INTERNATIONAL SCIENTIFIC CONFERENCE
45 YEARS HIGHER EDUCATION IN THE AREA OF SECURITY – EDUCATIONAL CHALLENGES AND SECURITY PERSPECTIVES

26-28 SEPTEMBER 2022, Struga

Volume III, No. 7

Skopje, 2022
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МЕЂУНАРОДНА НАУЧНА КОНФЕРЕНЦИЈА
45 ГОДИНИ ВИСОКО ОБРАЗОВANІЕ ВО ОБЛАСТА НА БЕЗБЕДНОСТА - ОБРАЗОВNI ПРЕДИЗВИЦИ И ПЕРСПЕКТИВI ЗA БЕЗБЕДНОСТА

26-28 СЕПТЕМВРИ 2022, Струга

Година III, Број 7

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USE OF MODERN TECHNOLOGY IN THE PROTECTION AND RESCUE OF THE POPULATION FROM unexploded ordnance (UXO)

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Abstract

This paper poses and analyzes the questions and opportunities for the use of modern technologies and means to make the work of the responsible institutions for dealing with unexploded ordnance (UXO) more efficient and effective and to protect and rescue the population from the danger caused by such ordnance. The continuous development of technique and technology enables its application in many areas, including solving the most complex practical working tasks and professional challenges.

The subject of the paper is elaborated firstly through the analysis of the legal aspects and the importance of the protection and rescue of the citizens, as well as through the discussion of unexploded ordnance as a security threat, with particular reference to the population of the Republic of North Macedonia. The main part of the paper is discussing the application of technology in the protection and rescue, with a case analysis of the Virtual Evidence Capture Tool for Ordnance Recovery.

The paper is based on a review of the current scientific and professional achievements in the field and presents and analyzes relevant statistical data related to the UXO in the Republic of North Macedonia. Special focus is placed on the possibility to use modern technology in evidence-gathering through photo-documentation using smartphones, tablets, and drones, in order to identify and determine the threat and consider the possibilities for disabling UXO.

The knowledge from the analysis and the possibilities for their use have scientific and professional justification in the field of collecting data on the existence of UXO on the territory of the country and their analysis, training of staff who work or will work on activities related to UXO protection and continuous application of developed software solutions in detecting, identifying and disabling UXO. This paper, of course, has its limitations, because additional data and results from current projects in this area may not be available and thus not be included in the comparative analysis, and certainly that the galloping development of technology day by day results in new and more modern methods and techniques than those analyzed in this paper.
Keywords: UXO, protection and rescue; technology; application.

1. INTRODUCTORY REMARKS

Natural and man-made disasters have happened and will continue to occur. The normal way of life of humans today is increasingly associated with the calculation of risks, as well as with the probability of certain events occurring. The technical-technological progress of humanity at the same time, slowly but surely, suppresses the human factor. As a society, we increasingly think that someone else will do the job for us and "clean our yard".

On the other hand, among the new types of weapons used in World War I were military aircraft and poison gas. Before this great war, civilians were usually far from the battle lines, given the manner and style of warfare. With World War I, and especially with World War II, this changed significantly, in the sense that more and more civilians were attacked and thus killed. London, for example, was an alternative target for bombers barred from landing bombs, killing a total of 1,413 British civilians and injuring 3,407. In June and July 1917 in Poplar, a teacher and 16 children were killed in this way (Essex-Lopresti, 2005).

The interwar period between World War I and II was characterized by the desire of the victorious powers to maintain and secure the European status quo and to take steps to avoid a new outbreak of war. A death toll of more than 20 million killed Soviet citizens, the Holocaust and the mass killings around Europe, account for an estimated 40-45 million casualties of the German war (Schütte, 2013, p. 88).

After the end of World War II, a number of wars took place in which, unfortunately, civilians suffered many casualties. Conflicts in Israel, Korea, Vietnam, military conflicts in the Middle East, and wars in the Balkans have continued to cause suffering and casualties to innocent civilians.

Meanwhile, with globalization and the development of technology, the way of warfare has changed significantly. Violence used for political purposes has been around for a long time. However, the intensity and manner of carrying out the terror in the last century against the civilian population are unknown in history. Only in the last 20 years since the attack on the Twin Towers in 2001 in New York, the world has entered into military, political and economic conflicts of which we are all aware of the consequences. The conflicts in Afghanistan, Iraq, Syria, Yemen, and Libya are not over.

Despite the advancement in technology, the existence of high-resolution cameras, guided bombs, global positioning systems, long-range aircraft control, and the development of artificial intelligence, civilians remain at risk. Unfortunately, "collateral damage" is a term that almost no person understands.

U.S. Gen. Kenneth Mackenzie said the U.S. military's deadly drone strike near the airport in the Afghan capital, Kabul, on August 29, 2021, was a mistake and apologized for the deaths. Mackenzie, who heads the U.S. Central Command, said ten civilians, including seven children, were killed in the attack, not extremists, according to the military (www.slobodnaevropa.mk, 2021).

2. PROTECTION AND RESCUE

The aforementioned military conflicts have resulted in the creation of organized forces for the protection and rescue of the population. Firefighters, medical personnel, and people clearing rubble and searching for survivors were initially organized on a voluntary basis. But the dangers and consequences were already extremely destructive and the need arose to organize protection and rescue forces.
Among the first forces formed to protect civilians were: the monitoring, reporting and alarm service, fire-fighting teams resulting from the air bombardment, rescue teams and first aid teams. In European countries, civil protection has emerged as the most organized. The first organized forms of civil protection were formed in these countries.

The first civil protection organization was established in Germany by the Ministry of War. (Солунчевски, 2014, 16).

In the Macedonian state, this system initially continued to function as a continuation of the Yugoslav one, and in 2005 it experienced a complete transformation. The protection and rescue system is one of the basic elements of the security system of North Macedonia, both in times of peace and during times of emergency and war.

The protection and rescue system contains a dimension of assistance and protection from an already occurred event, or an event that is ongoing, but at the same time has a pronounced preventive side. For example, the preventive nature of the PR we see in the competence to prepare a unique assessment of the threat to the Republic of North Macedonia from natural disasters and dangers. Also, the preventive dimension can be seen in the part of observation, detection, monitoring and study of possible dangers of natural disasters and other accidents, and further through training, coaching, exercises, organizing forces, taking protective measures, etc.

In organizational terms, all people, as well as legal entities, have a duty to contribute to the protection and rescue system, except for the elderly, the children, pregnant women and other vulnerable categories. Also, this includes the state with all capacities, other state bodies, the local self-government, public enterprises, institutions and services, trade companies... Within the protection and rescue system, important legal acts and relevant documents are adopted that are of exceptional importance in terms of security. Their overview is shown in Table no. 1.

Table no. 1. Strategic and operational documents of the protection and rescue system

<table>
<thead>
<tr>
<th>SIGNIFICANCE</th>
<th>NAME</th>
<th>PREPARED BY</th>
<th>ADOPTED BY</th>
</tr>
</thead>
<tbody>
<tr>
<td>Strategic document</td>
<td>National Strategy for Protection and Rescue</td>
<td>Protection and Rescue Directorate</td>
<td>The government proposes it The Assembly adopts it</td>
</tr>
<tr>
<td>Strategic document</td>
<td>National Assessment of Natural Disasters and Other Accidents</td>
<td>Protection and Rescue Directorate</td>
<td>The government adopts it</td>
</tr>
<tr>
<td>Strategic document</td>
<td>National Annual Protection and Rescue Program</td>
<td>Protection and Rescue Directorate</td>
<td>The government adopts it</td>
</tr>
<tr>
<td>Strategic document of local importance</td>
<td>Local Assessment of the Risk of Natural Disasters and Other Accidents</td>
<td>The Mayor</td>
<td>Community Council</td>
</tr>
</tbody>
</table>

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In the context of this paper, it is necessary to note that the Balkan wars took place on the territory of the Macedonian state, followed by the two world wars and the 2001 conflict 20 years ago. As a result of these military activities, the territory of North Macedonia, as part of the wider region of Macedonia, is an area where numerous unexploded ordnance is present. In the further part of the paper, we will present the legal grounds for neutralizing these dangers, as well as the degree and intensity of their presence.

3. UNEXPLODED ORDNANCE AS A SECURITY THREAT, WITH PARTICULAR REFERENCE TO THE POPULATION OF THE REPUBLIC OF NORTH MACEDONIA (RNM)

Unexploded ordnances (UXOs) (Enke, 2015:19-21) are explosive munitions that have been fired, thrown, dropped, or launched but have failed to detonate as intended. UXO include artillery and tank rounds, mortar rounds, fuses, grenades, and large and small bombs including cluster munitions, submunitions, rockets and missiles. UXOs are usually found in areas where fighting has taken place or at military firing ranges. UXOs can be discovered inside and outside of buildings. They can be buried beneath the ground or hidden beneath rubble or collapsed walls. UXOs can even be found lodged in trees or hanging from branches, hedges, and fences as well as a souvenir inside homes.

An Improvised Explosive Device (IED) (Enke, 2015:33) is a manually placed explosive device, normally home-made and adapted in some way to kill, injure, damage property, or create terror. Often UXO or abandoned munitions are modified to construct IEDs, which can then be detonated accidentally by the victim, by remote means (radio-controlled, command wire, etc.), or as a suicide attack.

The identification, classification and assessment of explosive devices such as unexploded ordnances (UXOs), and improvised explosive devices (IEDs) is vital to a wide range of Explosive Ordnance Disposal (EOD), law enforcement agency (LEA) and emergency response operations and is of critical importance to NATO and its partners' strategic interests and tactical operations. However, there is a gap in first responders receiving actionable advice on known or suspected threats quickly and effectively upon discovery. Typically, this requires specialized experts to go to the site in order to implement the necessary security, recovery and disposal protocols under high-risk and time-sensitive conditions. Moving physical evidence is often operationally impossible as it may expose responders and the public to risks in the case of explosive as well as chemical, biological,
radiological and nuclear (CBRN) devices or subject artefacts to damage in transit. Overall, the possibility of bringing evidence to EOD experts to provide real-time assessments and advice for first responders has been underexplored.

The legal framework governing the matter of dealing with EOD operations with unexploded ordnance by the institutions within the protection and rescue system, especially by the Protection and Rescue Directorate includes:

**Strategic documents:**

- Assessment of the Threat to the Republic of Macedonia from Natural and Other Disasters ("Official Gazette of the Republic of Macedonia“ no. 117/07);
- Methodology for the Content and Manner of Hazard Assessment and Protection and Rescue Planning ("Official Gazette of the Republic of Macedonia“ no. 76/06).

**Laws:**


**Government Decrees:**

- Decree on Implementation of the Measure of Protection from Unexploded Ordnance and Other Explosive Devices ("Official Gazette of the Republic of Macedonia“ no. 101/10);
- Decree on Implementation of the Measure of Protection and Rescue from Fires, Explosions and Hazardous Substances ("Official Gazette of the Republic of Macedonia“ no. 100/10).

**Rulebooks:**


**Guidelines:**

- Guidelines on the Content of the Rulebook on Protection from Fire and Explosion of the State Bodies, State Administration Bodies, Local Self-government Units, Public Enterprises, Public Institutions, Trade Companies, Sole Proprietors and Other Legal Entities ("Official Gazette of the Republic of Macedonia“ no. 80/11);
- Guidelines for the Content of the Study for Protection from Fires, Explosions and Dangerous Substances ("Official Gazette of the Republic of Macedonia“ no. 139/10).

**Internal acts adopted by the Director of the Protection and Rescue Directorate**

- Standard Operational Procedure for Protection from Unexploded Ordnance and Other Explosive Devices no. 10-1760/1 from 07.05.2010;
- Standard Operational Procedure for Humanitarian Demining, 2010;
- Standard Operational Procedure for Implementation of the Measure of Protection and Rescue from Fires, Explosions, and Dangerous Substances no. 01-2969/2 from 09.11.2010.
According to the Government’s Assessment of the Threats to the Republic of Macedonia from Natural and Other Disasters ("Official Gazette of the Republic of Macedonia“ no. 117/07), the number and quantity of unexploded ordnance and other explosive devices can be difficult to predict and determine, but given the fact that 5-10% due to various reasons are not activated, it is assumed that on the territory of the Republic of North Macedonia there is a presence of huge amounts of UXOs. Most of them date back to the First and the Second World War, as a result of the military actions that took place during that period.

Based on the field searches that have been planned, prepared and conducted by the Protection and Rescue Directorate, it can be concluded that the UXOs are present on the entire territory of the Republic of North Macedonia, but in specific areas in which there is the highest concentration of UXOs are:

- Bitola area;
- Prilep-Mariovo area;
- Dojran-Gevgelija area;
- Ohrid-Debar area;
- Other areas within the Thessaloniki Front and other armed conflicts on the territory of the Republic of North Macedonia.

According to the assessment, it is noted the presence of UXOs in the waters of Lake Ohrid and for their detection and destruction, it is necessary to undertake special measures and procedures.

The assessment states that in the Republic of North Macedonia measures and activities for protection from UXOs are being continuously undertaken and that only by 2007, over 200,000 pieces of different types, calibre, explosive charges, purposes and origin were found and destroyed.

According to the processed data in the Department for analytics and research within the Sector for planning, prevention and development in the Protection and Rescue Directorate, on the territory of the Republic of North Macedonia in the last thirteen years, a total number of 10,182 pieces of UXOs of different calibres have been found. More detailed information for the period 2007 - May 2020 is given in Table no. 2.
Table 2. Number of UXOs found in North Macedonia in the period 2007-May 2020.

<table>
<thead>
<tr>
<th>Year</th>
<th>No. of UXOs</th>
</tr>
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<tbody>
<tr>
<td>2007</td>
<td>965</td>
</tr>
<tr>
<td>2008</td>
<td>821</td>
</tr>
<tr>
<td>2009</td>
<td>675</td>
</tr>
<tr>
<td>2010</td>
<td>828</td>
</tr>
<tr>
<td>2011</td>
<td>831</td>
</tr>
<tr>
<td>2012</td>
<td>448</td>
</tr>
<tr>
<td>2013</td>
<td>1654</td>
</tr>
<tr>
<td>2014</td>
<td>833</td>
</tr>
<tr>
<td>2015</td>
<td>999</td>
</tr>
<tr>
<td>2016</td>
<td>393</td>
</tr>
<tr>
<td>2017</td>
<td>359</td>
</tr>
<tr>
<td>2018</td>
<td>610</td>
</tr>
<tr>
<td>2019</td>
<td>657</td>
</tr>
<tr>
<td>Until May 2020</td>
<td>109</td>
</tr>
<tr>
<td>TOTAL</td>
<td><strong>10,182</strong></td>
</tr>
</tbody>
</table>

As a result of non-compliance with the standard procedures, i.e., inappropriate acting in finding the UXOs, certain consequences were caused, whereby a total of 1,083 people suffered, of which 40 people died by 2007.

In the last 10 years, 1 civilian died, 3 civilians and 3 EOD technicians from PRD were injured in accidents caused by explosive devices. North Macedonia is a signatory to the Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on Their Destruction, typically referred to as the "Ottawa Convention" or "Mine Ban Treaty" and has thus accepted all obligations under its provisions. In addition to the Ottawa Convention and additional protocols, North Macedonia has accepted other international regulations that regulate the issue of banning or restricting the use of mines and other explosive devices, according to which it is obliged to implement those measures and activities for the protection of the population and material goods. In that context, it should be emphasized that North Macedonia fully complies with those international regulations and is a country that does not have and does not use anti-personnel mines.
In the Republic of North Macedonia, two state institutions are responsible for EOD operations. The first one is the Protection and Rescue Directorate - PRD which is responsible for conducting the measure of protection against unexploded and other types of explosive ordnances. According to the legislation (Law on Protection and Rescue and the relevant by-laws), the measures include:

- field search and retrieval;
- finding unexploded ordnance;
- marking and securing the terrain;
- disabling and destroying all types of unexploded ordnance and other explosive devices;
- transport to the designated and arranged place of destruction and
- safety measures during transport.

The second institution responsible for EOD operations is the Ministry of Interior - MoI, which handles improvised explosive devices and undertakes appropriate preventive measures for protection. If an improvised explosive device is found at the scene, then the experts from the Sector for Countering Terrorism, Violent Extremism and Radicalism are authorized to act. They are taking photographs as evidence for the needs of criminal investigations and are taking measures and activities to deactivate and destruct the device.

4. APPLICATION OF TECHNOLOGY IN PROTECTION AND RESCUE

The use of modern technology is a subject of continuous interest to the academic public (Malish Sazdovska, 2016). In disaster risk management, it has been extensively researched. Vyas and Desai say that now in the age of technology it has been easier to manage disasters both natural and manmade. Information technology is useful to prevent as well as recover them… it may be observed that advancement in IT in the form of the internet, GIS, Remote Sensing, satellite communication, etc. can help a great deal in planning and implementation of hazard reduction measures (Vyas & Desai, 2007).

The wide spectrum of technologies used in all four phases of disaster management (preparedness, mitigation, response and recovery) are remote sensing, Geographical Information System, Global Positioning System (GPS), Satellite navigation system, Satellite communication, Amateur and community radio, television and radio broadcasting, telephone and fax, Cellular phones, video Conferencing Networking Technologies, Internet, e-mail; Online management databases, disaster information systems and networks, Robotics (Rathore, 2016).

Aerial robotics, including unmanned aerial vehicles (UAVs), aka drones, show tremendous potential to transform humanitarian aid. Using this technology, organizations can map terrain more effectively, assess damage in real-time, increase situational awareness through high-resolution mapping and deliver items faster, cheaper and more efficiently. Lower in cost, lighter in weight (as little as three pounds) and quieter than helicopters or planes, with pre-programmed routes that enable them to fly in life-threatening conditions, these “digital responders” provide access to otherwise unreachable areas. In addition, infrared cameras and advanced listening systems enable UAVs to uncover survivors from rubble or among flames and live-stream night footage, increasing the success of critical rescue efforts (Yoo, 2021). The introduction of smartphones and tablets isn’t something new to the industry. This type of communication has been used to record and retrieve data, such as emergency calls and medical records. As technology progresses, it’s expected that
advancements like 5G will continue to improve mobile technology and encourage fire and rescue operations to increase their mobile usage for enhanced communication.

Once largely seen as a gadget for leisure time and hobbies, drones are now being used for several purposes in many different industries. There are numerous drone prototypes currently in progress designed to deliver a defibrillator to those in dangerous situations. With this type of technology available to those in hazardous situations, firefighters could have the potential to save even more lives (Brown, 2021).

