all women killed worldwide by intimate partners or other family members in 2017 was in Asia, followed by Africa (19,000), the Americas (8,000), Europe (3,000) and Oceania (300). However, with an intimate

[8] Angelina Stanojoska, https://meduza.mk/fem-101/femitsid-od-spaluva%D1%9Aeto-na-klada-do-zhenskite-infantitsidi/ 22.06.2023 , 01.32 H

[9] Angelina Stanojoska, https://meduza.mk/fem-101/femitsid-od-spaluva%D1%9Aeto-na-klada-do-zhenskite-infantitsidi/

[10] Elena Dimushevska, Analysis of femicides, Murders of women in the Republic of North Macedonia 2017-2020, Skopje September 2021 https://glasprotivnasilstvo.org.mk/wp-content/uploads/2021/12/Femicid_14_MK.pdf

partner/family-related homicide rate of 3.1 per 100,000 female population, Africa is the region where women run the greatest risk of being killed by an intimate partner or other family member, while Europe (0.7 per 100,000 female population) is the region where the risk is lowest. The intimate partner/family-related homicide rate was also high in the Americas in 2017, at 1.6 per 100,000 female population, as well as Oceania, at 1.3, and Asia, at 0.9.[11]

In the Republic of North Macedonia, in the period from 2008 to 2020, a total of 96 women were killed, of which at least 50 are femicides.[12]

Clinical psychologist Marija Šutulović[13] says in an interview: Women are exposed to a high risk of femicide due to the secondary abuse they suffer. The consequences of torture suffered by female victims lead to a complete collapse of personality, freedom and integrity, the victim stops feeling and loses the experience of being a person. The horrors and threat of loss of identity experienced by the victims are referred to in professional literature as the experience of "mental death". Society, community, environment can contribute to reduced violence, but they can also encourage it by spreading hatred towards women through social networks, tabloid reporting, and messages sent by prominent individuals in public space. At the root of violence against women is hatred against women.

Main part

2. Statutory arrangement

2.1 .Regulation of femicide in national legislation

Macedonian legislation does not recognize the term femicide, and therefore does not regulate it as a separate crime. In the Criminal Code of the Republic of North Macedonia, Chapter XIV provides for criminal offenses against life and body. More specifically, in Article 123 paragraph 1, the basic form of the crime of murder is prescribed: "he who deprives another of his life shall be punished with imprisonment for at least five years". In this part, the legislator provided for a minimum prison sentence of five years, and also set the basic definition for the crime of murder.

In paragraph 2 of the same Article 123 of the Criminal Code, the legislator provided for qualified murders, which are also called capital crimes. Qualified (aggravated) murder is the intentional deprivation of another's life, carried out under particularly aggravating circumstances, determined by law, which increase the degree of wrongdoing and the degree of guilt of the perpetrator and for which more severe punishments (life imprisonment) are prescribed. Qualified murder differs

[11] Data taken from: GLOBAL STUDY ON HOMICIDE Gender-related killing of women and girls , UNITED NATIONS OFFICE ON DRUGS AND CRIME Vienna, 2019, https://www.unodc.org/documents/data-and-analysis/gsh/Booklet_5.pdf seen 22.06.2023 , 01:54H

[12] Data taken from: Elena Dimushevska, Analysis of femicides, Murders of women in the Republic of North Macedonia 2017-2020, Skopje September 2021. https://glasprotivnasilstvo.org.mk/wp-content/uploads/2021/12/Femicid_14_MK.pdf seen. 22.06.2023, 02.04H

[13] Marija Shutulovic, Clinical psychologist, ,, Centar za edukacija I Konsalting ,, Marija I Vi,, Zeleni Bulevar BB local 6 , Bor Serbia, marija_sutulovic@yahoo.com

from basic murder by certain qualifying circumstances of an objective and subjective nature. This provision distinguishes several groups of circumstances, which give premeditated murder the character of serious murder contained in it (the character of qualified murder is otherwise also other acts outside this chapter, such as the acts contained in articles 237, 238, 309 of the Criminal Code of RSM)[14]. The existence of several qualifying circumstances are of great importance for determining the punishment for the crime of murder.