5. CASE ANALYSIS - VIRTUAL EVIDENCE CAPTURE TOOL FOR ORDNANCE RECOVERY

EOD units, LEAs and emergency responders face enormous risks in their line of work when confronted with explosive devices and difficulties in the transfer of suspected threats and evidence for analysis. In practice, EOD involves the detection, identification, evaluation, rendering safe, recovery and disposal of explosive or other hazardous devices. A key challenge encountered is accurately identifying the object in question, evaluating and classifying the level of risk and obtaining actionable advice on how to proceed based on the device’s particular specifications and the context in which the threat is situated. These tasks comprise the first and most critical stage of EOD responses prior to removing, destroying or disarming the explosive itself because until the type and condition of the threat have been determined, the correct protocols cannot be put in place to counter it. For example, UXOs cannot be destroyed at the site in every case because of the risks of contamination due to the potentially hazardous materials, such as depleted uranium found in a tank and armoured vehicle munitions or other chemical, biological or incendiary hazards. Moreover, with so many munitions mass-produced across the globe, the task of identifying, categorizing and assessing the level of threat proves highly challenging. The issue has become even more complex with terrorist and insurgency threats. The widespread use of IEDs by these entities has made it harder to disarm or dispose of explosives and other devices. First responders may have difficulty in knowing what security and disposal protocols to deploy as standard identifiers of factory-manufactured munitions are not present in IEDs and the composition of the device may vary from case to case.

Although a plethora of advances have been made in recovery and disposal techniques, such as unmanned bomb disposal vehicles, the reality is that experts and equipment will not always be immediately available to deal with these situations. In the majority of scenarios, threats such as IEDs and UXOs will be discovered and responded to first by persons who do not possess EOD expertise. Identification and evaluation of the threat must wait until specialized units arrive at the scene and determine the nature and level of threat and implement the next steps, delaying counteraction under time-sensitive and dangerous circumstances. However, even when EOD teams arrive the wide range of potential devices and munitions that are not always readily identifiable as well as the need for close multi-agency coordination to effectively recover and dispose of suspected or known threats and secure the surrounding area entails that secure communication and information sharing between teams both on the ground and off-site is critical. As the following cases of IED and UXO disposal demonstrate, these issues have challenging field implications that can impact the security of emergency responders and the citizens they protect.

All these were the main reasons for establishing the VECTOR project (https://projectvector.net). It is a NATO SPS (Science for Peace and Security) Programme funded research project led by CENTRIC (www.research.shu.ac/centric/), in which three other academic and research institutions are members: CERTH (www.iti.gr), SSST
(www.ssst.edu.ba) and UKLO FSS (www.fb.uklo.edu.mk). It is developing an integrated solution for identifying, analysing, classifying and responding to explosive devices. By fusing 3D photogrammetry, artificial intelligence augmented and virtual reality technologies, we are developing a versatile toolkit that is deployable in a wide range of Explosive Ordinance Disposal (EOD) operational scenarios.

Explosive devices, such as unexploded ordnances (UXOs) and improvised explosive devices (IEDs), are a critical threat to NATO members and partner States. Globally, thousands lose their lives or face grievous physical and psychological injury every year to IEDs constructed by terrorist and insurgency groups as well as UXO remnants from past conflicts. On the front line, EOD units are especially at risk and require new solutions to 1) rapidly identify explosive devices, 2) safely conduct remote analysis and 3) enhance real-time collaboration between first responders, EOD units and off-site experts.

VECTOR delivers the following capabilities to enhance the safety and efficiency of EOD operations and, as a result, the security of the societies they serve:

− multi-media capture – to gather evidence of UXOs and IEDs;
− object recognition – to identify the type of explosive device in question;
− 3D photogrammetry – to process images into 3D objects;
− three virtual labs – for remote analysis in VR environments and 2D interfaces;
− virtual assistant software – with an augmented reality interface to guide users in using the system;
− user field manuals – to enhance EOD operations on the ground.

VECTOR provides a smart solution to enable first responders to send intelligence to remote experts and receive actionable advice via a multimedia capture application and a command-and-control platform in real-time. By synthesizing cutting-edge 3D photogrammetry, image recognition and augmented and virtual reality technology, VECTOR aims to go beyond the state-of-the-art to enhance EOD operations against a wide range of threats.

Through collaborative research by NATO Member and Partner State academic institutions with governmental and practitioner end-users, VECTOR’s outcomes will seek to improve the speed and accuracy at which EOD, LEA and emergency response units are able to analyse, assess and respond to threats. By replicating real-world objects in 3D and bringing them into Virtual Labs, including VR environments, off-site experts will be able to interact with evidence and analyse them in detail. This will enable faster and better support to emergency responders in real-time in areas including mine UXO detection and clearance, countering IEDs, detecting the threat of explosives and other devices and enhancing recovery of CBRN agents as well as forensic evidence collection and analysis. Above all, VECTOR aims to enhance the security of NATO members and partner states by providing a tailor-made, best-in-class tool that complements and enhances the capabilities of EOD, LEA and emergency response end-users to respond to threats.

6. CONCLUDING REMARKS

The subject of the paper was elaborated through several segments that discussed the theoretical and legal bases of protection and rescue, and the threat of unexploded ordnance to the population of the Republic of North Macedonia was elaborated. Due to the rapid development of technology and the need to use their benefits in solving practical problems, the paper also gave a review of the application of technology in protection and rescue,
specifically presented through the case scientific research project within the NATO SPS Program, which is underway, entitled VECTOR.

The description and analysis of the findings and results obtained in the paper confirm the need to collect data on the representation of UXO on the territory of the country, as well as training staff who work or will work on activities related to the protection of them. Modern scientific and technical-technological trends impose the need to take into account the continuous development of technical means and software solutions that will be used in finding, identifying and disabling the UXO, which will overcome the problems and risks that arise in such processes.

Overcoming the limitations and challenges in the daily work of the EOD technicians of the state institutions will significantly improve the EOD operations and their personal safety, as well as the safety of other people and areas where the UXOs are found. In that regard, the state institutions need to take into account more on procuring adequate modern working equipment (including personal protective equipment), unmanned aerial vehicles, appropriate transport vehicles, literature, specialized catalogue with UXOs features and characteristics, training for new EOD technicians, continuous training for the current EOD technicians, regional meetings for exchanging the experiences and good practices, expert support etc. The modern solutions, such as the VECTOR tool here would help with increasing the personal safety of the pyrotechnicians, without necessarily needing to approach the device to identify its model and other relevant specific features. That way, the risk of explosions at the location where the UXOs are found is lower, so the citizens who live there, as well as the objects near the location, are better secured from possible dangers.

Bibliography


https://www.slobodnaevropa.mk. (2021, September 18)


The Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on Their Destruction ("Ottawa Convention" or "Mine Ban Treaty")


TACTICS OF APPLICATION OF MEASURES AND ACTIONS IN THE CRIMINAL INVESTIGATION OF ECONOMIC - FINANCIAL CRIME

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Abstract

Economic-financial crime is a special group of crimes for which legal measures and actions are applied for detection, clarification and provision of evidence, but in order to achieve appropriate results for provision of relevant evidentiary material, appropriate tactics are needed in the criminal investigation. The detection of this crime is related to obtaining information of a certain category of perpetrators who commit crimes related to their jobs, performing certain functions or duties; the crime is related to abusement in the performance of the crime, and the motives are abuse of powers and acquisition of unlawful property benefit. The process of detection is followed by tactics for obtaining operational information, a process of branching out with tactics of applying legal measures and actions. The subject of this paper is an analysis of the tactics related to the application of legal measures and actions, and the most important ones related to the insight into business documentation, the tactics of conducting a conversation with suspects and the tactics of securing economic-financial documentation and those related to the entire selection and provision of relevant evidentiary material.

Keywords: economic – financial crime, abuse of powers, insight into business documentation

1. INTRODUCTION

Economic-financial crime in the society is considered as one of the most dangerous types of crime, as it is difficult to detect; the perpetrators in the society are mostly respectable citizens, and the damage that is caused is on a larger scale. It is particularly characteristic that most of this crime is under the protection or directives of the government, which considers this type of crime in the group of organized and inaccessible for investigation by the law enforcement authorities, whose members often appear as co-perpetrators or as concealers, at least. (Nanev, 2008).

Economic-financial crime has numerous emerging forms and occurs in all segments of social life, the spectrum of criminal activities is wide; they are mostly related to non-execution or non-application of laws and by-laws in the work field and in the making of certain decisions and solutions. The perpetrators of these crimes are persons in certain positions in the society which enable them to abuse their official powers and acquire illegal property for their benefit or benefit of other persons, not just natural persons, but also juridical persons. This crime has several important features: low visibility, complexity, difficulties in detection and prosecution, mild punishment policy, legal imprecision and
problems arising in the status of delinquents. The threats to the development of democracy, the rule of law and human rights and state security, stability and economic development of the countries in Southeast Europe and beyond are serious. (Arnaudovski, Nanev and Nikoloska, 2009)

Criminal actions in the field of economic-financial crime mainly occur as a result of placing the personal interests of individuals above the general interests of economic entities as a whole. There is an attempt to cover up those actions, in order to preserve the acquired positions or to reach the "desired" positions in the society. Concealment is usually carried out under the "veil" of creative-manipulative accounting, which reduces the reliability, quality and integrity of financial reports for the overall operation of any economic-legal entity, regardless of whether they are in government, mixed or private ownership.

Economic-financial crime, formerly known as economic crime, has its own general and special characteristics that distinguish it from the classic crime, it is a dangerous phenomenon that threatens the entire social-legal, economic and social system; it can be said that no other form of crime has such pronounced multifaceted consequences as with this crime to the detriment of all, but to the benefit of individuals. The creator of the theory of "white-collar crime" is Sutherland, who in his time, in the 40s of the last century, emphasized that the damage from this crime exceeds the damage caused by other forms of crime, whereby in addition to financial damage, damage is caused on social morality, it causes mistrust and creates disorganization on a wide scale. The most significant are the financial consequences that can be seen through the fact that the social material goods and values are attacked and appropriated, the economic system in the country is disrupted. As a significant consequence is the combination of economic and political power that negatively affects the maintenance of the legal order and the legal system, because this crime manifests a serious disregard for legal norms, thereby causing mistrust in the institutions of the system and increasing the degree of mistrust among the citizens towards the government and its organs. But the ethical consequences are also obvious, given that it is a phenomenon that has a negative impact on the creation and development of moral awareness in the economic relations. (Tanjevich, 2018)

The main motive of this crime is the acquisition of illegal property, but not by ordinary theft, threats, robbery, etc., but the financial assets which are in the legal financial system or the funds with the planned state Budget are misused with illegal and criminal ways by persons who are authorized to manage and direct them. Regardless of the form they take, criminal actions are characterized by several essential elements: false presentation of the facts important for making legal decisions; awareness of the individuals that false data has been presented; the person who receives the information treats it as true and relevant for making appropriate decisions and solutions; occurrence of damage on the basis of the aforementioned and the acquired illegal property benefit. (Cvetkovich & Keshetovich, 2018)

This crime can mainly be divided into two basic groups of crimes, the first of which is aimed at criminal behaviors in which the perpetrators avoid legal obligations towards the state (non-payment of contributions for health, pension and disability insurance, tax evasion, customs offences, etc.) and in the second group are criminal behaviors in which the perpetrators, using their function, power, workplace and influence, i.e., using their position and powers, commit crimes that illegally extract financial resources from the Budget of the state (abuse of the official position and authority mostly through crime in public procurement, use of discretionary powers, forgery of official documents, etc.) With both groups of crimes, the most common victim of economic-financial criminality is the state directly, and the citizens indirectly, but not all, a small part (perpetrators and their families)
are "profiteers" of the crime they committed, and perhaps they will never be discovered, because the evidence is "invisible" or well hidden, from the point of view that "no one can discover them". (Nikoloska, 2013)

The subject of the paper is the normative analysis of the legal measures and actions, especially the measures and actions that are key to uncovering and providing evidence and analysis of criminal tactics and methods for their implementation, but also an analysis of the effectiveness of the measures towards the adoption of valid court verdicts for the most committed economic and financial crimes based on indicators from a previous research. Based on the research on reported, accused and convicted perpetrators of the crime Abuse of official position and authority carried out for the period 2007-2019 and based on data from the State Statistics Office, data was rejected that for the researched period out of a total of 8709 reported perpetrators, 2432 or 27.9% of those reported were accused, and 1218 of the accused or 50.08% of the accused perpetrators were convicted, and only 13.98% of those reported were convicted (Nikoloska, 2021) which is a significant indicator that the efficiency of the criminal investigation and provision of evidence is weak and the reasons for the weak processing of these criminal cases should be sought. This input is similar to several previous researches, for individual economic and financial crimes, and also for the overall economic and financial crime in the Republic of North Macedonia. In several research periods on economic-financial crime, indicators were obtained that the most committed crimes are "Abuse of official position and authority" and "Tax evasion", that the efficiency in adjudication is about 12 out of 15%, with (Nikoloska, 2019) an exception in money laundering, where the efficiency is over 90%, but the data also indicate that in the phase of filing an indictment, there is an expansion in addition to predicate offenses and the crime of "Money laundering and other proceeds of a criminal offense". (Nikoloska, 2021)

The goal of this paper is to obtain indicators of the efficiency and effectiveness of operational officers working in the criminal investigation process, which is measured by the effective sanctions imposed on the perpetrators, the efficiency in the area of comprehensive undertaking of all measures, actions and the provision of evidence on which verdicts are based, but efficiency can also be placed under the "issue of corruption in the judiciary", especially when it comes to economic-financial crime where "trading with influence" is expressed, which results in a long period of time of conducting criminal proceedings, rejection of charges or adoption of final court verdicts with the representation of a "mild punishment policy", absence of imposition of confiscation measures and what is "most dangerous" in the prevention section in a negative sense, is that "this crime is worth it". Raising the awareness among operational officers for comprehensive clarification of criminal situations and provision of all relevant evidence supported by appropriate records and initiation of appropriate expertise to provide "irrefutable evidence" and to bring the judges in the decision-making to the state that "in front of the evidence even the Gods are silent" and are encouraged to judge accordingly.

2. CRIMINAL INVESTIGATION OF ECONOMIC - FINANCIAL CRIME

A criminal investigation refers to the process of collecting information (or evidence) about a crime in order to: (1) determine if a crime has been committed; (2) identify the perpetrator; (3) apprehend the perpetrator; and (4) provide evidence to support a conviction in court. If the first three objectives are successfully attained, then the crime can be said to be solved.
In recent years, the Republic of North Macedonia has accepted the recommendations of the International Community for the reform of the system of law enforcement agencies for perpetrators of economic and financial crime. Police powers have been given to the Financial Police and the Customs Administration, which are coordinated by a competent public prosecutor.

The legislator foresees three sets of measures and actions according to the law on criminal procedure (Official Gazette of the Republic of Macedonia No. 150/10). They are: police scouts or operational tactical measures and actions, investigative measures and special investigative measures. Which measures and actions will be applied and which operational officers will participate in a specific criminal case depends on the complexity of the case and the coordination with the public prosecutor who has an active role in the overall process of discovery, clarification and evidence, and determines the criminal investigation team. This is done with the aim of avoiding "double handling and overlapping of competence" as well as the engagement of other inspection services in order to adequately perform controls and provide relevant documentation. On this basis, all criminal activities and all involved perpetrators in the specific criminal situation are determined. It is a complex process that needs an appropriate coordination and planned operational action according to the principle of "case studies". (Nikoloska, 2015). Economic-financial crime has its own criminal characteristics in terms of the way of execution, the instrument and methods of execution which are used, and especially the status of the perpetrators and their criminal roles in the execution of crimes in a criminal situation. Operational officers have legal powers, legally provided measures and actions, but it is significant how they will be applied in the discovery of a criminal case and its full elucidation, how relevant evidence will be provided, how criminalistic tactical ways and methods of realization will be applied and how they will be combined in the interest of fully elucidating the case and providing evidence of specific crimes and evidence of the status properties and the role of all involved in the specific criminal situation. The complexity of the criminal cases requires new criminal tactics and methods of criminal investigation, but the old traditional tactics and methods should not be neglected and appropriate operational combinations should be made. Criminal cases can be simpler, but also quite complex, and the provision of relevant evidence is a complex procedure in which new methods developed by forensics should be applied, for this crime the forensic audit is significant, which has its own specific methods and tactics for securing evidence of this criminality. (Cvetkovich & Keshetovich, 2018)

2.1. Criminalistic control of economic and financial crime

From a criminalistic point of view, the tactics of action is in the process of obtaining data and information about a criminal case, and this is the work of operational officers in the process of criminal control, in which, in accordance with the legal powers and criminalistic principles, they work on obtaining general suspicions through cooperation with citizens, with the institutions, but also the methods of obtaining information from legal sources of knowledge as a basis for further measures and actions. When it comes to economic and financial crime, operational work is specific, because the criminal investigation does not start from a reported case; this crime is rarely reported. The cases are based on initial general information and their verification first through legal sources of knowledge, but also verification of data and records in the institutions, and then planned taking of measures and
activities. In the first phase of criminal investigation of the criminalistic control, information is collected and their verification is carried out in order to determine: (Dzukleski, 1995)

- The factors that determine criminal phenomena;
- The material consequences of the crime; and
- The criminal realization.

In the phase of criminalistic control, information and data are usually collected through cooperation with citizens who have a key role in the detection process, especially with experts from certain areas, and especially building a network of "collaborators" and people who have certain important information, but the obtaining of that information by operatives is dependent on their criminalistic skills for searching, checking and sorting the information; based on the clues and relevant data, facts and documents, legal measures should be taken. An essential feature of this method is good communication with citizens, conducting informal conversations about the happenings in their area and encouraging conversation about the criminal activities which are carried out in their place of residence, whether they are victims of someone's criminal behavior, whether some people got rich after they got certain position, etc. The cooperation of operational officials with citizens can be at the level of obtaining information from an established operational network of informants and collaborators, depending on the degree and manner of the established cooperation between citizens and operational officials. Therefore, the informant is an inevitable instrument of criminalistic work, which as the main bearer of the "criminal reporting service has a great importance in the repressive and preventive interception of crime".

The skilled informant is, in a way, a skilled consultant to the operative, who cannot always be up to date with all the developments, because quite often there is a change in the legal regulations; something that is allowed, legal, can be changed in the law to illegal, and the same is known to the informant from his/her area either by profession, expertise or facility.

Legal sources occupy an important place among the ways and methods of finding out about a committed crime or the perpetrators of crimes. These sources of knowledge are particularly important in economic and financial crimes, because through numerous legal sources - documents we can find data on criminal behavior. In fact, these are facts recorded in various records, registers, reviews, card files, reports from inspection services, or other business books. Such widely available facts, with prior grouping, analysis and criminalistic-tactical perception (through the application of the method of elimination and through other indicial methods), may indicate the suspicion of the existence of various criminal events.

As more significant legal sources of information we would single out: audit reports, reports from inspection services, especially reports from the Public Revenue Administration, tender documentation, customs documentation, trade register, sales contracts, solemnizations, etc. These documents, according to the law, should be posted on the websites of the relevant state authorities and institutions.

The use of legal sources of knowledge facilitates the work of operational officials who have to constantly monitor the problem on a linear basis (within their competence for the problem and according to the place of execution) in order to follow the published reports, but also other sources of knowledge and according to the principle of analysis and comparison to form "suspicions" about a possible crime and to investigate, initially with investigations, and then with concrete measures and activities: E.g. From monitoring the published data on public procurement in the area under their jurisdiction, to perform operational checks on whether and how a specific procurement was carried out, if they
determine certain illogicalities, to conduct a preview of business facilities and insight into business documentation and determine the actual condition. Cooperation with persons who know the situation and have specific information which is important for further inspection is also used here.

The method of analogy is used by comparing previously elucidated cases, because the perpetrators use the same or similar ways and methods, but all the specifics of each criminal situation should be determined. Especially with the principle of analogy, it is possible to predict and monitor a certain situation and determine new criminal cases which are similar to the ones that have already been revealed, and it can be about the same criminal structure or another criminal structure with the same status. E.g. Public procurement with the construction of buildings where people from the local government are involved, if a case is discovered and clarified, all tenders should be controlled, especially for the criminal structure that is suspected (the mayor as the orderer, the public procurement commission, the contractor and supervision). The mayor is the orderer of all public procurements, the tender committee may or may not be the same, but the contractor or economic operator is the same or different depending on the subject of the public procurement. Therefore, it is necessary to make a criminal forecasting and inspection plan, which may include experts from the relevant field who help the operational officers from a specific field, namely the professional associates, in the first phase, and in the investigation phase are appropriate experts.

Criminal assessment, possible predicting and versioning are based on initial methods, as a logical operation of analysis and synthesis. (Dzukleski, 1995).

In the first phase, the most significant operational-tactical measure is applied, which is "inspection in business facilities and premises of state authorities, institutions that exercise public powers and other juridical entities and to carry out an inspection of their documentation". (Article 276 paragraph 2 item 6 of the Law on Criminal Procedure, Official Gazette of the Republic of Macedonia No. 150/10). Parallel to this measure, computer data should be checked in the computer systems, but business documentation should also be seized from which the elements of specific crimes and documents that indicate the involvement of specific perpetrators can be determined.

2.1.1. Inspection in business facilities and insight into business documentation

In order to establish an inspection as well as the basis of suspicion for committed criminal acts in the field of economic-financial criminality, the operative officers should make appropriate application of the operational-tactical measure "in the presence of an official or responsible person to carry out an inspection of certain facilities and premises of state authorities, institutions exercising public powers and other juridical entities and to have an insight into their documentation".

In a situation of a more extensive, comprehensive and complex application of the measure inspection in the business premises or insight into the business documentation, the need for cooperation with certain professional services or authorities is imposed, who, within the framework of their competences, also have the right to undertake this measure, and they also have personnel whose specialty is the management of business and financial documentation (Public Revenue Administration, Financial Police, inspection services, etc.) and, primarily, have the goal to select the relevant and eliminate irrelevant documentation. (Banovic, 2002).

For the application of this measure and action, tactical ways and methods that correspond to the specific criminal situation should be used, but what should previously be
planned and undertaken is the determination of the subjectivity of the juridical entity, determination of the ownership whether it is government, mixed or private property, determination of the movement of ownership according to the data in the Central Register, determination of the identity of the official or the responsible person for the period that is controlled and at the moment when the measure is implemented, because the legislator is "expressive" in that, that actions should be implemented in the presence to an official or responsible person. The suspicions are related to a certain period of time, but the measure should be implemented in the presence of a current official or responsible person, and in further proceedings the suspect will be invited to a conversation in which he will be presented with the secured documents from which the suspicion of criminal activity arises. Here is the application of appropriate tactics, when and how to combine the measures of conducting a conversation with a suspect and inspection in business facilities and insight into business documentation. If the suspect is still in the specific workplace or function, in parallel with the mentioned measure, a conversation is also conducted, from which information about the case is gathered and a check of the entire documentation is carried out, while controlling the time of making certain decisions, when contracts are concluded, who signed the contracts, whether and how payments were made - control of invoices, receipts, consignment notes and their analysis. It is part of the administrative procedure of inspection of business documentation, but in certain cases, especially in the case of public procurement, inspection of business premises and facilities and comparison with business documentation is also required. E.g. construction of a facility: a public procurement is checked, whether all procedures have been observed, as well as who carried out the legal acts, who concluded the contracts, the specification and the clauses in the contract in terms of deadlines, foreseen penalties, etc. Then the time range, the payment of the same is checked and an inspection is made in the construction object, by comparing the specification as a document, the construction books, the incorporated materials, in order to determine certain irregularities (deviation from the gauge, incorporated unsuitable materials, unrealized situations, non-existence of quality guarantees, etc.) In those situations, not just the customer, but during the inspection of a business facility and inspection of business documentation, the contractor and the supervisor should also be present. For the implementation of the measure, an appropriate record should be drawn up, in which the identity and status of the official or responsible person is ascertained, and further the course of the inspection, the time and the entire documentation subject to control should be specified. If elements of criminal activity are found, the controlled documentation is confiscated with a certificate for temporarily confiscated objects.

The purpose of the mentioned measure is to determine whether the business books are legally kept, whether all the necessary documents have been drawn up, certified and found in the appropriate subject, to determine forged documents, to pay special attention to the signatures of the documents, whether they are signed by appropriate persons, to determine the realization of payments or a statement from financial accounting, determination of elements of "double payment" through invoices with the same content, determination of senders and receivers with time control, signatures and realization, determination of "non-existence" of legally required documentation (there is no receipt of goods, and payment has been made), identifying if there is a connection with other juridical entities and the need to inspect them, existence of blank signed memoranda or other documents, etc.

The tactic of action during the realization of the inspection in the business facilities and premises and the insight into the business documents is the emergent form of the
economic-financial criminality. It is previously known that this criminal is mainly focused on disobeying the laws and committing tax evasion, customs fraud, etc. of official position and authority. In the case of the first forms of this crime, especially in the case of tax evasion, an analysis is made of annual periods as well as the overall operation of the juridical entity, taxes paid, in the case of value added tax, the return of tax is controlled, in the case of other taxes, whether they are correctly calculated and paid, and the tax inspectors who have appropriate expertise in that area are involved for a comprehensive investigation. When it comes to misuse of public funds, the laws, internal acts and case are analyzed first, and if there is a connection, all related cases are also analyzed. When it comes to bankruptcy crimes, the bankruptcy case is analyzed for reasons of opening, all documents for filing a bankruptcy petition, and the entire bankruptcy procedure and all the decisions and resolutions made, especially in the section available to the bankruptcy estate.

2.1.2. Interrogation with a suspect

Interrogating a person suspected of economic and financial crime is specific and several interrogation tactics are used, but it must be in accordance with the law. First of all, depending on whether the suspect has been summoned, detained or deprived of liberty, his/her rights are familiarized with the right to a defense attorney, the use of the native language and the right to remain silent. If the suspect does not use the right to remain silent, the conversation itself should be conducted on the specific subject and the questions should be systematized and related to a specific case and its role. The conversation must not last longer than 4 hours, and the person cannot be detained for more than 24 hours in the Police Station, these are circumstances that should be taken care of, that is why it is good to plan the course of the conversation in advance and in the conversation itself, attention should be paid to clarifying disputed facts. A suspect is a person against whom a preliminary procedure is conducted, that is, a criminal investigation for a specific criminal case.

2.1.3. Inventorying of temporarily confiscated documents and technical recordings

When conducting an insight into business documentation, it is necessary to list all business documents, that is, files and documents for their further analysis, and in certain cases, technical recordings are taken, especially for computer financial crime. The files are registered with a record, and they are seized with an order for temporarily confiscated items, where all the files were listed according to their archive numbers and are confiscated in a photocopy that is certified to be faithful to the original. If temporary confiscation of documents that can serve as evidence is carried out, their inventory will be carried out. If this is not possible, the files will be enveloped and sealed. The owner of the documents can also put their own stamp on the cover. The envelope is opened by the public prosecutor. When reviewing files or documents, care must be taken to ensure that unauthorized persons do not find out their contents. A record is drawn up for the opening of the envelope. The person from whom the files or documents were seized will be called to be present when the envelope is opened. If he does not appear on the summons or is absent, the envelope will be opened, the papers or documents will be examined and listed in their absence. The same will be done with the temporary confiscation of a technical recording that can serve as evidence.

2.2. Criminalistic processing in economic-financial crime

Criminalistic processing, as a planned and targeted operational activity, starts from a certain criminal case or several cases, with the aim of criminalistic determination by collecting facts and data which have the significance of evidentiary information, "whether
there is a relationship between the perpetrator and the criminal case, i.e., whether the particular assumed causality is justified”. (Krivokapic & Zarkovic, 1999)

The second stage of criminalistic processing is when "grounds of suspicion" have already been established, on the basis of which the Public Prosecutor and the judge in a preliminary procedure issue orders for the application of investigative actions, and in cases where the evidence cannot be provided in any other way or when it is fulfilled, legal conditions and orders are given for the application of special security measures. At this stage, we already have a criminal case that is being developed, and on the basis of a forensic investigation plan, the operational officers act as a team with specific tasks. The object is given an "operational name" which is determined most often as a "synonym" for the criminal acts of the specific case. An example of the operational processes so far is "Metastasis" for the criminal case with the issuance of false disability pensions by doctors in the relevant commission; "Ariel" associated with tax evasion and money laundering, etc.

When the subject of criminal processing has already been established, all measures and activities are coordinated and a tactical approach is planned to take a system of measures and activities as an operational combination during the implementation of the operational action.

If the public prosecutor who leads the operational processing for a specific case determines the need, upon request from the state authorities, the authorities of the local self-government units, organizations, legal and natural persons exercising public powers or other legal persons, can submit to him/her the data that he/she required from them. He/she can request control in the operations of a legal and natural person and temporary confiscation until the adoption of a final judgment of money, securities, objects and documents that can serve as evidence, request tax control and be provided with data that can serve as evidence of a committed crime or property acquired by committing a crime, performing an inspection control and to request notifications of data related to unusual and suspicious monetary transactions. The aforementioned entities are obliged to provide the public prosecutor with data, notices, documents, objects, bank accounts or documents that he/she needs during the procedure. The public prosecutor has the right to request data, notices, documents, items, bank accounts or files from other legal entities and from citizens whom he/she can reasonably believe have such data or information. They are obliged to take the necessary measures and without delay, but at most within 30 days to deliver to the public prosecutor the requested data, notices, documents, objects, bank accounts or files. In case of non-action, the public prosecutor can propose to the court to impose a fine in the amount of 2,500 to 5,000 euros in Denar equivalent for the person responsible, that is, the official in the entities. The public prosecutor has the right to provide and inspect the requested data, notices, documents, objects, bank accounts or files, and for their non-delivery, he/she will notify the responsible or official person in the subject to whom he/she addressed and may propose taking over appropriate measures determined by law. If the public prosecutor suggested taking appropriate measures, the person in charge, that is, the official in the authority or the person to whom he/she addressed, is obliged to inform within 30 days about the measures that have been taken. Inspection of bank accounts does not constitute a violation of bank secrecy, especially when it is a criminal investigation in the criminal processing phase, i.e., investigation. At the request of the public prosecutor, operators of public communication networks and providers of public communication services are obliged to submit data on contacts made in communication traffic. (Article 287 of the Law on Criminal Procedure, Official Gazette of the Republic of Macedonia No. 150/10)
The legislator envisages judicial control over the legality of taking any of the actions, and thus a right is violated against the person on whom they are applied. If, within 8 days of taking the action, a complaint is submitted to the judge in a previous procedure, he/she is obliged to decide with a decision on the legality of the action or measure, and the person who submits the complaint is not limited in the right to file a criminal report and to realize the right of protection in another way. (Article 290 of the Law on Criminal Procedure, Official Gazette of the Republic of Macedonia No. 150/10)

The legal framework is a prerequisite for criminal proceedings, but success depends on the criminal tactical approach when undertaking each of the listed measures or actions. In order to fully solve a criminal situation, especially if elements of organization are established, it is necessary to establish evidence on the basis of which the following elements should be solved:

- It is a hierarchically organized group of people with a precise division of functions, which works for profit.
- There is an internal (within the organization) punishment system.
- Money laundering is done with various transactions.
- Government officials or persons from other segments of the government, or employees in the private sector, are bribed.
- Criminal activities are set on a long-term basis.
- The organization uses violence even against people from criminal circles.
- Registers screen – companies on paper. (Матеска, 1997)

The provision of evidence of economic-financial crime is through appropriate expert examinations of the previously provided business documentation, the same are performed by licensed experts registered in the register of experts of the Ministry of Justice. In the criminal investigation phase, the public prosecutor submits a warrant for an examination, and after the initiation of the criminal procedure, the warrant is issued by the court. In the warrant, guidelines should be given to the petitioner of the order which facts should be established, based on the expert's analyses, he/she prepares a finding and an opinion that has evidentiary value for the court. Documentation expertise is a broad area of forensic-technical research, where specific methods and modern technical assets are applied. The document can be examined by experts to determine the identification of signature, handwriting, numbers, typewriter, printer, seal and stamp, and then to determine the traces of forgery, erasure, correspondence, etc. (Aleksic, 1982).)

3. CONCLUSIONS AND SUGGESTIONS

Economic-financial crime is not a new phenomenon, but throughout history it adapts to social-economic relations, and the perpetrators always use their position and power to appropriate the public funds that are available to them when performing their duties or have the power of decision-making and directioning the public funds to the accounts of their close legal and natural persons. The forensic investigation is conditioned by legal measures and actions, but how they will be implemented depends on the expertise, the professionalism of the operational officers in the tactical approach to the implementation of each of the measures, but also in the part of operationally combining what the necessary measures and actions are, and what the most expedient ways to determine the individual criminal activities of a special form of this crime. There are numerous emerging forms of economic-financial criminality, the legislator foresees a large number of criminal acts that mainly refer to non-
compliance with the laws in business operations and the fulfillment of legal obligations towards the State and the employees. A large part of the criminal acts refers to abuses during the performance of official duties, where decisions based on public funds are misused. The Macedonian legislator, accepting the recommendations of the international documents, forms state bodies whose competence is the criminal investigation of this crime, not just the traditional criminal police, but in the existing authorities, such as the customs, where the positions of customs inspectors are introduced, and whose competence is also customs offenses which are aimed at avoiding customs duties towards the State, abuses during the entry and exit of goods, etc. Traditional and modern measures and actions are foreseen, especially the measures related to the provision of computer data, because the very application of the information technology in the process of operation of all juridical entities requires the need to control the data related to a specific criminal case. The coordination of criminal cases is from one center, and it is the competent public prosecutor who leads the case, especially when criminal processing is opened and information and data according to the prepared operational documents flow into the case handled and based on a thorough analysis and necessary measures and actions are planned and implemented. The most significant measure that is applied from the beginning and is essential for the development of the case and the opening of criminal processing and the implementation of operational action is the inspection of business facilities and business premises and insight into business documentation, which provides relevant data and facts, but also documentation from which elements of a crime are determined for further analysis and comparison. However, this measure is tactically applied depending on the emerging form of economic-financial criminality which is investigated. The provision of the relevant evidence is through the application of operational combinations of measures and actions that are carried out based on orders and coordination with the public prosecutor, and the determination of the relevant evidence is through appropriate expert examinations of the economic-financial documentation which are carried out by licensed experts.

4. REFERENCES

1. Алексиќ, Ж., (1982), Криминалистика, Савремена администрација, Београд.
2. Арнаудовски Љ., Нанев Л. и Николоска С., (2009), Јэкономското криминалитет во РМ, Македонска ревија за кривично право и криминологија, бр. 1.
4. Кривокапиќ, В. и Жарковиќ, М., (1999), Криминалистичка тактика, Београд.
5. Матеска, М., (1997), Доказите и докажувањето на кривичните дела, МРКПК бр. 4 Скопје.
6. Нанев Л. (2008), Криминолошки обележја на македонскиот економски криминалитет низ податоците на органите на казнениот прогон, МРКПК, бр. 2 - 3, Скопје.


DETERMINATION OF FORGERY PAINTINGS IN THE WATERCOLOR TECHNIQUE - CASE STUDY

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Abstract
Taking into account the previously published material on the work with dubious paintings made with oil on canvas technique, the paper presents a way to determine the originality of an artistic painting made with the watercolor technique. Determining the authenticity of a work of art is a very complex process, especially with the watercolor technique, due to the small amount of paint, as well as the non-existence of the canvas in the base. In the absence of a certificate of authenticity or description in museum inventory or catalogs, art historians cannot determine the originality of a suspicious work of art without conducting a forensic analysis. For this purpose, forensic scientists and forensic experts use the following laboratory methods: X-rays that detect the presence of a sketch or image below the surface), spectroscopic analysis of materials by infrared rays (FT-IR, highlights changes in asymmetric vibrations of material molecules), stereomicroscopic analysis of painted surfaces luminescent source and/or polarizing additive), physical analysis of color layers by a directed beam of light directly or through different filters, analysis using ultraviolet (UV) rays, as well as analysis by Raman spectroscopy (IR spectroscopy that highlights vibrations that are symmetrical to the center of symmetry of molecules). The paper presents a real case study of the forgery of the artistic painting of the English sculptor Henry Moore, made using watercolor and graffiti techniques, from 1937.

Keywords: Art painting, Forensics, Laboratory analysis, forgery, aquarelle technique

1. INTRODUCTION

Have you ever wondered what makes art really original and unique? Is it the hand that made it or the innate qualities of the work itself? If a fake Van Gogh appears as beautifully vibrant as an authentic one, enough that not even an experienced eye can tell the difference, why does the art world revolve around the concept of authenticity to such a large extent? The fact is, every artwork is an unparalleled expression of individual creative talent and a result of a precise personal, historical and cultural context. Art forgeries, even if aesthetically pleasant or technically stunning, can cause serious misinterpretations with extremely damaging consequences, first of all in the academic field, as well as disruptions to the art market. It could easily seem that the main purpose behind art forgery would be financial gain – do not be misled, profit surely plays a huge part and a gigantic amount of money is involved – but it is often the case that the human factor has a considerable role, in some instances the
desire for revenge against a system that doesn’t seem to recognize the talent of a would-be artist [1].

2. COPIES AND COUNTERFEITS

Not all works that are not original are forgeries. It is completely legal to own or make a copy of a work of art if it is not presented or distributed as the original. Copies of works of art that are not forgeries are: Replica - another production of the original by the artist or his workshop, replication is a copy made of exceptional quality, usually by another artist and reproduction is a copy that is usually made with industrial techniques in very large series, and therefore, in its artistic quality, is much inferior to the original [2].