In our Criminal Code, murders are specifically qualified according to several criteria:

According to the method of committing the crime of murder:

Murder in a brutal way, murder in an insidious way and murder in the course of domestic violence;

According to the motives of the perpetrator:

Manslaughter, murder for the purpose of committing or concealing another crime, murder for wanton revenge and murder for low motives: will deprive another of life for the purpose of extracting an organ, tissue or cells for transplantation:

According to the object of the attack or according to the characteristics of the victim:

Murder of a female person whom the perpetrator knows is pregnant or a child, murder of a judge, public prosecutor or lawyer, official or military person;

According to the circumstances of committing the crime of murder:

Murder in which the life of another person is intentionally endangered, murder by order, murder of two or more persons, for which he has not been tried before.

2.2. Criminal - legal aspects of the qualified murder during domestic violence

This type of murder exists when two conditions are met. The first has an objective nature and consists in the existence of a relationship between the perpetrator and the victim that meets the elements of domestic violence (according to the definition of "domestic violence" in Article 122 of the Criminal Code of the RSM): *"harassment, gross insult, endangering safety, physical injury, sexual or other mental or physical violence that causes a feeling of insecurity, threat or fear towards a spouse, parents or children or other persons living in a marital or extramarital union or joint household, as well as towards a former spouse or persons with whom they have a common child or are in close personal relationships"*[15]

According to this definition, the term domestic violence is a complex term, which includes a close relationship between the perpetrator and the victim, as well as acts of violation of the rights of the victim, which cause a feeling of insecurity, threat or fear. The subjective element of this crime is the awareness that it is being committed in conditions of domestic violence and that the will to take life is an expression of the violent attitude towards the victim. When it comes to the

[14] Kambovski. Vlado. Commentary on the Criminal Code of the Republic of Moldova (Matica-Skopje, first edition 2011). Page 630

[15] Criminal Code of the Republic of Moldova. Official Gazette of the Republic of Moldova 37/1996

execution of the murder by the victim of domestic violence, it is considered a *privileged murder* (Article 125 of the Criminal Code).[16]

2.2. National legislation

The Republic of North Macedonia ratified the Council of Europe Convention on preventing and combating violence against women, including domestic violence, known as the Istanbul Convention[17], in December 2017, which entered into force in July 2018. In that direction, with the aim of a more effective implementation of the Istanbul Convention by harmonizing the national legislation with the provisions of the convention, in October 2018, the Government of RSM developed and adopted the so-called National Action Plan 2018 – 2023 (NAP). The NAP includes all relevant institutions in the country and foresees all the changes that need to be made in the three identified areas: **legislation, prevention and protection.**

Preparation and adoption of the *new Law on prevention and protection from violence against women and domestic violence*[18] was foreseen in the National Action Plan for the implementation of the Istanbul Convention, and its main goal is to improve the system for the protection of women victims of various forms of gender-based violence and it should be especially emphasized that this Law is not an integral part of the criminal law, because it does not regulate murders as crimes, and its importance stems from the fact that the full respect and implementation of the provisions will contribute to the prevention of femicides. Taking into account that the Istanbul Convention recognizes and defines the various forms of violence against women and the killing of women as physical violence that can result in death, provides certain recommendations for criminal prosecution of the perpetrators and foresees the aggravating circumstances when determining the sanction, the Macedonian judicial system should use these provisions in practice.