Among the varied categories of art forgers, we can distinguish two major groups, the ones who create replicas of existing artworks and those who create brand new pieces inspired by celebrated painters. To the latter surely belongs Wolfgang Beltracchi, who is considered “the forger of the century” in one of Germany’s greatest art scandals. Over more than thirty years, together with his wife, he hoaxed collectors, gallery owners, and museums.

The strategy was to “fill the gaps” in the artists’ bodies of work, either inventing new works or creating paintings that were believed to be lost but whose titles were known and no images existed that reproduced them. The couple’s scam came to an end in 2011 when experts discovered traces of titanium white in a supposedly 1914 painting by Heinrich Campendonk, but the pigment did not even exist at that time. One thing led to another and eventually the two were found guilty for forging 14 works of art (dozens of other suspected instances could not be proved) and sentenced to a few years in prison. Nowadays, Beltracchi uses his remarkable artistic talent to create original works that are exhibited in gallery shows [1].

Paper and canvas are the two favorite choices amongst forgers. Over the years, they have cracked the key to beat visual scrutiny, and sometimes even chemical analysis! Paper: To fake older artists and beat the carbon dating test, the forgers must find the paper that fits the era. They scavenge bookstores in search of old books. Since olden times, books have had one or two empty pages in the front or back. The forgers tear these papers and use them for drawing. Other forgers let the paper select the master. Whichever artist’s style fits the dimension of the paper gets used in that particular forgery [3].

3. METHODS FOR DETERMINATION OF COUNTERFEIT

Traditionally, art historians, archaeologists and restorers / conservators characterize cultural assets visually and with the help of optical microscopy. The modern approach implies close cooperation of experts in the field of art, social and natural sciences. The application of methods of physico-chemical analysis enables unambiguous identification of used materials, as well as their micro-chemical and micro-structural characterization. In order for the analytical technique to be applicable to this type of testing, it is important that it is fast and non-destructive. The available amount of material for analysis usually does not allow repeating the measurement. Samples are heterogeneous - complicated selection of a representative sample and establishment of correlation of results obtained by different techniques in independent trials.

It is common to use the following physico-chemical methods in the process of determining forgeries of artistic paintings:

- Infrared (IR) spectroscopy
- Micro-Raman spectroscopy
- X-ray fluorescence analysis (xRF) and
- Optical microscopy method with luminescent source.

Digital X-ray fluorescence method and Raman spectrometry are methods that are used in cases during forensics, they are the methods applied in the process of expertise of the image from practice.

Both methods are spectroscopic methods. Spectroscopy is a scientific field that studies the interactions between electromagnetic radiation (both visible light and other areas of the electromagnetic spectrum) and the examined sample. Spectroscopic methods are used to identify substances, as well as to determine their amount present in the test sample based on the spectrum obtained by emission, absorption, reflection or scattering of radiation, or for qualitative and quantitative analysis of substances. Spectra obtained by Raman as well as infrared spectroscopy represent a "fingerprint" for chemical compounds. To the human eye, some colors may appear identical, but based on the spectrum, differences in the chemical composition of pigments can be clearly seen and it can be unambiguously determined which pigment was used [2].

3.1. Case study

Forensic analysis was performed to determine the originality of the painting [4], which is assumed to be the work of the English artist Henry Moore, in the technique of watercolor, charcoal and ink, Figure 1.

Fig.1. Controversial painting made with the technique - watercolor, charcoal and ink
The "watercolor" technique rarely appears in forensic analyzes, mainly due to their incomparably lower price compared to paintings made with the oil on canvas technique. Thus, in the forensic analysis of oil paintings on canvas, there are numerous studies and examples, while each painting made with the watercolor technique represents a specificity and thus a challenge for forensic scientists [5].

In the specific problem, the image and the frame in which it was placed were first examined in great detail. The painting shows the painter's signature and the mark of the year in which the work was created. In Figure 1, the position of the signature is indicated by an arrow, while in Figure 2 it is shown enlarged. On the back of the picture, there is a strip of paper on which the author's name is the name of the work and the year in which it was created (typed), Figure 3 and 4.

Fig. 2. Author's signature and year of creation “Moore 37”

Fig. 3. The back of the picture. The bar with is visible inscription (arrow)  

Fig. 4. Visible text of the inscription - H.Moore: 
   Ideas for Metal Sculpture 1937
In order to analyze the disputed painting in more depth, it was necessary to analyze the works of this English artist/sculptor from the period indicated in the controversial painting. On that occasion, data on the works of Henry Moore were collected from the catalog of the Henry Moore Foundation (HMF). The images with which the disputed image could be compared, because they were made with the same technique, are in Figures 5-9.

Fig.5. Group of Figures - made with gouache, water color, brush and shower

![Group of Figures](image)

**Group of Figures**
- Date: 1937
- Artwork Type: Drawings
- Catalogue Number: HMF 1311a
- Media: gouache, watercolour, brush and ink
- Dimensions: paper: 375 x 555 mm
- Paper: paper mounted board
- Signature: Moore 37
- Ownership: unknown
- Collections: [Henry Moore Catalogue Raisonné: 1930-1939](#)

Fig.6. Drawing for Metal Sculpture - made with the technique of watercolor and chalk

![Drawing for Metal Sculpture](image)

**Drawing for Metal Sculpture**
- Date: 1937
- Artwork Type: Drawings
- Catalogue Number: HMF 1312
- Media: watercolour, chalk
- Dimensions: paper: 380 x 610 mm
- Signature: II. Moore/37
- Ownership: private collection, UK
- Collections: [Henry Moore Catalogue Raisonné: 1930-1939](#)
Fig. 7. Drawing for Metal Sculpture - made by the technique of washing and showering, chalk, watercolor

Fig. 8. Drawing for Metal Sculpture - made using the technique of charcoal, pastel, watercolor, brush and shower, chalk

Fig. 9. Drawing for Stone Sculpture - made with the technique of pencil, watercolor, shower, chalk
The data obtained indicate that in the period from 1930-1939, this artist mainly used the technique: charcoal, watercolor (watercolor), ink, pencil and chalk. The focus of material testing was mainly on these materials.

As it can be determined, the disputed painting is in the catalog and belongs to the artist's work, and according to the nuances of the colors used, Figure 7 (which is in the catalog of the Henry Moore Foundation under number 1313) was chosen as the painting with which it will be compared. The selected image, both in terms of work techniques and visually, best suits the disputed image.

3.2. Physico-chemical analysis

For the needs of the physico-chemical analysis, the following methods were used [6, 7]:

1. Optical microscopy method with a luminescent source, performed on a microscope of the brand "Kern" type "Oko-Okn 178";
2. Digital X-ray fluorescence method, made on a Shimadzu instrument type "Sonialvision";
3. Raman spectrometry method, performed on an instrument of the brand "Rigaku" type "Progeny ResQ".

The method of optical microscopy with a luminescent source and a polarizing additive, under several different magnifications, was used as the first elimination method. This method observes the similarities of selected parts of the artist's controversial and undisputed paintings. Selected places in individual images are marked and shown in Figure 10.

![Fig.10 Comparison of image no. 7 (A) and disputed image (B)](image)

After the analysis by optical microscopy, similarities in the shades of the used colors and techniques were noticed, but minor discrepancies were also visible, so further laboratory analyzes were started.

The X-ray fluorescence method was applied only to the disputed painting, to determine whether there was an earlier painting below the original (which is often the case with forging works of art), but also to see traces of a graphite pencil often used in watercolors. Due to the geometry of the image, X-ray fluorescence of the left and right sides was done separately. The results are shown in Figures 11 and 12.
As the X-rays shown above do not show the expected details (micro-traces of previous sketches with pencil or ink, graphite or other paint), the originality of the image began to be justifiably doubted, and further laboratory tests were started. The method chosen is the Raman spectroscopy method as a very sophisticated method.

By applying the method of comparative Raman spectrometry of marked places (Figure 10), a series of spectra was obtained, of which only some characteristic ones were singled out. They are shown in Figure 13.

Fig. 13 Comparative spectra of undisputed (a) and disputed images (b) Henry Moore
The analysis of the obtained spectrograms, indisputable and disputable images reveals the difference in the position and intensity of the peaks of the wave numbers of the examined and comparative samples. This result indisputably indicates that the disputed painting is not the work of the English artist Henry Moore.

3. CONCLUDING REMARKS

In the modern world, the desire for easy money is more and more pronounced, especially in the world of art, where the number of falsified works has increased with the improvement of technology. The falsification of paintings with the oil on canvas technique has developed greatly and the number of techniques used in the production of forgeries is on the rise, as is the speed of production. At the same time, although on a smaller scale, there is also the falsification of art paintings made with the watercolor technique. Proving that this work is a forgery is possible only by non-inverse examination techniques such as X-ray fluorescence and Raman spectroscopy.

By the example presented in the paper, the authors hope to enable the colleagues who work in the same or a similar field to successfully shorten the process of forensic analysis and speed up the process of finding the perpetrators of this crime, as well as to prevent the crime environment in order to reduce the number of these acts.

4. REFERENCES

[2.] https://www.ffh.bg.ac.rs/uploads/sr/2020/12/Autenti%C4%8Dnost-umetni%C4%8Dih-dela-1.pdf
[4.] https://noahcharney.smugmug.com/Books/Forgery
PROTECTIVE AND SAFETY MEASURES AGAINST NEGATIVE EFFECTS OF TRAFFIC NOISE – A REVIEW

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Abstract
Noise represents any unwanted sound that interferes with a person's work, psychological and health condition, and their rest time. Numerous studies indicate that noise affects changes in human behavior (aggression, social conflicts) and causes stress reactions associated with physiological reactions. It also affects the central and neurovegetative system, reduces attention and concentration ability, reduces work ability, and reduces work productivity. Noise pollution is a major environmental health problem in Europe, with the transport sector being its main cause. The noise level is mostly affected by the number of vehicles, traffic flow, relative share of passenger and freight vehicles, their speed, types and characteristics of the road, whether the traffic is one-way or two-way, intersections, weather conditions, etc. In order to adequately protect against the negative effects of traffic noise, it is necessary to take various measures to reduce it. This paper provides a comprehensive review of the literature with special measures for the protection, monitoring and reduction of the negative impact of traffic noise.

Keywords: traffic, traffic noise, protection measures, noise barriers

1. INTRODUCTION

According to the World Health Organization (WHO), noise is harmful to human health. Numerous studies indicate that noise affects changes in human behavior (aggression, social conflicts) and causes stress reactions associated with physiological reactions. It also affects the central and neurovegetative system, reduces attention and concentration ability, reduces work ability and reduces work productivity (Science Communication Unit, 2015). Noise consequently affects the cardiovascular, immune, and digestive systems, as well as numerous other organs, causing functional disorders. In their study, which focused on the cardiovascular consequences of environmental noise exposure, Münzel and others demonstrated that noise not only causes disturbances, sleep disorders, or reduces the quality of life, but also contributes to a higher prevalence of major cardiovascular risk factors for arterial hypertension and the frequency of cardiovascular diseases. The evidence supporting this claim is based on the established rationale supported by experimental, laboratory and observational field studies and a number of epidemiological studies (Münzel et al., 2014). During their research, Lienhart and others came up with results that show that traffic noise affects physiological reactions during sleep, leading to visible cardiovascular reactions (Lienhart et al., 2018.). Pirrera, De Valek, and Cluydts state in their study that the impact of road traffic noise on sleep and daily functioning causes harmful effects that cannot be ignored. Specific groups such as children, the elderly and the sick are vulnerable and need special attention. Shift and night workers are also at risk because their work schedule
involves sleeping at unusual times, mostly during periods when road traffic noise is greatest (Pirrera et al., 2010). During their research, Singh, Kumari and Sharma list all the harmful effects of traffic noise and finally come to the conclusion that it is high time to take appropriate measures to control noise pollution at the limits of noise exposure (Singh et al., 2018).

Noise pollution is a major environmental health problem in Europe, with the transport sector being its main cause. The noise level is mostly affected by the number of vehicles, traffic flow, the relative share of passenger and freight vehicles, their speed, types, and characteristics of the road, whether the traffic is one-way or two-way, intersections, weather conditions, etc. (Lindov, 2011). The construction of traffic infrastructure, the increase in the number of motor vehicles, the conditions of traffic, and the non-compliance with the legal regulations have led to alarming levels of traffic noise (Lindov, 2003). According to the European Environment Agency (EEA), the most dominant source of noise is road traffic. In 33 EEA-33 member countries, over 110 million people are exposed to noise levels higher than 55dBA caused by road traffic. Of these, 32 million are exposed to very high noise levels (above 65 dB) (European Environment Agency, 2017). In urban areas, 81,668,800 residents are exposed to all-day noise levels caused by road traffic in excess of 55 dB (A), while in suburban areas this number is 31,142,900 (European Environment Agency, 2019). According to the WHO, noise caused by road traffic is the second most harmful source of environmental stress in Europe, right after air pollution. Air traffic contributes only about 1 percent of noise levels higher than 65 dB, to which 80 million people in the European Union are exposed during the day (Zijadić et al., 2014).

It can be stated that traffic noise is considered one of the main causes of reduced quality of life. In order to provide a high-quality environment in which people live and work, control (monitoring) traffic noise, protection measures, and reducing its impact to acceptable levels (up to 55 dBA during the day and 50 dBA at night), are becoming one of the main measures that need to be taken.

2. PROTECTION AND SAFETY MEASURES AGAINST THE NEGATIVE EFFECTS OF TRAFFIC NOISE

This paper provides a comprehensive review of the literature with special measures for the protection, monitoring and reduction of the negative impact of traffic noise. According to the research, there are the following solutions to reduce traffic noise levels:

- noise reduction at the source (vehicle),
- traffic-technical measures and proper planning and construction of roads to reduce noise,
- reducing the impact of noise by setting up protective barriers,
- immission protection measures,
- spatial planning and urban solutions,
- economic measures and legislation.

2.1. Noise reduction at the source (vehicle)

The source of traffic noise consists of vehicles, i.e., vehicle tires in contact with the road surface, engine power, cooling systems, intake and exhaust systems, etc. In the recent years, more and more attention has been paid to reducing acoustic noise in many industrial applications, especially in the automotive industry. Noise reduction is essential as it contributes to comfort, efficiency and safety. In order to reduce these sources of noise, the
European Union adopts regulations, ordinances and directives that vehicle manufacturers are obliged to comply with. One of the strategic goals of the European Union is to halve the negative effects of traffic noise on humans and the environment in the future.

There are two different approaches to achieving noise reduction. On the one hand, the passive approach is widely used. Passive control techniques generally reduce the sound emission of vehicle construction by geometrically modifying and applying additional damping materials. These methods are best suited for a larger frequency range. On the other hand, active techniques are available; these provide an alternative way to minimize unwanted noise resulting from the vehicle construction itself. Active methods are of increasing interest to designers because they are effective and significantly increase construction weight. Active control techniques are usually used in the low frequency range.

Some in-vehicle noise reduction solutions can be classified into:
- measures to improve the acoustic comfort in the vehicle,
- reconstruction and improvement of the intake and exhaust system,
- designing new engine models,
- replacement of fuels (usage of alternatives), and
- reduction of vehicle weight.

Measures to improve the acoustic comfort in the vehicle include better acoustic treatment of the vehicle by insulating the partition wall with the use of vibroacoustic materials. Better isolation of the partition wall on the vehicle means reducing the openings for the passage of cables, wires, and control pedals (gas, brake, clutch), but also by enabling better absorption inside the vehicle. By applying vibroacoustic materials, which are placed on the partition wall, floor, sides and roof of the body, it is possible to reduce the noise by 1 to 2 dB (A), depending on the speed (Lakušić et al., 2005).

Noise reduction by improving the intake and exhaust system is mainly reduced to the use of mufflers, reconstruction of the crankshaft and fan, reconstruction of the catalytic converter, and elastic support of exhaust systems (Milinković & Marjanović, 2009).

In today's engine design process, the acoustics are taken into account at a late stage of development, where the first acoustic measurements can be performed on the final prototype engine. At this stage of development, possible changes in engine design are very limited, and it is therefore impossible to obtain an optimal acoustic solution. This can be overcome by applying various simulations used today in engine designing.

As part of appropriate strategies to reduce the impact of noise from vehicles, it is necessary to take measures that reduce the replacement of fuels, such as: electric vehicles, fuel cell vehicles and hybrid vehicles.

Reducing noise with less vehicle weight means reducing the weight of complete sound packages, applying new materials, passive or active piezoelectric or electromagnetic patches on vehicle and engine panels, using smart Helmholtz resonators and broadband active noise cancellation. When applying these solutions, it is necessary to find full integration and the correct balance of components, in order to achieve the set goals of reducing noise and weight.
2.2. Traffic-technical measures and proper planning and construction of roads to reduce noise

Traffic-technical noise reduction measures include primarily changes in the traffic regime, such as (Lakušić, Dragčević, & Rukavina, 2005):

- traffic calming and
- reduction of traffic load and
- free flow of traffic.

Noise levels can be reduced by calming traffic in residential and other sensitive areas, and the best way is to install devices for automatic speed measurement. In addition, there are other solutions such as placing vertical barriers (raising one part of the road or the entire central space of the intersection, vibrating lanes), narrowing the traffic lane or widening the curbs. Thus, it is possible to achieve noise reduction of 6-8 dB. Traffic calming is possible by adopting new speed limits on roads. The effect of speed reduction on noise is given in the following table.