Aggravating circumstances according to the Istanbul Convention are:

a) **the crime was committed against a former or current spouse or partner in accordance with national legislation, by a family member, a person living with the victim or a person who abused his authority;**[19]
b) **the crime, that is, related crimes were repeated;**[20]

[16] Kambovski. Vlado. Commentary on the Criminal Code of the Republic of Moldova (Matica-Skopje, first edition 2011). Page 633

[17] The Convention of the Council of Europe on preventing and combating violence against women and domestic violence, also known as the Istanbul Convention; adopted by the Committee of Ministers of the Council of Europe on April 7, 2011, and opened for signatures on May 11, 2011 within the 121st session
of the Committee of Ministers at the Council of Europe, held in Istanbul, which is why it was also called the "Istanbul Convention".

[18] https://www.mtsp.gov.mk/content/pdf/2021/1a28a922f364401e94935d4d694b9d75.pdf

[19] https://glasprotivnasilstvo.org.mk/wp-content/uploads/2021/12/Femicid_14_MK.pdf?fbclid=IwAR1EFhBhhYRa1KnSYcQq-LzHmH3m_vWHr0SqeQ64Tn1tEEfvzF7m7O82BEs

[20] Ibid

c) **the crime was committed against a person who was vulnerable due to certain circumstances;**[21]
d) **the crime was committed against or in the presence of a child;**[22]
e) **the crime was committed by two or more people acting together;**[23]
f) **the crime was preceded or committed by an extreme level of violence;**[24]
g) **the crime was committed with the use or threat of a weapon;**[25]
h) **the crime resulted in a severe physical or psychological consequence for the victim;**[26]
i) **the perpetrator was previously convicted for acts of a similar nature.**[27]

2.3. Convention of the Council of Europe on preventing and combating violence against women and domestic violence - Istanbul Convention

Violence against women is considered a violation of human rights and constitutes one of the forms of discrimination against women and includes acts of gender-based violence that lead or are likely to lead to physical, psychological or economic injury or suffering to women, and includes threats of such acts , coercion or arbitrary deprivation of liberty, whether in public or private life.[28]

It is of vital importance to change attitudes and begin to eliminate stereotypes, not only at the individual level, but also at the institutional level, because only in this way will it be possible to act as a prevention against violence against women.

There is a large number of women in society who are afraid or ashamed to ask for help or talk about what is happening in their lives. Most of the time, fear prevails among them that no one will believe them, and then comes the mistrust they have towards the institutions, the fear that it could be worse if they ask for help from someone, and most of the time those who speak up are not always heard.

Acting within its leading role in the protection of human rights, the Council of Europe adopted the Convention on the prevention and control of violence against women and domestic violence (known as the Istanbul Convention)[29].

The Istanbul Convention is generally accepted as the most far-reaching legal instrument in the prevention and fight against violence against women and domestic violence, as one of the forms of human rights violations. Since its opening for signature in 2011, it has received significant support at all levels, state and

[21] Ibid
[22] Ibid
[23] Ibid
[24] https://glasprotivnasilstvo.org.mk/wp-content/uploads/2021/12/Femicid_14_MK.pdf?fbclid=IwAR1EFhBhhYRa1KnSYcQq-LzHmH3m_vWHr0SqeQ64Tn1tEEfvzF7m7O82BEs
[25] Ibid
[26] Ibid
[27] Ibid
[28] Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence - Istanbul Convention, Article 3a
[29] https://rm.coe.int/168046253a

regional, at the level of local self-government, among the public, parliaments, national and international human rights organizations, civil society organizations, media and the academic community.

The Convention entered into force in 2014, three years after its adoption, demonstrating the need for member states to have a legally binding international agreement on which to base their efforts to fully prevent gender-based violence, as well as their political commitment to the principles and values enshrined in the convention.

The Istanbul Convention required ratifying governments to adopt a comprehensive series of measures to address all forms of violence against women and domestic violence.[30] Each provision of the Convention aims to prevent violence, to bring perpetrators of violence to justice and to provide support and assistance to victims. The Convention also requires that various forms of violence against women, such as domestic violence, sexual harassment, psychological harassment, be qualified as criminal acts and that sanctions be provided for by law.