<table>
<thead>
<tr>
<th>Speed reduction (km/h)</th>
<th>Noise reduction for light vehicles ((L_{\text{eq}}), dB(A))</th>
<th>Noise reduction for heavy vehicles ((L_{\text{eq}}), dB(A))</th>
</tr>
</thead>
<tbody>
<tr>
<td>from 130 to 120</td>
<td>-1.0</td>
<td>-</td>
</tr>
<tr>
<td>from 120 to 110</td>
<td>-1.1</td>
<td>-</td>
</tr>
<tr>
<td>from 110 to 100</td>
<td>-1.2</td>
<td>-</td>
</tr>
<tr>
<td>from 100 to 90</td>
<td>-1.3</td>
<td>-1.0</td>
</tr>
<tr>
<td>from 90 to 80</td>
<td>-1.5</td>
<td>-1.1</td>
</tr>
<tr>
<td>from 80 to 70</td>
<td>-1.7</td>
<td>-1.2</td>
</tr>
<tr>
<td>from 70 to 60</td>
<td>-1.9</td>
<td>-1.4</td>
</tr>
<tr>
<td>from 60 to 50</td>
<td>-2.3</td>
<td>-1.7</td>
</tr>
<tr>
<td>from 50 to 40</td>
<td>-2.8</td>
<td>-2.1</td>
</tr>
<tr>
<td>from 40 to 30</td>
<td>-3.6</td>
<td>-2.7</td>
</tr>
</tbody>
</table>

Reduction of traffic load is possible by redirecting traffic to other roads (bypasses). In addition, restricting access to the city center or a specific district (like Superblocks in Barcelona) and even in whole neighborhoods (like Houten in the Netherlands) has proved to be very effective. Restriction or complete ban on the movement of vehicles at certain time intervals is a very good measure to reduce noise, such as limited access to delivery vehicles in the city center outside the morning hours, reservation system for delivery space in the city center (30 minutes with a maximum of two consecutive reservations), prohibited driving at night for trucks, and a ban on the movement of motor vehicles on the roads in order to open periodic pedestrian zones. Relieving traffic in cities, and for the purpose of reducing noise, is possible by promoting and encouraging the use of public city transport, bicycles and other alternative modes of transport. The impact on noise level by reducing traffic load is shown in the following table.
Ensuring the free flow of traffic can be achieved by coordinating traffic lights, while reducing noise resulting from the movement and braking of vehicles. Turning off the traffic lights at night reduces the noise level by up to 4 dB. This measure can, in some cases, be abused by non-compliance with speed limit traffic regulations, so it is best to use it in combination with one of the speed control measures. Free flow of traffic can be achieved by constructing roundabouts instead of installing traffic lights.

The design and construction of routes for the movement of public urban transport vehicles, and in particular rail systems, is also a significant way to reduce noise. The wheel-rail combination must not be neglected when observing noise and vibration propagation. Noise reduction can be achieved in these situations:

- by selection of the appropriate type of superstructure construction,
- by the maintenance of track and wheels,
- by selecting the appropriate vehicle type,
- by reducing the speed of movement.

Traffic noise levels can be reduced by 2 to 4 dB (A) depending on the type and texture of the pavement, such as flat cast asphalt, asphalt concrete and other porous textures.

Maintaining the road surface (for example, by leveling canal covers, patching holes and applying a new layer of asphalt) is the most cost-effective and effective corrective method. In this way, the dynamic impacts of the vehicle on the road construction are reduced, which results in a reduction in noise levels. However, this is still a short-term measure, so for example, cracks and damage in the original asphalt pavement reappear on the new layer. Therefore, the road would need to be maintained more frequently if the targeted noise reduction effect is to be achieved. The estimated noise reductions which can be achieved by taking a number of technical measures are given in the following table.

### Table 2. Impact of traffic load reduction on noise (Larsen, 2007)

<table>
<thead>
<tr>
<th>Reduction of traffic load</th>
<th>Noise reduction ($L_{\text{eq}}, \text{dB(A)}$)</th>
</tr>
</thead>
<tbody>
<tr>
<td>10%</td>
<td>0.5</td>
</tr>
<tr>
<td>20%</td>
<td>1.0</td>
</tr>
<tr>
<td>30%</td>
<td>1.6</td>
</tr>
<tr>
<td>40%</td>
<td>2.2</td>
</tr>
<tr>
<td>50%</td>
<td>3.0</td>
</tr>
<tr>
<td>75%</td>
<td>6.0</td>
</tr>
</tbody>
</table>

### Table 3. Estimated reductions in noise levels that can be achieved by traffic-technical measures (Bublin, 2000)

<table>
<thead>
<tr>
<th>Technical measures</th>
<th>Noise reduction (dB(A))</th>
</tr>
</thead>
<tbody>
<tr>
<td>Less noisy road surfaces</td>
<td>2 – 4</td>
</tr>
<tr>
<td>Avoid steep slopes of the road</td>
<td>5 – 6</td>
</tr>
<tr>
<td>Walls and other obstacles (the effect depends on the height and position of the obstacle)</td>
<td>5 – 20</td>
</tr>
<tr>
<td>Vegetation screens</td>
<td>4 – 6</td>
</tr>
<tr>
<td>Noise screens (walls and structures of different sizes)</td>
<td>5 – 20</td>
</tr>
<tr>
<td>Galleries</td>
<td>5 – 20</td>
</tr>
<tr>
<td>Tunnels</td>
<td>above 50</td>
</tr>
</tbody>
</table>
From the aspect of traffic planning, it is necessary to point out the growing trend of development and implementation of sustainable urban mobility plans. These plans are based on the concept of improving the overall quality of life of citizens. Special attention must be paid to the transformation of urban mobility in a way that encourages the transition to the use of mass modes of transport, active mobility (walking and cycling) and the management of transport supply and demand.

2.3. Reducing the impact of noise by setting up protective barriers

If traffic-technical measures and proper planning and construction of roads to reduce noise did not give the desired results, then it is necessary to turn to the construction of appropriate protective structures:

a) horticultural landscaping by planting protective vegetation along the road,
b) protective embankments,
c) protective walls/barriers,
d) combination of the above works and facilities, and
e) partial or complete coverage of the road.

In addition to all the benefits it brings, this noise protection measure causes additional investments, as well as shortcomings that affect the environment and driving conditions on the road itself. Some of the disadvantages to keep in mind are:

- the monotony of driving between two walls,
- difficult integration of facilities into the environment,
- reducing the comfort of nearby residents due to limited visibility (more recently, it has been addressed by “invisible” sound barriers built of glass or clear plastic).

a) Planting protective vegetation along the road represents the most natural, cheapest, and aesthetically best solution. A minimum of 10 (m) depth of vegetation will result in a noise reduction of only 1 dB (a). Very dense vegetation 30 (m) wide and 200 (m) long can reduce noise by 5dB (A). The following guidelines must be observed when applying this method of protection, alone or in combination with other measures (Kotzen & English, 2019):

- the side of the screen facing the sound source should be made of thick folded curtains of leaves,
- openings need to be avoided along the entire length of the planting,
- when planting in special lines, it is necessary to pay attention that the width between the plants remains the same,
- separation of plantations into special sections need to be avoided,
- arrangement of plantations in wide individual belts with overlapping or continuous belts with recesses or protrusions does not affect the effectiveness of noise protection,
- it is recommended to plant evergreen trees because their leaves remain during all seasons.

Spatial constraint can be a problem when planting protective vegetation because it requires occupying a wide belt along the road. However, this is a very cost-effective method, as the initial and maintenance costs are incomparably lower compared to other protective structures. It is best to apply them in combination with other measures.
b) Noise protection embankments are the type of construction closest to nature, and are therefore considered an aesthetically acceptable solution, provided that there is sufficient space for its construction. These noise pollution (sound dams) solutions are fully sustainable as they are made from earth, stone or recycled construction waste materials with environmentally relevant ingredients.

The slope of the embankment on the side of the road should be in the ratio 2:3, while the other side of the embankment should be shaped so that the embankment adapts to the terrain. They lower the noise level by about 3 dB (A) more than vertical walls of the same height. However, they require a lot of land to build, especially if they are very high (Lindov, 2011). The 5-meter high embankments reduce the noise level by about 6 dB (A).

Steep embankments: Steep embankments have supporting concrete or stone structures (spatial lattice structures) which are filled with hummus and are greened. Such a supporting structure is designed so that it allows a much steeper slope of the earth or humus embankment. For this reason, embankments are envisaged in cases where there is not enough available space for a real earthen embankment.
c) Walls / barriers against noise impact are obstacles that are placed between roads and receivers (urban areas / facilities, etc.). They are most often used because they provide the most effective results in reducing noise propagation. They are the best solution, especially in situations when there is not enough available space for planting protective vegetation and earth embankments. In order to achieve the best possible results, many factors need to be taken into account. First of all, the barriers must be acoustically appropriate. Proper noise barrier design requires consideration from both the acoustic and non-acoustic aspects. From the aspect of acoustic design, it is necessary to think about the barrier material, the place of installation, the dimensions and the shape of the barrier. The decision on the non-acoustic aspect is equally important. Solving one problem (in this case noise) can cause other problems such as unsafe conditions, visibility problems, maintenance difficulties, lack of access to maintenance due to improper barrier design and air pollution in case of complete fencing or covering the space.

By choosing the appropriate height and length of the barrier, it is possible to effectively influence the reduction of noise levels. Barriers do not necessarily always have to be the same height. It depends on the environment and the type of facilities along the road. Changing the height of the barrier can help alleviate the monotonous appearance of longer sections lined with barriers, and can also reduce the visual impact of the barrier. Figure 3 shows the role of the sound barrier in reducing noise levels.

![Diagram of sound barrier and noise reduction](image)

**Figure 3. Influence of barrier on noise reduction (Lärmschutz an Straßen, 2022)**
The material of construction can be reinforced concrete, concrete, brick, stone, wood, aluminum, glass, transparent plastic and constructions of various materials. The figures show the types of protection walls.
Terraced walls have favorable aesthetic and visual characteristics. They usually consist of reinforced concrete, metal, plastic, reinforced prefabricated structural systems, which are formed into a terraced structure of interconnected chambers, filled with soil and planted with low shrubs, plants or creepers.
Figure 9. Stepped wall; Terraced wall (Durisol, 2022)

The following pictures show the effect of the vertical and cantilever barrier.

Figure 10. Illustration of the effect of the vertical barrier next to the road

Figure 11. Illustration of the effect of the cantilever barrier next to the road (Lindov, 2011)
Cantilever barriers are barriers with a specially designed part at the top of the barrier. Its function is to reduce the impact of sound waves traveling over the top of the barrier. By comparing 2 (m) high cantilever barriers with a simple flat barrier of the same size, research has shown that the average increase in acoustic protection ranges from 1,4 to 3,6 dB (A).

d) The combination of the mentioned solutions and facilities can be chosen for the following reasons:
- available space that is not sufficient for the construction of a protective embankment,
- the available quantities of embankment material are not sufficient,
- the need to avoid the screen type of wall due to aesthetic and visual disturbances,
- breaking the monotony while driving and acting on psychological disorders.

![Image](image1.png)

Figure 12. Combination of mentioned solutions and facilities (Agrohuerto, 2022 & Palram, 2022)

e) Partial or complete coverage of the road (tunnel or sound tube) can reduce the noise level by more than 20dB(A) (Kim, Song, Park, & Kim, 2019). Tunnels are completely closed, optimal sound isolation facilities that achieve complete isolation of sound from traffic areas (roads or railways). The tunnels must be long enough to effectively protect the area. They are very expensive to build and usually require high operating costs (lighting, ventilation, fire protection, cleaning, etc.).

![Image](image2.png)

Figure 13. Tuneli kao mjera zaštite od buke (Kim et al., 2019)

A special case of the noise protection tunnel is a simpler design variant - the ZÜBLIN noise protection ceiling. In this case, in the areas along the tunnel and above it can be used efficiently, which enhances the aesthetic appearance and better landscaping (Lärmschutz an Straßen). Applying this solution reduces congestion (exhaust ventilation), provides natural light and reduces the risk of disaster caused by fire (no retention and spread of smoke).
2.4. **Immission noise protection measures (sound isolation)**

Noise protection at the site of immission is the measure that is best applied when designing buildings. Sound isolation of apartments includes sound isolation of windows, doors and exterior walls, especially in those parts of the building that are directly exposed to noise. Due to its high cost, it is often considered the last resort to reduce noise at the site of immission, and is especially implemented in noise-sensitive areas. Modern double and triple glazed windows can reduce noise by about 30 dB (A) and even in some cases by 40 dB (A). The acoustic performance of a triple glazing system depends on the quality of the frame used for glazing. In addition to window isolation, the isolation characteristics of door walls are also important. A solid door that fits well can achieve noise reduction between 35 and 40 dB (A) (Murphy & King, 2014).

2.5. **Spatial-planning and urban solutions**

Spatial-planning and urban solutions suitable for noise protection are (Figure 15) (Bublin, 2000):

- closed construction method,
- terraced construction method,
- atrium construction method and
- construction of buildings as sound isolation.

Reduction of traffic noise by **closed construction** is provided by the construction of warehouses, shopping malls, business premises and closed garages between residential buildings and noise sources.

**Terraced construction method** allows the use of a full terrace fence (concrete, glass, etc.), whereby the impact of noise can be effectively reduced.

**The atrium construction method**, where the garden yards are sheltered from the street, enables relatively quiet living, if the spaces facing the street are adequately protected.

**Building as sound isolation** means the construction of elongated, compact buildings that connect to each other without leaving space for passage (Städtebauliche Lärmfibel - Hinweise für die Bauleitplanung, 2018). The spaces on the ground floor are not intended for permanent residence of people (warehouses, staircases, work spaces, etc.). This construction method can reduce noise in the range of 25 to 30 dB(A). However, access roads or passages between buildings can only be left if their width is small in relation to the depth of the building. In such circumstances, noise reduction levels are lower.
2.6. Economic measures and legislation

Regulatory-assisted economic protection measures include taxes on vehicles whose noise level exceeds the prescribed values for certain land uses, the establishment of research funds, the development of action plans and implementation of noise protection measures, as well as incentives to encourage noise reduction. Although economic measures have proven to be very effective, they are very limited in European countries.

Legislation should also be supported by appropriate technology. A good example can be seen on the streets of Paris. The first noise radar has been set up in Paris as part of a plan to punish owners of loud motorcycles and other vehicles in one of Europe’s noisiest cities. This device, mounted on a street lighting pole, can measure the noise level of vehicles in motion and identify their license plate. The issuance of fines for excessive noise caused by vehicles is planned for the beginning of 2023. Meanwhile, the government has decided to set up more noise radars in other French cities and test penalty automation procedures as part of the 2019 Mobility Act. Under existing laws, authorities can already sanction owners of noisy vehicles, but police must have the necessary equipment and catch a driver in action. This system works on the principle of speed radar, with automated penalties.

3. CONCLUSION

Numerous studies indicate that noise affects changes in human behavior (aggression, social conflicts) and causes stress reactions associated with physiological reactions. It also affects the central and neurovegetative system, reduces attention and concentration ability, reduces work ability, and reduces work productivity. Noise consequently affects the cardiovascular, immune, and digestive systems, as well as numerous other organs, causing functional disorders. Noise pollution is a major environmental health problem in Europe, with the transport sector being its main cause. According to the European Environment Agency (EEA), the most dominant source of noise is road traffic. According to the WHO, noise caused by road traffic is the second most
harmful source of environmental stress in Europe, right after air pollution. It can be stated that traffic noise is considered one of the main causes of reduced quality of life. In order to provide a high-quality environment protection measures, and reducing its impact to acceptable levels (up to 55 dBA during the day and 50 dBA at night), are becoming one of the main measures that need to be taken. This paper provides a comprehensive review of the literature with special measures for the protection, monitoring and reduction of the negative impact of traffic noise in six basic groups: reduction of noise at source; traffic technical measures and proper planning and construction of roads to reduce noise; reducing the spread of noise by building protective structures; noise protection at the immission site; spatial planning and urban solutions; economic measures and regulations.

4. REFERENCES


38. Zakon o zaštiti od buke Kantona Sarajevo. Službene novine Kantona Sarajevo, No. 1/96, 2/96, 3/96, 16/97, 14/00, 4/01 i 28/04
39. Zakon o zaštiti okoliša Federacije Bosne i Hercegovine. Službene novine FBiH, No. 33-03
ALTERNATIVE CRIMINAL SANCTIONS IN THE REPUBLIC OF SERBIA¹

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Abstract

The workload of prisons and the increase in crime is not only a problem in the Republic of Serbia but in the region and the whole world. Therefore, the introduction of alternative sanctions is a step toward reducing the prison population, humanizing the sentence, reducing costs, avoiding the harmful consequences of imprisonment such as stigmatization, deprivation and privation instead of rehabilitation, a positive effect on recidivism, crime prevention, and prevention.

The application of alternative criminal sanctions is only at first sight more significant only for minor, possibly moderate crimes. In the first place, that is true, because they are intended for this category of crimes - their perpetrators. However, their application is also of great importance for serious crimes, because it saves the resources of criminal justice, which can be focused on combating serious crimes. Unfortunately, we cannot say that our judicial system applies alternative sanctions exclusively in exchange for short-term imprisonment, which is indicated by the data on the number of persons who have served up to one year in prison in previous years. Statistical data for 2020 for the territory of the Republic of Serbia indicate the following application of alternative sanctions, and according to the Law on Execution of Extrajudicial Sanctions and Measures: Imprisonment served in the premises where the convict lives (house arrest with and without electronic supervision) - 3560, Probation with protective supervision- 19, Penalty of work in the public interest (decisions of the misdemeanor and criminal court) -156, Measure prohibiting leaving the apartment (house arrest) with and without electronic supervision -1066.

Keywords: alternative sanctions, punishment, penal policy, excessive crime

¹The work was created as a result of research engagement according to the Plan and work program of the Institute for Criminological and Sociological Research for 2021., which is funded by the Ministry of Education, Science and Technological Development of the RS.
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1. INTRODUCTION

These days, the sanctions goals can, to a large extent, be achieved in conditions that are less restrictive than imprisonment. The concept of sanctions is applied under the patronage of the community and it has an aspiration towards a preventive, not a retributive component of punishment since imprisonment has more negative than positive effects on the perpetrator, his family and the whole community. Imprisonment affects general prevention - to warn potential perpetrators that if they commit a crime, they will end up in prison and that the level of correction of prisoners' behavior while serving a prison sentence, their improvement, and their resocialization give very low results (Stevanović, Igrački, 2013: 524-534).

Penal policy (Ignjatović, 2012: 102) can be mild and can be strict (Đorđević, 3/2009: 68), so when sentencing criminal sanctions, the severity, character and structure of the crime to which those sanctions are directed must be considered. The value system, norms of behavior and the behavior code of convicts that exist in prisons largely obstruct efforts to bring about positive changes in the personality, with the aim that when the prisoner returns to the community no longer commits crimes. The most important values that exist among convicts are group cohesion and mutual solidarity, which often lead to great resistance to the formal system, and thus to resistance to engage in activities that lead to positive changes in behavior (Mirić, 2014; Konstatinović-Vilić & Kostić, 2006).

Therefore, the aim was to develop an alternative to imprisonment, especially with the aim of avoiding these negative aspects of imprisonment, especially for prison sentences of up to one year, because experience has shown that it does more harm than good. The alternative sanctions are recognized to have the purpose of providing an adequate social response to crime, above all to enable the individualization of the punishment itself (Soković, 2009). The Criminal Code from year 2009 went a step further in the development of alternative sanctions and legal means, introducing a completely new form of serving a prison sentence, "house confinement", i.e. serving a prison sentence without leaving the premises where the convict lives, as appointed by the legislator. In this way, in addition to fines, work in the public interest and revocation of driver's licenses, the trend of finding alternatives to the existing short-term prison sentence has begun.