Giving violence against women a legal term and the fact that it is a crime will help stop it.

The FRA[31] study found that a quarter of victims do not report the most serious incidents from a partner or other person, often out of fear, anger and shame. Victim-blaming attitudes and discriminatory attitudes that pre-professionals may present to women also lead to mistrust of the legal system. Reporting may also be delayed as a result of any or all of the above reasons and often occurs later, including after the victim has already suffered numerous violent incidents.

An ideal form of victim empowerment is first of all to avoid such attitudes that lead the victim to minimize the facts and lose hope in the justice system.

A gendered understanding of violence and the application of a victim- and human rights-focused approach ensure that secondary victimization is avoided. At the same time, special attention should be paid to the needs of vulnerable people, including children.[32]

---

[30] https://rm.coe.int/istanbul-convention-questions-and-answers-macedonian/1680983cd7

[31] http://fra.europa.eu/en/publication/2014/violence-against-women-eu-wide-survey-main-results-report

[32] Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence – Istanbul Convention, Article 18.3 General Obligations

The Parties shall ensure that the measures taken in accordance with this chapter:

• Are based on a gendered understanding of violence against women and domestic violence and focus on the human rights and safety of the victim;

• Are based on an integrated approach that takes into account the relationship between victims, perpetrators, children and their wider social environment;

• Are aimed at avoiding secondary victimization;

• Are aimed at strengthening and economic independence of women victims of violence;

• Allow, when appropriate, a range of victim protection and support services to be housed in the same premises;

• The specific needs of vulnerable persons, including child victims, are addressed and made available to them.

In order to break down barriers to justice, the Istanbul Convention specifically confirms the following rights of victims:

 Adequate and timely information about available support services and legal measures in a language they understand (Article 19[33] of the KI).

 Access to services that will help them recover from violence, including, if necessary, legal and psychological counseling, financial assistance, residential tutoring, training and assistance in finding a job (Article 20 [34]CI).

 Availability of civil remedies, including compensation (articles 29[35] and 30[36] IC).

 Investigations and proceedings to be rejected without unnecessary delay (Articles 49[37] and 50 [38]of the Criminal Code);

 Measures to protect the victim and her family during court proceedings, namely protection from intimidation and revenge, information about the escape or release of the perpetrator, information about their rights and available support services, the right to a hearing and information about the course of the procedure, protection of privacy and reputation, no contact with the perpetrator if possible, interpreter, etc. (Article 56[39] CI).

2.4. The National Action Plan for the Implementation of the Istanbul Convention and the need to implement femicide as a crime

The national action plan for the implementation of the Istanbul Convention defines the activities, responsible institutions, indicators and the time frame for harmonizing the provisions of the Convention with the national legislation in the Republic of North Macedonia for the period 2018-2023. The adopted National Action Plan has three basic objectives: harmonizing the legal framework with the provisions of the Convention, establishing general and specialized services for the promotion of the protection of victims of gender-based violence and victims of family violence and implementation of activities for the prevention of gender-based violence based violence and domestic violence.

As part of the prevention, an increase in the role of the Ombudsman in monitoring femicides - murders of women, i.e. the establishment of a femicide watch mechanism - is foreseen.

From the aspect of civil-legal protection of victims of gender-based violence, the Republic of North Macedonia for the first time in January 2021 adopted a law that recognizes all forms of gender-based violence and provides for specific protection for all female victims of the various forms of violence, through

[33] Convention of the Council of Europe on preventing and combating violence against women and domestic violence - Istanbul Convention
[34] Ibid
[35] Ibid
[36] Ibid
[37] Ibid
[38] Ibid
[39] Ibid

the establishment of specialized services for help and support. Its preparation and adoption was foreseen in the National Action Plan for the implementation of the Istanbul Convention, and its main goal is to improve the system for the protection of women victims of various forms of gender-based violence.