A step forward in crime prevention and reduction of the prison population is being brought about by alternative criminal sanctions and legal means, as an instrument of criminal law response to crime in our criminal legislation. The concretization of the very idea of the importance and significance of the application of alternative criminal sanctions and measures found a foothold within the codification of the Criminal Code\(^4\) in 2006. As a reaction to imprisonment, there is a general movement in European and North American countries to find new sanctions, often called substitutes or alternatives to imprisonment (Pradel, 2009: 34).

2. EXPERIENCES AND EFFECTS OF IMPRISONMENT

In recent years, most research conducted in the United States has shown that there are many problems with standard imprisonments, such as overcrowding in penitentiaries, huge financial costs, violations of basic human rights, and a still high rate of returns among ex-convicts. These problems demanded the urgent need to reform the standard execution of prison sentences in America (Bagalić, Hunter, 2018: 1-64). It is emphasized that the current prison system causes great suffering to prisoners, which is disproportionate to the crime for which they were convicted (Bagalić, Hunter, 2018: 1-64). The former idea that a convict should be able to live a useful life in a social community, from today’s point of view, seems utopian, as opposed to the price society pays for an individual to stay in prison for a certain period of time.

Any punishment expressed through the harm imposed on the delinquent, and especially the punishment of deprivation of liberty, represents an inhumane legal means in modern society, in which freedom is a conditio sine qua non of human existence (Lazarević, 1974: 78). This does not mean that imprisonment can be abolished. We are witnesses that imprisonment is inevitable for the most serious crimes. The assumption that the length of stay in prison will affect the change of habits and value system of convicts, i.e. that a convict will have more time to understand and accept socially acceptable forms of behavior if he/she is exposed to longer treatment in prison, shows that the length of stay in prison does not significantly affect the change of attitudes and behavior of convicts in relation to those sentenced to shorter prison terms according to the research carried out in 2020 (Igrački, 2020).

Research of the effects of treatment in penitentiary conditions (Igrački, 2020: 101-120), took under monitoring the attitudes of two groups of convicts: those who spent ½ sentences in prison and convicts who have spent more than ½ of the prison sentences in prison, according to the level of influence of the prison on their behavior. The results of this analysis provide an argument that convicts find it difficult to change their attitudes under the influence of the prison program, because most of them do not want to change their attitudes under the influence of prison institutions, and the main reason is that they believe that imprisonment is a waste of time and it does not have any influence on the behavior. Both groups of convicts (more than ½ served sentences and less than ½ served prison sentences), in the high percentage, 47% and 44% - these data indicate that time spent in prison is not useful and that convicts do not expect that the prison institution, with its work program, will help them change their attitudes and correct their behavior.

Moreover, for some crimes, murder of children, rape, the most severe forms of violence, the application of punishment other than imprisonment would cause additional public harassment. The penalty of imprisonment is necessary for the protection of society and the fight against crime. On the other hand, the meaning of retribution, resocialization and prevention as the basic postulates of the execution of criminal sanctions is called into question by short-term sentences of imprisonment (Lazarević, 1974: 78). The theory states that for a certain type of behavior, such as violent crime, the system of traditional imprisonment is the best, compared to drug-addiction associate and non-violent crimes, which could be adequately sanctioned by various forms of alternative sanctions.5

The former opinion was overcome and it states that the existence of special institutions for short-term sentences would contribute to eliminating the harmful consequences of short prison sentences which result from internal contacts and lack of a classification of convicts, but would also enable constructive treatment, adapted to the specifics of this sentence (Lazarević, 1974: 4). In addition, the large financial resources that need to be provided have led to the abandonment of the need for special institutions for the execution of short-term prison sentences. The treatment of re-socialization that is carried out in prisons cannot give the expected results when it is done in a short time and therefore most convicts who are in prison do not receive adequate treatment (Lazarević, 1974: 4-6).

Negative effects of short prison sentences are eliminated by applying alternative legal means (substitution of sentence): parole, suspended sentences, court reprimands, work in the public interest, revocation of driving licence and parallel penalties such as home confinement, electronic surveillance, fees, half-day detention, intensive supervision and other legal means (Jovašević, 2016: 155-156). Setting standards and criminal policies for the implementation of alternative criminal sanctions in the field of alternative criminal sanctions and legal means were defined at the UN Congresses on Crime Prevention and Treatment of Defendants in 1980, at the 6th Congress, Resolution no. 8 on Crime Prevention and Treatment of Defendants, in 1985 at the 7th Congress Resolution no. 16 on the reduction of the prison population, alternatives to imprisonment and social integration of convicts, so that at the next session in 1990, the Draft UN Standard on Minimum Rules for Non-Detention Legal Means (the so-called Tokyo Rules) were accepted.

In order to regulate in more detail and create a comprehensive system of European standards of alternative criminal sanctions, a number of different documents will be adopted, including a new Recommendation on European rules on community sanctions and measures, accepted in March 2017.6

The Tokyo Rules and Recommendations R (92) 16 and R (2000) 22 of the Council of Europe were adopted with the intention of serving as an incentive to build a more efficient and humane system of sanctioning criminal behavior, and represent the minimum conditions necessary to develop rules for implementing detention, as well as minimum legal means of protection of both legal security and the rights and freedoms of persons subject to these penalties. What the Tokyo Rules especially insist on is the need to measure alternatives to institutional treatment, which start from the idea of spreading the rights of criminals, bringing them in line with victims' rights, public safety concerns and crime prevention (Ignjatović, 2018: 63).

The main objectives are to establish rules on community sanctions, which will ensure fair application of these sanctions by national legislation, contribute to providing guarantees to prevent human rights violations against persons subject to community sanctions and legal means, and propose clear rules of conduct for those in charge. The key issues for conducting an adequate penal policy in Serbia are concentrated around several issues. These are: prescribed penal ranges, the purpose of punishment, mitigating and

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aggravating circumstances, conditions for a suspended sentence, creating conditions for serving a suspended sentence with supervision, an act of minor offence (an institute which, unlike minor social danger, is quite rare applying in addition to expanding the conditions for its implementation (by the 2009 Amendment) and the possibilities that exist in terms of criminal procedural law (primarily related to the principle of opportunity and plea agreement) (Stojanović, 2012: 1-18).

Guided primarily by the guidelines accepted by the Council of Europe7 in the scope of imprisonment and overcrowding, the Government of the Republic of Serbia accepted the Strategy for Reducing Accommodation Overcrowding in Penitentiary Institutions in the Republic of Serbia by 20208 thus setting targets for reducing population density in institutions.

One of the principles set by the Strategy is the further development of the system of alternative criminal sanctions and trust services, as one of the ways to reduce the excessive overcrowding of institutions in our country. The Tokyo Rules of the United Nations9 and the European Rules of the Council of Europe10 provide recommendations and guidelines to member states for the development of effective systems of non-institutional sanctions and legal means.

The high recidivism rate is just one example of the inadequacy of the current criminal policy, which relies on prisons and punishment to solve social problems in society. Therefore, there is an urgent need to find other solutions specifically for certain crimes, such as drug abuse, which is the goal of the European countries that participated in the project, the European Prison Observatory concluded in its 2016 report (European prison observatory) (Heard, 2016: 1-38). The opposite stand to the idea that the standard system of imprisonment can be completely overrun; there are also opinions that deny the crucial role of alternative sanctions in reducing the crime rate (Igrački, Brašovan Delić, 2022: 349-360).

It is obvious that prison treatment is effective if it leads to a reduction in the prison population, a reduction in returns, a change in behavior as well as the desired changes in the environment of the treated person. Institutional resocialization has shown weak effects on changing the behavior of criminals, and the state has approached new ways of resolving this issue. Given that there is a double approach to the punishment with severe penalties for offenders identified as dangerous to society, while alternative sanctions or restorative justice processes are applied to less serious offenders. In order to keep up with the European standards, in 2006 the Republic of Serbia, by accepting the Criminal Code11 and the Law on

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8 The United Nations Minimum Standard Rules on Alternative Measures from 1990, on the basis of which they were accepted through documents that promote, regulate and enforce alternative sanctions, i.e. community-based sanctions.
10 Ibid
the Execution of Criminal Extrajudicial Sanctions and Legal Means, acquired a precondition for the practical application of alternative sanctions.

3. APPLICATION OF ALTERNATIVE SANCTIONS AND LEGAL MEANS IN EUROPE AND SERBIA

In Europe, the system of alternative sanctions was developed on the basis of experiences of applying two very different institutes of similar importance: conditional sentences, as a continental European one, and probation as an Anglo-American institution. It is assumed that most crimes are committed by non-violent criminals and do not pose a great danger to society, so it can be expected that the goals of punishment can be achieved in conditions that are far more favorable than imprisonment, in the community. Thus, the development and application of community sanctions have been most widely applied to “low-risk” offenders, and traditional probation is in this sense opposed to imprisonment.

Between imprisonment and (conditional) freedom, there is a space to be filled by acts of an alternative nature, "something between probation and imprisonment, where conditions of supervision are still strict, but penalties are more lenient than prison" (Soković, Vasiljević, 2007: 121-138). The practice of European countries in the application of non-institutional sanctions, as well as the organization of the probation service, differs significantly from country to country, which indicates that the recommendations and resolutions of the Council of Europe are fully implemented in some countries. So, we can see that alternative sanctions are most often applied in Finland, England and Wales, Denmark, and the least in Italy and Spain. According to data from recent years, an average of 3,885 alternative sanctions per 100,000 inhabitants per year are imposed in Finland, 2,806 in England and Wales, 2,630 in Denmark, 1,268 in Sweden, 1,067 in Germany, 848 in France, 370 in Italy and 298 in Spain.

These data show that some members of the European Union have developed a system of alternative measures that are largely imposed and that the intention of extra-institutional sanctions have fully taken root in practice. Of course, Finland, England and Denmark are leading the way, and it is unexpectedly applied on a small scale in Spain, Italy and France, which have a well-developed social crime prevention programs (Stevanović, Igrački, 2013: 302). In Italy, alternative criminal sanctions were introduced back in 1981, as special forms of "imprisonment", which gives the convict the right to spend 10 hours in special departments of the penitentiary (supervised liberty), for those sentenced to imprisonment for up to three months who have the obligation not to leave their place of residence and to report regularly to the competent authority (Marietti, 2015).

In 2014, the Italian government undertook to propose a law that would prescribe the possibility of applying home confinement as the main punishment for all crimes indictable by up to 5 years, or the obligation that all prison sentences up to 3 years be imposed exclusively at home (Marietti, 2015). Although the data on whether the Law in this form has

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13 Anglo-American countries have the most significant and longest experience in the application of alternative measures. In the USA, the wider application of these measures is connected with the Juvenile Justice & Delinquency Prevention Act from 1974, within which the so-called strategy of institutionalization (DSO), and in the UK for the Criminal Justice Act of 1972 on the basis of which, to begin experimentally, the Community Service Order (CSO) and the Day Training Center (DTC) are established.
come to life today is not reliable, it shows the intention of the legislator to replace short-term prison sentences as much as possible with some other types of deprivation of liberty. Thus, the applications of sanctions that are implemented include: fees on daily bases, home confinement, restitution, work in the public interest, electronic monitoring, probation surveillance, daily reporting centers, boot camps and various forms of protective surveillance that can be carried out in the local community that are represented in the laws and practices of individual countries.

The characteristic of the application of these measures is reflected in the restriction of a certain degree of freedom through the obligations and conditions that are imposed on the person; they are applied by certain bodies and are executed in the community. The content of alternative legal means consists of educational, medical or therapeutic doings that are applied within the local community in order to avoid or reduce unnecessary stigmatization of convicts and improve the process of their reintegration.

With the new Criminal Code from 2006, which is in force today with several amendments, for the first time alternative criminal sanctions were introduced into our criminal legislation, so in addition to the mentioned conditional sentence with protective supervision, work in the public interest revocation of driving licences, which in addition to imprisonment and fines, are provided as penalties in our system of criminal sanctions. It is later amended, from 3/9/2009, home confinement was introduced in such a way that it is presented as a way of serving a prison sentence of up to one year.

The execution of sanctions, imposed as an alternative to prison sentences in Serbia, is performed by the Probation Office (Trustee Service), which operates within the Department for Treatment and Alternative Sanctions at the Administration for the Execution of Institutional Sanctions of the Ministry of Justice. The first office was opened in Belgrade on November 14, 2008, and after the initial one, the next offices were opened in Novi Sad, Subotica, Sombor, Valjevo, Niš, Kragujevac and Leskovac.

The formation of the Probation Office provided organizational conditions for the professional and consistent implementation of alternative sanctions. The actions of the trustees are regulated in detail by the Rulebook on protective supervision and penalties for work in the public interest. Scope of authority provides establishment and maintenance of contacts with the convict, respecting the principle whose essence is the restriction of the convict's rights only to the extent necessary to achieve the purpose of the sentence. It cooperates with the competent court, the body of internal affairs, the employer, and other institutions, and has the right to request data and inspect official records and other documents relevant to the execution of a suspended sentence. There is an obligation to submit the file of the sentence to the Department for Treatment and Alternative Sanctions after the execution of the sentence, and it submits it to the court.

Of course, one of the problems is the insufficient number of trustees, and according to the data of the Probation Office, there are 30-50 people on one trustee over whom he/she should implement one of the sanctions. Based on the interview with the judge's associate of the Primary Court in Pancevo, who deals with the matter of execution of criminal sanctions, the problems faced by the Primary Court in Pancevo in this area were: "In practice, it is considered that one of the problems is that the commissioners are not educated in the field of law and that they have not been informed by the Administration that there is a deadline by which the sentence expires, which is a potential danger for the execution of the sentence in those cases where no timely action is taken. Also, the fact is that there are a small number of commissioners in the Republic of Serbia. For example, the Commissioner in charge of the High Court in Pancevo is in charge of the entire territory of the South Banat District,
which is a huge job for one person. There is also a lack of technical possibilities, as well as he does not have a vehicle for the purpose of touring the area he is responsible for.”

For our justice system, unfortunately, we cannot say that it applies alternative sanctions solely to replace short-term prison sentences, as indicated by the number of ongoing persons who in previous years had served up to a year in prison. The practice of the judicial authorities of the Republic of Serbia is extremely retributive because it is based on the imposition of short-term prison sentences (up to one year 67% and 82% up to two years), as opposed to alternative sanctions that are more suitable for achieving special prevention.

The main question of the controversy is whether alternative criminal sanctions include ancillary penalties (work in the public interest and the penalty of revoking a driving licence) or whether other measures are considered alternative criminal sanctions for adult perpetrators of criminal offenses (suspended sentence and court reprimand) is not crucial for the issue of house confinement.

In the broadest overlook, any criminal sanction that in an appropriate manner and according to the conditions prescribed by the Criminal Code substitutes imprisonment or fine (when prescribed as the main or only punishment for a specific crime), is an alternative criminal sanction (Škulić, 2014: 251). In a narrower overlook, an alternative criminal sanction should be understood as any criminal sanction that substitutes a prison sentence according to the appropriate legal mechanism (Škulić, 2014: 251). From the narrower definition of alternative sanctions, our legislator has already regulated house confinement as a modality of serving a prison sentence in the very provision of the Criminal Code.

In addition to criminal sanctions (imprisonment, fines, penalties for work in the public interest, revocation of driver's license), which found their place in separate articles of the Criminal Code, and even in special chapters relating to warning measures, it seems that the legislator did not intend to provide for a sentence of house arrest as a separate sentence. This was done not out of the conviction that this punishment does not differ significantly from imprisonment, but because of the legislative technique (Stojanović, 2018: 237). In order not to intervene with numerous provisions in the Criminal Code, because in a number of individual provisions, in addition to imprisonment, it would involve house confinement, too, and an attempt was made to avoid this problem (Stojanović, 2018: 237).

Statistical data for 2020 for the territory of the Republic of Serbia indicate the following application of alternative sanctions: Imprisonment served in the premises where the convict lives (house confinement with and without electronic surveillance) - 3560, Probation with supervision - 19, Work in the public interest (decisions of the misdemeanor and criminal court) -156, Measure prohibiting leaving the living premises (house confinement) with and without electronic supervision -1066.

Looking at the regions of the Republic of Serbia, out of the total number of domestic prison sentences imposed during 2017 (2122), the most were imposed in Belgrade 564, which is logical according to the number of inhabitants and thus the largest number of

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14 Data obtained from an interview with a senior judicial associate of the Primary Court in Pancevo, Jovanov Aleksandar, who has been performing criminal sanctions for three years. Discussion on pre-prepared questions was held on May 27, 2019, in the premises of the High Court in Pancevo.
16 Data collected from Administration for the Execution of Criminal Sanctions of the Republic of Serbia, accessed, 8. 5.2022.
cases, then in Southern and Eastern Serbia 612, Vojvodina 494, Šumadija and Western Serbia 452, while there is no data for Kosovo and Metohija. \(^\text{17}\)

The research conducted in the area of Western, Eastern and Southern Serbia, confirms that of all the imposed alternative criminal sanctions, house confinement dominates in execution in relation to other sanctions. In ten trustee offices, there were 260 prison sentences with electronic surveillance in 2016. Only in the first six months of 2018, 186 sentences were executed, while 266 house sentences were executed without electronic supervision in 2016, and 241\(^\text{18}\) sentences in the first six months of 2018 alone. The authors of the research point out that the statistical data are not 100% accurate, because the answers provided by some courts do not keep precise and detailed records.

4. CONCLUSION

Most criminologists and penologists are increasingly presenting the results of examinations that indicate that the effects of current prisons in changing the behavior of criminals are very modest and that it is necessary to look for other mechanisms in crime prevention. In such cases, the differentiation took place between criminals who need isolation from society and those who do not need imprisonment. In recent decades, alternative sanctions have been used more and more in the treatment of criminals. The practice of European countries in the application of non-institutional sanctions, as well as the organization of the probation office, is increasing and more developed and extensive. The first results show that the effects in re-education of criminals are better. It is noticeable that the scope and types of extrajudicial sanctions differ significantly from country to country, which indicates that the recommendations and resolutions of the Council of Europe are partially implemented.

Sanctioning involves a very wide range of means and procedures that can replace criminal proceedings and prevent the prosecution of offenders, non-institutional means imposed by the court to reduce or eliminate the use of imprisonment, as well as those to change and adjust the program of treatment of convicts to serve a prison sentence in order to eliminate the negative consequences of imprisonment. The implementation of standards contributes to the development of appropriate professional attitudes of employees in this field and the establishment of realistic criteria for evaluating the implementation of certain sanctions (Soković, 2011: 69-94). Only a free man can truly feel like a human being. However, in the legal system, there are always certain forms of restriction to the right to liberty (even very numerous in modern criminal/criminal justice systems), and one of the most striking are certain criminal sanctions, among which the most typical are those whose essence is deprivation of people (convicted of a crime), to loss/restriction of liberty for a certain period of time. Certainly, the most typical criminal sanction is imprisonment.

By applying alternative sanctions, the convicted person is not isolated, which enables him/her to maintain family and social contacts without hindrance, to continue his/her education, to establish an employment relationship, and, no less important, to avoid the negative impact of imprisonment. Therefore, although alternative sanctions are repressive, they are more geared towards the perpetrator and much more humane than an effective prison sentence. In the execution of most alternative sanctions, in addition to convicts and


\(^{18}\) Ibid
commissioners, the wider community takes an active part in helping to supervise the execution of alternative sanctions, as well as in helping and supporting the convicted person, which effectively and publicly reintegrates convicts into society, thus making the convict not feel rejected in society and to a much lesser extent than when he is serving a prison sentence.

The practice of European countries in the application of non-institutional sanctions, as well as the establishment of the probation office, differs significantly from country to country, which indicates that the recommendations and resolutions of the Council of Europe, in some countries, are fully implemented, they are most often applied in Finland, England and Wales, Denmark, and the least in Italy and Spain. According to data from recent years, an average of 3,885 alternative sanctions per 100,000 inhabitants per year are imposed in Finland, 2,806 in England and Wales, 2,630 in Denmark, 1,268 in Sweden, 1,067 in Germany, 848 in France, 370 in Italy and 298 in Spain. Sanctions in Serbia, in 2020, indicate that Serbia is increasingly resorting to these sanctions - work in the public interest (decisions of the misdemeanor and criminal court) - 156, prohibiting leaving the living premises (house confinement) with and without electronic surveillance – 1066.

5. LITERATURE

2. Đorđević, D., (2009), Criminal Policy of Courts - Policy of Imposing Criminal Sanctions in the Republic of Serbia, Bulletin of Judicial Practice, Supreme Court of Serbia, no. 3, p.68
4. Ignjatović, Đ.,(2012), Is the penal policy of the courts in Serbia appropriate? In: Criminal Policy (schism between law and its application), East Sarajevo, p. 103.
execution and conditional release (ed.Stevanović I., Batričević A.), Institute for Criminological and Sociological Research, Belgrade, p. 155-156.


13. Pradel, J., (2009), Comparative Criminal Law Sanctions, Faculty of Law, University of Belgrade, p. 34.


Laws, strategies, recommendations, rules

2. Law on Execution of Extra-Institutional Sanctions and Measures, Službeni glasnik RS, br. 55/2014 i 87/2018
3. Law on Execution of Criminal Sanctions, Službeni glasnik RS, br. 55/2014 i 35/2019
6. Minimum standard rules of the United Nations on alternative measures from 1990, on the basis of which they were adopted through documents that promote, regulate and execute alternative sanctions, i.e. community-based sanctions.
INCRIMINATION AND DETECTION OF FORGERY OF DOCUMENTS

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Abstract
The aim of this paper is to analyze incriminating conducts related to forgery of documents. In this context, the methodology of detection of this criminal offense will be treated. In addition, the criminological aspect of this criminological phenomenon will be treated, by analysing the main risk factors that influence the occurrence of the most common forms and manners of counterfeiting.

From a criminal perspective, this paper will interpret the positive provisions of the Criminal Code of Republic of North Macedonia which incriminate Forgery of documents and also the current legal loopholes in this area.

The research paper includes some practical examples concerning forgery of documents and would simultaneously serve to all civil servants, particularly those who fight against crime. Additionally, such would get acquainted with the aspects and manners of its modus operandi, improving the forensic methodology in detecting, exposing and documenting this criminal offense.

It is important to consider that the methodology used in this paper is based on the method of analysis, the statistical method, the method of studying individual cases, the survey method, etc.

Contemporary and inclusive issues related to some criminal offenses, such as abuse of power and official position as well as fraud will be reviewed. Our objective, by scrutinizing this phenomenon, is due to its insufficient treatment, as we believe that this research paper will manifest a modest impact from a scientific viewpoint.

Keywords: forgery of documents, incrimination, detection, criminal offense

1. FORGERY AS A NOTION

In everyday life we encounter the notion of forgery in various fields, such as forgery of documents, forgery of coins and securities, forgery of food products, forgery of textile clothing, forgery of vehicles, etc. But what would be the definition of forgery? There are different definitions but here the definition given by professor Vesel Latifi will be mentioned, who, by forgery implies the creation of subjects, of false objects to which opportunities are given, which they do not have or changes of subjects, real objects in their content, form and their value.  

19 Vesel Latifi, Kriminalistika , zbulimi dhe të provuarit e krimit, Prishtinë, 2014, pg.419
The items, the subjects that surround us in everyday life are numerous which means that the possibility that a considerable number of them are counterfeit is great. Incriminations characterized by the phenomenon of counterfeiting are sanctioned in the criminal codes of different countries. For a large number of counterfeit cases or items, special sanctions are provided in the criminal codes, e.g., a special article is provided for counterfeiting money, for counterfeiting textile goods, etc. Since relevant articles are provided for these phenomena, in the following we will mainly address the issue of forgery of documents, which is often associated with other criminal offenses such as abuse of office known as a special criminal offense, fraud, fraud of buyers, copyrights, etc.

2. FORGERY OF DOCUMENTS

According to Article 122, paragraph 11 of the Criminal Code of Republic of North Macedonia, a document shall refer to any object that is suitable or designated to serve as proof of a fact that is of value for the legal relations. In everyday life, we are surrounded by different documents, issued by different institutions which serve certain purposes. Not rarely, practice has shown that such documents can even be falsified. But what do we mean by forged documents?

By falsifying documents, we imply the appearance in it, of the new circumstances or the compilation of a completely forged document, as well as the use of forged documents.

Some conclusions can be drawn from this definition:

- First, the document is considered forged if there are some fake circumstances in it. This means that not everything in the document is false, but only some circumstance that goes in favour of the one who had an interest in doing something like that;
- Second, the document as such (copy) may be original, which means issued, stamped and signed by competent officials, but its full content does not correspond to the reality that means it is characterized by fake content;
- Third, which is in fact the second part of the definition, deals with such cases of forgery when both the document and the writing on it, stamps, signatures and other data are forged.

Based on this as well as the practice of forensic expertise, the falsification of documents can be divided into full and partial forgery.

2.1. Full forgery

Complete forgery is done by imitating the original document and using new materials, such as paper, paint, stamp, seal, etc. To achieve the criminal purpose, the perpetrator first obtains an original document and then prepares a new document based on it, using entirely false materials.

Objects of full forgery are diplomas for completing education of different levels, certificates for completing various courses that serve in the application for employment, permits provided for the exercise of any concrete activity, driving licenses, etc. It is worth mentioning that the identification documents are also objects of forgery, e.g., ID cards,

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20 In the Criminal Code of the Republic of North Macedonia, counterfeiting of money is provided in Article 268 (see Afrim Osmani, Penal Code of NRM, Skopje 2010, pg. 221)
21 Ibidem, page 122
22 Elezi I., E drejta penale (pjese e posaçme), Tirana, 1995, pg. 219
23 Mainly thought about certificates of foreign language proficiency required when applying for employment
passports, etc., but with the advancement of technology the number of these forgeries has significantly decreased. This type of counterfeiting, due to difficulties, is done only when counterfeiters are equipped with appropriate equipment and tools and the same have special skills and inclinations for something like this. Such persons, in detail, try to falsify the official document, by issuing the signature of the person authorized to issue such document, the stamp and other characteristics contained in the concrete document. This type of forgery is also called material forgery.

**An example from practical experience where complete forgery is expressed:**

The person D.K has presented the case as follows:

The person M.M employed in the capacity of inspector at the Police Station in Gostivar, has deceived the person D.K, in the way that he promised the denouncer (case reporter), to deposit the saved money in the amount of 35.000,00 euros in the bank, and for the same will receive from 300 euros per month in the form of a pension. At the same time, he suggested that all the procedures related to it will be done by the denouncer (inspector), since he knows the director of Bank XX, and the conditions regarding the drafting of the contract will be in favour of the depositor, i.e., the person who denounced the case. Due to the fact that the denouncer did not have proper education, and did not know the procedures well, and the fact that the denounced had previously accompanied the denouncer with some persons who allegedly were in power, the latter trusted the denounced. After agreeing the next meeting, they go to bank XX together, where the denounced tells the denouncer to wait outside, because the meeting he has to have with the director is internal. The denouncer trusts him, and gives him the amount of 35.000,00 euros, the denounced enters the bank, and after half an hour after leaving the bank premises, he tells the denouncer that he has made the deal, at the same time gives him the contract, and tells him that now he has to wait for each month the monthly payment which will be issued to his bank account.

For the next three months, the denouncer received the amount of 300 euros on his bank account, after that receiving money was interrupted. For such a termination, he notifies the denounced and he tells him that he is aware, and that the bank has some technical problems, and it will be fixed soon. As several months have passed and the situation has not changed, the denouncer addresses the bank, asking why they do not continue with the monthly payment and presents the contract he had originally received from the denounced. The bank official told him that this contract was not drafted by the bank and that someone had manipulated him. After he understands the case in question, the denouncer presents the case to the police station in Gostivar.

During the graphiological examination of the contract, it was confirmed that it was forged. During the verifications that were made in the bank, it was noticed that the money issued for 3 months from 300 euros in the account of the denouncer were not issued by the bank, but by the private account of the denounced. It was also verified that the denounced in the critical period, i.e., the day he received the money from the denouncer, had continuously covered his loans in several banks.

After completing and documenting the case against the denounced (police officer) with prior consultation with the relevant prosecutor, a criminal charge was issued for the criminal offense of fraud and forgery of documents. Given the case in question, one can rightly ask the question why he was not charged with the criminal offense of abuse of official position, since he is an officer? The answer is as follows: It is a fact that the perpetrator is an official person, but the incriminating activities undertaken have no connection and are
not undertaken in the framework of the daily work he does in the capacity of police inspector but are undertaken outside (this is what the Criminal Code of RNM provides).

What is the conclusion regarding the specific case, including the manner and means used to commit this criminal offence?

- First, the denouncer of the case is not anonymous, and such cases usually come to light when the denouncer is a victim;
- Second, the denounced person is an official person, but even though he is, he is not charged with the criminal offence of abusing the official position and authority, because the incriminating activities are not related to his scope as an official person;
- Third, the manner of fraud is such that the denounced has used his authority to gain the trust of the denouncer;
- Fourth, the means for committing incriminating acts are the fictitious contract, forged signatures and stamps, technical means, i.e., computer and pen with which it is possible to make a contract and a stamp;
- Fifth, we are dealing with a complete forgery, as the contract as such is completely forged which means the notes on it, but also the stamp, signatures and other characteristics that characterized the concerned contract.

2.2. Partial forgery

Partial forgery means changing any circumstances or data in the official document. In order to determine this type of forgery, forensic and chemical methods are used. The most common methods in the practice of partial forgery are: deletions (mechanical and chemical), additions and corrections and compilation of the document from different parts.

Deleting is the disarranging of graphic elements or other parts of a text or document in order to change its contents. The perpetrator uses mechanical means, such as a rubber, a knife, a lighter\(^24\), etc., to erase any letter, word, number, date, etc., from the text of the document.

Using these tools will damage the paper and remove the ink. Impact of mechanical erasure loses gloss, the appearance of the paper becomes uncommon, the paper on the erased part is translucent, writing marks remain, old text can be read, previous on back page, ink spreads on added text hyphens, etc. The perpetrator also uses chemicals to delete from the text of the document, any letter, word, figure, etc.

In practice there are cases when from the original document the perpetrator extracts the parts he keeps, such as signatures, seal and other data and this part is attached to another

\(^{24}\text{We have such cases when the notes in a book or a concrete document are marked with a pen which is not resistant to heat, e.g., when travel agencies, which do not have a regular line for any international travel, but use other variant known as free international transport, and according to the concrete regulations in this area they transport passengers according to certain agreements such as going to a place to take a specific traveller, or sending travellers from one place to another, organizing excursions, etc. What should be emphasized in this case is the fact that the number of passengers and their identity should be the same both at the border exit and at the border entrance. The entry of passenger data is done in a special book known as interbus (Book of passenger waybills), and the same is done with a pen which does not resist heat, i.e., when using a lighter the data is immediately deleted. Why do they do such a thing? In fact, if the number of passengers who exit at the border is 35, the same number and the same passengers must be at the border crossing, when they return. But since then the persons are not the same neither as number nor as identity, the representative of the agency or the driver, with the help of a lighter deletes the data of the previous passengers in the interbus, and writes other names, or does not write at all, depending on the concrete situation they face, with the purpose that the notes in the interbus book correspond to the factual state in the vehicle, and thus avoid the penalties provided for such manipulations.}\)
letter, in which the perpetrator has written the desired text. We have a lot of such cases recently. They are usually encountered during the notarization of relevant documents where the stamp and signature of the notary are taken from the document with real content - original, and are marked in another document with completely different content.

When it comes to partial forgery, it should be noted that this type of forgery can also be done by officials authorized to provide the concrete document and the same time, for corruption reasons or any other favour, intentionally add or remove something from the text, which goes in favor or to the detriment of someone else. In fact, if these officials during the drafting of the document indicate non-existent circumstances, or do not enter any data that should be noted, in this case we have partial forgery, perhaps, the stamp, signature, the document as such (form) are original, but the content does not correspond to the reality and is contrary to the concrete regulations that regulate the concrete scope. For example, *issuance of a certificate from the court for person XX, where it is stated that the same is not under investigation, while according to the evidence in the possession of the court, the same is under investigation.* So, in this case, the certificate is original, with the original stamp and signature of the relevant officials, with accurate data on the identity of the specific person, but in the main part that has to do with the issue of investigation, we have false data. This type of forgery and all other types related to official documents, in the literature can also be encountered as intellectual forgery.

The detection of this type of forgery is mainly done by comparing the content of the document with the data that are in the adequate records of official institutions. In the latter case, in fact, the court evidence for the specific case must be verified, it is possible to copy the sheet where the data for the specific person are, or by order of the prosecution to obtain the entire book where the evidence for the case in question stands. If the whole book is taken, but also the photocopy of the respective sheet, for the same activity a certificate for the receipt of temporary items must be compiled, in which the items received are described (in this case the book for such evidence or the photocopy of the relevant sheet) and the same must be signed by the police officer, and the person from whom the items are taken.

It is also practiced during the review of the documentation in the respective institution to take a photo of the concrete data which will serve as evidence, to clarify the case, but this usually happens when we do not receive the book of evidence, due to the obstruction of the evidentiary processes and other, of the concrete institution. Also, after all this, an official note is compiled by the police officer, which describes the entire control activity in this case. This is actually the discovery of counterfeiting! Now we have to see who is behind this falsification, i.e., who is the author of this work. In such cases it is not very difficult to find the perpetrator of this act, maybe each document contains the date of issue, the institution that issued it, the compiler of the document, the signatory of the document in the capacity of the head of the specific institution, etc. While analysing these data, the police officer should direct further activities from the point of view of the authorizations he possesses to the compilers and signatories of this document on the date of issuance of the specific document and other circumstances related to the procedure of issuing the document. However, in practice this is not always the case! We elaborate this, precisely from the police practice that has to do with administrative officials in issuing citizenships, certificates, identification documents, etc. These officials have their own special numbers or codes with which they have access to the computer system from where they extract data, or compile concrete documents. In situations when the queues of citizens for obtaining these documents are large, to serve the citizens as soon as possible, it happens that with the number of an official who is authorized, another employee who does not have a number comes in
place, but to whom, consciously and in faith, the former told the latter without any malicious intent. It happens that exactly the second clerk misuses the figure and issued or compiled a document with falsified content. In such cases, even though the second person has committed such a violation, the first person is also responsible, especially if the official who de facto committed the crime does not accept such a responsibility. So, no matter how much he tries to justify himself, the facts included in the document are his, such as his name, competencies and authorizations in terms of issuing these documents, which is seen from the decision of employment, the number with which he worked on the computer, etc.

In practice, it happens that certain officials do not admit that they had committed concrete forgery, or even admit it. Despite these situations, police officers, in addition to other activities, must also examine or expertise the documents. In what direction the expertise will be done depends on the manner and type of forgery. For example, if we have complete forgery then we are dealing with some exports that are related to the concrete document, starting from the examination of the paper, stamp, colour, signature, etc., whereas if we are dealing with partial forgery then the expertise will not be comprehensive, but the critical parts of the document will be examined. Ultimately, what expertise will be done by the professionals who deal with them depends on the applicant for the expertise that may be, the police after obtaining a preliminary order from the prosecutor, the prosecution, or the court.

Other measures for the detection of falsified cases, which police officers undertake during the detection and clarification of criminal situations related to the falsification of documents are the controls and raids carried out in public or private institutions. It often happens that official stamps and other items with which various forgeries are made are also found in the houses or apartments of the perpetrators. Raids are also made on other persons, who are not in the capacity of official persons, and who in fact with various tools, such as computers, certain letters, special tools falsify various documents.

An example from practical experience where partial forgery is expressed:
A post director presents the case as follows:

Some pensioners in the premises of the Post Office in Gostivar, submitted a complaint that they have not received their pensions for two consecutive months. With the review of the case, an internal commission was formed at the post office, where they ascertain that the receipts for the payment of pensions appear in the postal records that the same have been realized. By reviewing the documentation, they identify the clerk who made the payment of pensions, and the same is asked about the case in question. The clerk rejects the pensioners' complaint, saying that the pensions were given to them and what is said is not true. For all these measures taken by the internal post commission, a report is compiled, and the same together with the complaint of the pensioners is submitted to the Gostivar Police Station for clarification and documentation of the case. After the verifications were done, i.e., the graphiological expertise performed by the relevant bodies of the Ministry of Interior, it was concluded that the receipts contain forged signatures, which in fact proves

25 The manner of expertise, the documents to be provided for the expertise, the number of documents, the number of signatures and other characteristics are provided in special regulations, based on which the experts in this field work.

26 This expertise was done after the signatures of the pensioners were provided in advance according to the regulations provided for something similar, and the same were compared with the suspicious signatures placed on the payment slips.
that the pension money was appropriated by the clerk who distributed the pensions. After the completion and documentation of the case, a criminal report was issued against the clerk, for criminal offense of abuse of his official position, provided in Article 354 and falsification of official documents provided in Article 361 of the Criminal Code of the Republic of North Macedonia.

What is the conclusion regarding the specific case, including the manner and means used to commit this criminal offense?

- First, the presenter of the case is in the capacity of the director of the post office, i.e., a responsible person in a legal entity;
- Second, in the capacity of the victims are some retired citizens;
- Third, the way of manipulation is through forged receipts (signatures);
- Fourth, in this case, unlike the above example, the incriminating action of the official person has been undertaken within the framework of his official work, therefore he is charged with the criminal offense of abuse of duty, in addition to the criminal offense of forgery of official documents;
- The budget of the Republic of Macedonia is damaged in the last instance, as the pensioners were compensated after documenting and clarifying the case.