The glossary of the law in Article 3 specifically defines what it covers and what is meant by "violence against women" (paragraph 1), "gender-based violence" (paragraph 2), "family violence" (paragraph 3) and "intimate partner violence". (paragraph 5). The new law defines the reintegration of victims of violence (Article 99), for the first time in the system of protection against violence against women and domestic violence, where through a special program for the reintegration of victims of violence, the following services will be provided: temporary housing, psychological counseling with mentoring, various types of financial assistance specifically intended for women victims of violence, opportunities for education and training in various fields, as well as employment measures established by law. According to this article, competent institutions will be obliged to recognize victims of violence as a special vulnerable category and to develop programs and measures in accordance with the specific needs of women victims of violence.[40]

One of the most significant improvements regulated by this law is the principle of due diligence, which obliges all participants in the protection system to take all appropriate legislative, administrative, judicial and other measures to prevent, protect, investigate, punish and ensure fair compensation for victims or restitution for acts of violence committed by natural or legal persons. Basic principles of this law are non-discrimination, prohibition of victimization, vulnerable women, adequate adaptation for women with disabilities, gender-responsive policy and empowerment of women victims of violence.[41]

3. Types of femicide

Intimate femicide also referred to as intimate partner femicide, captures the killing of women by current or former partners. Globally, women are much more likely than men to be assaulted, raped or killed by a current or former partner and it most often occurs within relationships where there is a history of intimate partner violence.[42]

Family femicides are made by one within your immediate or extended family, the concept of "intimate femicide" is often used to refer to the killing of a partner or prior, regardless of the legal relationship between the two people.[43]
Non-intimate femicide involves the killing of women by someone with whom they did not share an intimate partner relationship, encompassing a broad range of

[40] https://glasprotivnasilstvo.org.mk/wp-content/uploads/2021/12/Femicid_14_MK.pdf?fbclid=IwAR1EFhBhhYRa1KnSYcQq-LzHmH3m_vWHr0SqeQ64Tn1tEEfvzF7m7O82BEs
[41] Law on prevention and protection from violence against women and family violence available at https://www.mtsp.gov.mk/content/pdf/2021/1a28a922f364401e94935d4d694b9d75.pdf
[42] https://femicideincanada.ca/about/types
[43] https://mk.warbletoncouncil.org/feminicidio-480#menu-3 seen 22.06.2023, 14.37

femicide subtypes such as familial femicide, 'other known perpetrator' femicide and stranger femicide.[44]

The media has a very important role in opening a debate in order to better the public inform and explain ways to overcome gender stereotypes. In this one process, journalistic and media associations also have an important role.[45] Although this issue is often neglected, the media has a significant role in providing much of the resources we use in thinking about gender and gender-related topics: about what it means to be a woman or a man, about gender roles in the public and private spheres, sexuality, parenting and what we consider to be is (or is not) natural, normal, acceptable, desirable and possible in relation to these aspects from our lives.[46]

The author Jahjaova Almira in her paper points out that contrary to the above, the media will contribute to strengthening stereotypes, prejudices and creating a wrong picture of the roots of gender-based violence, where dominant narratives in which the cause of violence is sought in the victim and not in the perpetrator or in the inaction of the institutions. The narrative in which justification is sought for the perpetrator, presenting him as a responsible, hardworking, peaceful man, who was respected by neighbors, directs the audience to demand guilt and responsibility from the victim.[47]

Intentional killings of women in war. The United Nations defines these killings as "deliberate, premeditated, excessive use of deadly force by by the state or its executors acting in the name of the law or by an organized armed group in conflict, and against individuals who are not among them hostage-taking."[48] This practice can also appear in conditions of peace. What sets these murders apart from other types of murders is that deadly force is used in advance targeted group. In armed conflicts, women and girls are often targeted and killed as part of the military strategy, and not only to weaken the family of the victim, but also to affect the community as a whole. That is, women are raped and killed to show dominance and power and to punish the enemy. This form of violence is used as a weapon in war.[49]

Female infanticide and gender-based sex selective feticide. These forms of violence and murder are practiced in countries where the value of the male child is greater than the value of the feminine. Namely, forced termination of pregnancy is carried out in cases where the gender of the child is known during pregnancy (selective feticide), and if the female child is already born then it is neglected, left to starve until it dies (female infanticide). The reasons are related to the bigger ones

---

[44] Ibid

[45] YAHJAOVA Almira, FEMICIDES IN THE REPUBLIC OF NORTH MACEDONIA IN THE PERIOD FROM 2017 TO 2021 YEAR, page 68, Faculty of Law, University "Goce Delchev" - Shtip

[46] Ibid

[47] Ibid

[48] 1 A/HRC/14/24/Add.6, Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Philip Alston, Fourteenth Session, 28 May 2010

[49] Elena Dimushevska, Analysis of femicides, Murders of women in the Republic of North Macedonia 2017-2020, Skopje September 2021,page 13
http://www.glasprotivnasilstvo.org.mk/wp-content/uploads/2013/11/Femicidi-mk.final_.pdf

expenses that the family has towards the female child, as well as lower earning potential in the future.[50]

Femicides as a consequence of genital mutilation and murders of women accused of witchcraft/sorcery. Female genital mutilation is a harmful traditional practice the practice of removing female genitalia without any medical reason and mostly in unhygienic conditions. Most often is performed on girls aged 5 years, and because of themselves conditions in which it is performed, very often occur as a consequence infections that lead to death. The unavailability of health facilities to the place of residence affects the the increased mortality rate. As a practice it is represented in Africa, Asia and the Middle East, although there is already a trend to be legally regulated and punished. In Europe it occurs in France, Belgium, Norway and other countries where there are immigrants from African countries. The European Union already has adopted policies and directives for the protection of girls and women from genital mutilation.[51]

Lesbocide.It is not difficult to find historical periods in which the killing of women as a punishment for homosexuality was legal. For example, in France in the thirteenth century, a law was passed according to which women must have a limb amputated the first two times they had sex with women, while the third must be burned.[52]

A similar crime, and often associated with lesbicide, is the violation of correction; consisting of sexually abusing a homosexual woman with the purpose of making her behave as a heterosexual or simply as a punishment. It is a way of trying to impose a supposed "natural order" through violence and force.[53]

Today, homosexuality, in both women and men, continues to be condemned by most religions and is illegal in countries such as Iran, Libya, India, Pakistan, Morocco and Nigeria. These conditions support violence against homosexual people because they legitimize it by institutions.[54]

Racial murders.In racial femicides, the gender component adds an ethnic factor.In these cases, the killer kills the victim both for being a woman and for having different cultural and physical characteristics than his own. It is a mixture of elements that generate hatred in a completely irrational way. In this type of murder, racism not only affects the commission of the crime, but the fact that the victim is from a less socially valued ethnic group can interfere with the resolution of the case, the trial and the image, the media given to the deceased.[55]

---

[50] Elena Dimushevska, Analysis of femicides, Murders of women in the Republic of North Macedonia 2017-2020, Skopje September 2021,page 13 http://www.glasprotivnasilstvo.org.mk/wp-content/uploads/2013/11/Femicidi-mk.final_.pdf

[51] 2 http://www.endfgm.eu/female-genital-mutilation/eu-policy-and-legal-framework/ 23.06.2023 , 13:00H

[52] https://bg.sainte-anastasie.org/articles/psicologa-forense-y-criminalstica/feminicidio-asesinatos-a-mujeres-definicin-tipos-y-causas.html 23.06.2023 13.25H

[53] https://bg.sainte-anastasie.org/articles/psicologa-forense-y-criminalstica/feminicidio-asesinatos-a-mujeres-definicin-tipos-y-causas.html

[54] Ibid

[55] https://bg.sainte-anastasie.org/articles/psicologa-forense-y-criminalstica/feminicidio-asesinatos-a-mujeres-definicin-tipos-y-causas.html

Feminicide in the series.This type of femicide usually occurs when a man repeatedly kills women for sadistic sexual pleasure. Generally, these murders are caused by trauma or suffocation. The victims of serial femicides, as well as other atypical femicides, are more often women who work as waitresses or prostitutes. Sometimes serial femicide is attributed to pornography, especially that which eroticizes violence. From a gender perspective, this may be due to the normalization of violence that occurs in these works of fiction. However, this relationship has not been proven at this time.[56]

Causes of femicide. The most common reasons for femicide is patriarchal upbringing. In Macedonia, the man is still the head of the family. A male child, i.e. a son, is considered a child, an heir, and a female child is considered to be someone else's, or more precisely known, a daughter is someone else's house. The woman is still considered the property of the man and when she gets married she does not have any inheritance from her parents and if she has problems then she is not allowed to go back to her parents' house because of shame or as I mentioned they consider her as someone else's. Thus, the woman has to suffer all kinds of violence and at the cost of her life.

Second, there is alcohol and drug addiction.

Differences in gender roles are often attributed to the biology of men and women. In particular, it is often mentioned that men have higher levels of testosterone, a sex hormone that affects aggressiveness, dominance and risk-taking. However, hormonal differences have not been shown to be responsible for the behavioral differences between men and women.[57]

In the Republic of Macedonia, we still have folk stories on television programs where they show us too much humiliation of women, they show her as lazy, and physical violence with lessons such as, "Beating is out of heaven".

Interview with psychologist Marija Shutulović -Clinical psychologist[58]

- **Why do you think men kill women? What are the reasons?**

- most often jealousy, mental disorders, narcissistic and psychopathic personality structure, alcoholism, drug addiction.The most common reasons are the display of power by the man over the woman. She uses male privileges, she uses prohibitions, threats, threats with the children to take them away from her, then emotional, economic and sexual abuse.

- **Do you care that mentally ill or healthy people kill themselves?**
- There are also patients who suffer from serious mental illnesses, but as I said in the first question, the most common causes are alcohol, drugs, and being witnesses or victims of violence during childhood.

- **In your opinion, how can femicide be prevented?**

[56] https://hr.yestherapyhelps.com/feminicide-murders-of-women-definition-types-and-causes-12219

[57] https://mk.warbletoncouncil.org/feminicidio-480 23.06.2023 14.04H

[58] Marija Shutulovic, Clinical psychologist, ,, Centar za edukacija I Konsalting ,, Marija I Vi,, Zeleni Bulevar BB local 6 , Bor Serbia, marija_sutulovic@yahoo.com

- It is not uncommon for victims to stay in a violent relationship because they are not financially stable, although there are also examples when women stay due to the sheer manipulation of their partners. A large number of women stay because they are afraid of the judgment of the environment or do not have the support of their loved ones or do not see the possibility of a choice. This is especially pronounced in rural areas where women are taught to live according to the principle of "keep silent and suffer".

It is precisely the culture of non-reporting that still exists, so that these women are mostly left to fend for themselves. Time has shown that even people who witness violence rarely decide to file a complaint, but instead follow the motto that "it's none of their business", which contributes to the woman closing herself off even more and cutting off social contacts, often due to a sense of shame, especially if she has pronounced physical injuries that could testify to violence, thus we come to stigmatization on the one hand, and on the other, patriarchy, which is still dominant, at least in our societies in the Balkans, which represents another taboo.

Fear of abusers, shame due to the violence experienced, fear of judgment from those close to them, unfavorable economic situation and mistrust in institutions are the main reasons why women do not report domestic violence. What would encourage women to report violence is support from family and friends, institutions, as well as financial support.

- **What are the consequences for the other person in the family, society, etc.?**

- The resulting lives lost, then a bad example for the next generations. One murder is a bad example for the next murder, whether in that family or sometimes in the country. And as I said, if the child is a victim and a witness to the violence that his father killed, his mother can also be the perpetrator as an adult.

Prevention. It is very difficult to find mechanisms to prevent femicide. First of all, they should consider the reasons, further invest a large financial budget and make femicide a crime. We have legislation, but it should be used much more in practice. Institutions should be more considerate and up-to-date, especially the Center for Social Work. The media also. It can be influenced mostly through the media in cooperation with other institutions such as schools, centers for social work, the police, the non-governmental sector, etc. through various campaigns, media advertisements, through social networks, educational lectures, etc.

3. Conclusion

From the paper we can conclude that premature death is a consequence of murder. We have seen that in the past women were killed by society as witches, further for honor, for dowry, then because of financial situation, during wars, etc. but mostly women are killed by their intimate partners.

Macedonian legislation does not recognize femicide as a separate crime. Hence the need to incriminate it as a separate crime. It is the only way to protect women from murder. Further to prevent in various other ways.

Women's lives have always been very difficult and not appreciated.

It is necessary to work on the mentality of the citizens. Violence must not be tolerated. Violence must be reported and sanctioned. Only in this way will we protect women and their lives. We need a big change in understandings about the importance of women's role in society and the family.

Literature

1. Almira Jahjaova, FEMICIDES IN THE REPUBLIC OF NORTH MACEDONIA IN THE PERIOD FROM 2017 TO 2021 YEAR, page 68, Faculty of Law, University "Goce Delchev" – Shtip;
2. Angelina Stanojoska, https://meduza.mk/fem-101/femitsid-od-spaluva%D1%9Aeto-na-klada-do-zhenskite-infantitsidi/
3. Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence – Istanbul Convention, Article 18.3 General Obligations;
4. Criminal Code of the Republic of Moldova. Official Gazette of the Republic of Moldova 37/1996
5. Vlado Kambovski, Commentary on the Criminal Code of the Republic of Moldova (Matica-Skopje, first edition 2011).
6. Elena Dimushevska, Analysis of femicides, Murders of women in the Republic of North Macedonia 2017-2020, Skopje September 2021
7. GLOBAL STUDY ON HOMICIDE Gender-related killing of women and girls , UNITED NATIONS OFFICE ON DRUGS AND CRIME Vienna, 2019
8. Radford, J. & Russell, D. E. H (1992). Femicide: The Politics of Killing Women. New York: Twain
9. Law on prevention and protection from violence against women and family violence
10.1 A/HRC/14/24/Add.6, Report of the Special Rapporteur on extrajudicial, summary or
11.arbitrary executions, Philip Alston, Fourteenth Session, 28 May 2010

12.Internet
13.https://mk.warbletoncouncil.org/f
14.https://bg.sainte-anastasie.org
15.https://hr.yestherapyhelps.com
16.https://mk.warbletoncouncil.org
17.http://www.glasprotivnasilstvo.org.mk
18. http://www.endfgm.eu/female-genital-mutilation/eu-policy-and-legal-framework/
19.https://www.mtsp.gov.mk
20. https://meduza.mk/fem-101/femitsid-od-spaluva%D1%9Aeto-na-klada-do-zhenskite-infantitsidi/
21.https://rm.coe.int/168046253a
22. https://rm.coe.int/istanbul-convention-questions-and-answers-macedonian/1680983cd7
23. http://fra.europa.eu/en

24.https://www.unodc.org/documents/data-and-analysis/gsh/Booklet_5.pdf

25.**Interview**
26.Marija Shutulovic, Centar za edukacija I Konsalting ,, Marija I Vi,, Zeleni Bulevar BB local 6 , Bor Serbia, marija_sutulovic@yahoo.com
27.(Interview via e-mail on June 26, 2023.)