It is implied that the cases of forgery are numerous, and that the same in most cases, as mentioned above, are related to acts of different character and especially to those of economic-financial crime.

For all these falsifications mentioned above, as mentioned above, criminal sanctions are imposed. Sanctions in this regard, in addition to the compilers of forged documents, are also imposed on persons who have enabled these documents to be issued in circulation, such as concrete superiors, with whose signature something like this has been enabled, as well as on persons who have these forged documents, have used them in certain places for certain purposes, such as, employment, fraud to obtain financial resources from insurance companies, obtaining loans, etc.

3. FORGERY OF DOCUMENTS ACCORDING TO THE CRIMINAL CODE OF THE REPUBLIC OF NORTH MACEDONIA

In the Criminal Code of the Republic of North Macedonia, the issue of forgery of documents is included in several articles. Namely, forgery of official documents is provided in Article 361 of the Criminal Code of the Republic of North Macedonia, in Article 378 of the Criminal Code of the Republic of North Macedonia, special cases of forgery of documents are provided in Article 379 of the Criminal Code of the Republic of North Macedonia. More or less these articles contain the above-mentioned actions for which criminal sanctions were envisaged. But, regardless of the number of attempts made to include all actions that are harmful to the society, and which in fact should be sanctioned, whether they are of minor or criminal nature, new situations that require new solutions have been created. In this regard, we will highlight the recent cases with the epidemiological situation known as COVID-19, where various unvaccinated citizens, during the checks made

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27 Clarification, the post in question, has enabled the distribution of pensions directly in the hands, bringing them to the pensioners home, so the pensioner did not need to receive the money directly from the account.
by the relevant authorities in different places where a certificate was required, presented certificates of other persons. Their detection is not a big problem as their identification is done through identification documents, but the problem lies in their sanctioning. For example, at the moment, when we talk about the issue of forgery, the most appropriate article in the Criminal Code of the Republic of North Macedonia, for such situations, is the use of a document with false content, which provides criminal sanctions for persons who use a document in legal circulation, book or writing that we know to be untrue. However, this article cannot include persons who present a vaccination certificate with data to someone else, to justify himself that he is vaccinated. This is because in this case it is not about a forged document, i.e., the certificate that is presented is original as a document. Thus, the emphasized article includes such situations when the presented document has untrue content, which means that in advance this criminal offense is preceded by the making of a forged document that is considered as a special offense. This situation or this new presentation cannot be included, not even in Article 391 of the Criminal Code of the Republic of North Macedonia which has to do with false presentation, since according to this article are included the persons who are presented as official or military persons and who in fact are not such. They cannot be included in Article 149 of the Criminal Code of the Republic of North Macedonia which provides for the misuse of personal data, because to complete the elements of this article, among other things, we must have the consent of the citizen, that his or her data is used by someone else, and that in this case we do not have something like that because the citizen consciously and with his or her consent gave to another person the concrete certificate. Based on this, the relevant authorities should review this situation by suggesting, proposing and establishing a special article that would sanction such occurrences.

4. CONCLUSIONS AND RECOMMENDATIONS

Forgery of documents as a criminal offense is part of the group of criminal offenses of economic-financial character. This criminal phenomenon is encountered in many areas, while the perpetrators may be persons with different status, who for different interests undertake actions of an incriminating character. The manner of committing this criminal offense is different, using various tools and methods. In principle, we distinguish between complete forgery of documents and partial forgery.

Detection of these cases is done in several ways, such as anonymous presentations, direct presentations by natural persons, responsible persons in legal entities, controls performed during various inspections, etc. To solve these cases, some tactical and technical forensic activities are undertaken, such as controls, graphiological examinations, raids, review of documentation, evidence, operational information activities, etc.

Police officers working in such cases should have the necessary experience as in most cases forgery of documents is related to other criminal offenses, especially those that have elements of economic and financial crime from which we would distinguish various forms of abuse of official duty.

Therefore, it would be recommended that police officers dealing with such cases are vigilant, and do not rush to clarify these criminal situations in the sense that as soon as the

29 Ibidem, pg. 310
30 This statement is valid for the time of writing this paper, i.e., for 2022, which means there may be changes in the future.
31 Afrim Osmani, Kodi Penal i RMV-ut, Shkup, 2010 pg. 143
person who committed the forgery has been discovered, criminal charges should be filed immediately, but carefully analyse the case and make all possible verifications because it often happens that in such situations more persons who should also be criminally sanctioned depending on the incriminating activity are involved.

Another recommendation is that the relevant authorities include a concrete article in the Criminal Code of the Republic of North Macedonia, which will provide adequate sanctions for persons who during their identification present a document of someone else that is not actually forged but does not correspond to the reality, that recently with the epidemiological situation created by COVID-19, we have such cases in considerable numbers, during the presentation of vaccination certificates, while in the absence of adequate article as explained above, such persons remain unsanctioned.

Bibliography:

2. Elezi I., E drejta penale (pjesa e posaçme), Tiranë, 1995,
3. Франк Х. Норвич и Хауард Сејден, “Спорни документи - Форензика”, Вовед во научни и истражни техники, Второ издание, Табернакул, 2009, Дел од програмата на владата на РМ за преведување на 500 стручни, научни книги и учебници од кои се учт на врвните, најдобрите и најреноминираниите универзитети во САД и ЕУ.
5. Јовашевич, Д. Злоупотреба службеног положаја и корупција, Номос, Београд, 2005 г.
6. Камбовски, В. и Тупанчески, Н. Казнено право, посебен дел, Скопје, 2011
7. Latifi V, Kriminalistika , zbulimi dhe të provuarit e krimit, Prishtinë, 2014
8. Николоска, С., Методика на истражување на економско - финансиски криминалитет, Факултет за безбедност - Скопје, 2013 г
ABUSE OF THE SOCIAL NETWORK FACEBOOK PRIVACY

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Abstract

Personal data protection is a relatively new area in the entire rights system. In the past, 20 to 30 years ago, this protection was not as necessary as it is today due to the fact that then the rapid advancement of technology and the emergence of social networks (Facebook, Instagram, Twitter) were not felt.

We assume that insufficient normative regulation of data protection makes them susceptible to abuse. The built legal culture and attitude towards the data of each individual (especially the care for the way of giving the data) conditions for a higher level of security of the personal data, but also of the individuals participating in the social networks. The target group of this research were people of all ages who are Facebook users. A survey questionnaire was used as a research tool, as well as the following methods: deduction method, statistical method and analytical method.

From the conducted research we can conclude that the users of the social network Facebook should increase the level of awareness regarding the protection of their profile in order to protect the privacy regarding the protection of the personal data they share on their profile in order to prevent abuse of their privacy. Among other things, it can be stated that the built legal culture and attitude towards the data of each user of the network conditions and there is an opportunity to relatively improve the level of security of personal data.

Keywords: Facebook, abuse, privacy, data, rights, low

1. INTRODUCTION

Social networks and social networking are not a new concept, but have always existed in various forms. Social networking is a simple act of maintaining and / or strengthening an existing circle of friends and / or acquaintances and expanding their circle. In this way, a new network of friends and acquaintances is introduced through the existing ones, which encourages the formation of a network of an individual and the creation of a community.

One of the ways in which social networks can be explored (for example in the classroom) is the sociometric method developed by J. L. Moreno in 1934, which says that these concepts are not new.

Although the creation of social networks and social networking is possible in the real world (for example in the neighborhood, school, dormitory...), these concepts are transferred to the online environment which makes online social networks and social networking very popular among young people. The creation of online social networks and social networking is enabled through social software and websites - service, and among the
most famous and most widespread are Facebook, MySpace, Twitter, YouTube, Bebo, Flickr, Second Life, etc.

In the last decade, the use of social networking sites has grown exponentially. For example, statistics provided by Facebook (2014) reveal that as of March 2014 there were 1.28 billion active users on the site per month, and at least 802 million of these users logged into Facebook every day. According to such statistics, we can see that Facebook is the most common and popular social network in the past period. The social network Facebook enables communication between users and is a form of socializing, which means a user-based environment for bringing people together and increasing the connection between them.

Users of this social network can also add friends, send them messages and update their personal profiles to inform their friends about themselves, but some users do not know how to protect their privacy on this social network, they publish personal data publicly for everyone, and others misuse their data.

Data on the social network Facebook, as mentioned above, can be misused by hackers, people we know, government and state bodies, and even by employers who often before calling a job candidate for an interview first check them on social networks, look for mutual friends to call them and ask them what kind of person they are, which is considered abuse. Data protection allows users to place bans and people who are not on their list cannot see information about them such as pictures, place of residence or list of friends.

2. ABUSE OF PERSONAL DATA ON THE SOCIAL NETWORK FACEBOOK

One of the important questions is how to protect our privacy on Facebook. Do we know how to protect ourselves and what we should do as part of this society in which we use this social network every day for any reason. The answer is the Agency for Personal Data Protection. It, as a competent institution for protection of personal data and privacy of citizens, but also for prevention and action against internet abuse on social networks, undertakes actions and activities to remove profiles and groups that have been created falsely, thereby revealing addresses or other data related to the owners or creators of such profiles or networks groups, and it responds positively when there is a properly processed request from certain authorities such as government agencies. Detecting and sanctioning the administrators of such profiles and groups implies filing criminal and misdemeanor charges, because such acts violate the privacy and abuse of personal data of entities, most often through the use of other profiles or groups on the social network "Facebook".

Attempting to thoroughly define personal data raises the question of whether we distinguish the term personal from the term private? If we try to define the term personal in the Croatian language, we should first make a few remarks. If we were to literally translate the words used in Western countries then we would be talking about the same word, the translation would be privacy, from the English word privacy, then personality from the

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32 The uses and abuses of Facebook: A review of Facebook addiction, Article in Journal of Behavioral Addictions - September 2014, see: file:///C:/Users/user/Downloads/jba-03-133.pdf, [пристапено на 05.06.2022]
33 The Agency acts in accordance with the Law on Personal Data Protection of 2020, which is a high European regulation in the field of personal data protection - Regulation (EU) 2016/679 of the Parliament and of the Council of 27 April 2016 on the protection of individuals with regard to the processing of personal data and the free movement of such data and repealing Directive 95/46/EC (General Regulation on the protection of personal data). See more: https://www.dzlp.mk/sites/default/files/pdf-azlp-godisen_izvestaj_za_2020_mk.pdf [accessed on 12.06.2022]
German Personlichkeit or even intimacy from the French le droit au respect da la vie intime. In the English-Croatian dictionary, the word privacy is translated as secrecy, trust, anonymity, loneliness, peace, etc., while the word Personlichkeit, or in English personality is translated as individuality, identity, person and the like.

So, the term individuality covers the area that explicitly represents a person and his personal life, and the term privacy encompasses a wider circle of important individuals who are taken individually, do not have to have any meaning, but are related in the permanent structure and result in the portrait of the person, which usually only that person should know about. Therefore, the origin more closely determines the term personal data as information explicitly related to the identified natural person, whose identity can be determined directly or indirectly.\(^{34}\)

Given that the new Law on Personal Data Protection is already in force, the Agency's biggest challenge is to ensure that the new privacy rules will be a priority for the Republic of North Macedonia. Awareness of personal data protection and privacy issues, as well as the importance of protecting these basic human rights has never been greater, so the Agency should constantly work on raising awareness among all stakeholders in the field of personal data processing.

According to the statistics from SpecialBakers.com in Macedonia there are 930,340 users, 297,709 of them are aged between 18 - 24, and 57% of them are male and 43% female, which means that 44.9% of the population of the country are members of the largest social network in the world, which has over 845 million users, Facebook. Also, Macedonia is ranked 81\(^{st}\) according to the number of Facebook users, where the percentage of Internet users is 87.9%. According to data from the State Statistical Office, this means that 46.5% of households have internet access, which includes: fixed, wired (cable, fiber, Ethernet, PLC, etc.), fixed wireless (satellite, public WiFi, WiMax) and mobile connection. Internet (at least 3G phone - UMTS or at least 3G modem - USB / laptop card).\(^{35}\)

According to the statistics of the Directorate (now the Agency for Personal Data Protection), Facebook leads convincingly in terms of personal data violations. Two thirds of all violations registered in 2012 are on social networks such as Facebook, Twitter and other social media on which citizens communicate in the country and abroad.

According to the director of the Directorate, Georgievski, the abuses are most often committed by hacking profiles and exporting content by persons who with malicious intent contribute to a violation of privacy. Upon receipt of such requests for protection of the privacy, the Directorate, with the support of public networks, deletes the profiles that have been hacked, or initiates an appropriate incentive for criminal proceedings, given that the protection of personal data is a criminal offense under the Criminal Code.\(^{36}\)

\(^{34}\) Boban, M., 2012, The right to privacy and the right to access information in contemporary ...Proceedings of the Faculty of Law in Split, vol. 49, 3/2012, p. 575.- 580


The most common complaints to the Agency submitted by citizens are for abuse of personal data on social networks, for deleting a Facebook profile. Complaints related to social networks for 2020 are 246, and there are shown in table no.1.\footnote{See more: https://www.dzlp.mk/sites/default/files/pdf-azlp-godisen_izvestaj_za_2020_mk.pdf [accessed on 12.06.2022]}

**Table no. 1 Complaints on social networks according to the reason**\footnote{Ibid}

<table>
<thead>
<tr>
<th>Complaints on social networks according to the reason</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Fake profiles</td>
<td>116</td>
</tr>
<tr>
<td>Hacked profiles</td>
<td>73</td>
</tr>
<tr>
<td>Posting others people's photos, videos and audio recordings on other people's social media profiles</td>
<td>29</td>
</tr>
<tr>
<td>The requirements refer to instructions for protection when accessing social networks</td>
<td>9</td>
</tr>
<tr>
<td>Insult, slander and blackmail online</td>
<td>19</td>
</tr>
<tr>
<td><strong>Total:</strong></td>
<td><strong>246</strong></td>
</tr>
</tbody>
</table>

**Table no.2 Complaints on social networks**\footnote{Ibid}

<table>
<thead>
<tr>
<th>Complaints on social networks</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Facebook</td>
<td>147</td>
</tr>
<tr>
<td>Instagram</td>
<td>60</td>
</tr>
<tr>
<td>Snapchat, YouTube, Twitter, xHamster, Porhub, VSCO, locatefamily</td>
<td>39</td>
</tr>
<tr>
<td><strong>Total:</strong></td>
<td><strong>246</strong></td>
</tr>
</tbody>
</table>

Privacy is one of the core values of the Western legal culture. It is based on the belief that every human being has their value, and on the other hand on the primordial human need for the existence of a certain protected space from which every second would be excluded psychologically and materially.

The use of the phrase "right to privacy" in determining primarily the legal and then the security methodology of protection, as a set of rules that should cover the protection of all important conditions and circumstances in which individuals exercise their needs for internal peace, as they wants and to which they have the right, respecting all social conditions should be clearer when it comes to normative regulation.\footnote{Boban, M., 2012, The right to privacy and the right to access information in sovereign ... Proceedings of the Faculty of Law in Split, vol. 49, 3/2012., P. 575.- 580} Privacy can be compromised by multiple entities. Specifically for users of social networks it can be disrupted by: third parties (acquaintances, colleagues) of the user, by the owners of the social network, hackers, as well as by government agencies that monitor individuals. The misuse of personal data today can occur in many ways. Computers and networking allow the data of each of us to be located in dozens of databases, which creates the possibility of abuse.

In the Republic of North Macedonia, the legality of the undertaken activities in the processing and protection of personal data is in the competence of the Agency for Personal
Data Protection. The annual report of this independent state body states that in 2017, 297 inspections were performed, of which 155 regular and 132 extraordinary.\(^{41}\)

The Agency also acted on the basis of submitted complaints by individuals and legal entities. Most of the complaints are related to Facebook, followed by Instagram, Skype, Twitter, etc. The analysis of the situation with the large number of complaints related to social media shows that the main reason for such situations is the lack of awareness among those who have a profile on social networks and that privacy policies are not consistently applied.\(^{42}\)

### 3. RESEARCH RESULTS AND DISCUSSION

The research refers to the level of security that users of the Facebook network have, the degree of data protection, characteristics of the security threat they feel, etc. The research was conducted through an online survey questionnaire of Facebook users in the Republic of North Macedonia. This is a systematic random sample of 30 respondents selected from the population (in this case my 810 Facebook friends were selected as the population, and as respondents - every 27 FB friends).

The following aspects of the research subject were elaborated within the research:

- Determining the safety of users of the social network Facebook;
- Description of the data that Facebook users most often share on the network;
- Considering users’ attitudes about knowledge, fear and trust regarding Facebook security;
- Preventive measures taken by users to protect themselves;
- Analysis of the representation of taking over personal identity on the network;
- Analysis of the representation of the hacked password on the network profile and endangerment of personal data;
- The level of security that users of the social network Facebook have;
- Legal protection of data published on social networks.

The scientific and social justification of the research is perceived in the following aspects:

- Criminal-legal aspects by which Facebook users can protect themselves from misuse of personal data.
- Opens the possibility for conducting more comprehensive research in the field of personal data protection of users of the social network Facebook on the territory of the Republic of North Macedonia.
- We gain insight into the manner and degree of self-protection of Facebook users and awareness of the possibility of misuse of their personal data.
- Awakening the awareness of Facebook users on the territory of the Republic of North Macedonia for the harmfulness of sharing personal data from their lives and the possibility of violating their personal integrity.
- Research of this type is most common in developed European countries and the United States, while in Republic of North Macedonia this field is still insufficiently researched and I think that this research can have its contribution.

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\(^{41}\)Tumanovska, M., 2018, Careful with the privacy of social networks, See: https://www.slobodnaevropa.mk/a/29130201.html, [accessed on 04.06.2022]

\(^{42}\)Ibid
Regarding the knowledge of the respondents about the existence of the Law on Personal Data Protection, we can emphasize that most of the respondents, a total of 88.9% of the respondents stated that they are aware that in the Republic of North Macedonia there is a Law on Personal Data Protection. According to the age structure, most of the respondents aged 26-35 years assess the level of security to some degree at the maximum level, i.e., 26% from relatively to the maximum level, which in people aged 36 to 45 years is mostly assessed at a maximum level of more than 75%. According to the gender structure, most of the male respondents have a medium to maximum level of security, while most of the women have a set level of security at the maximum level.

Respondents by age structure mostly think that the data they share on the social network can be misused. Half of 50% of the male population do not have previous experience with a hacked password on the social network, while this figure for women is 25%, i.e., it happens more often for women to have their password hacked than for men.

A total of 18% of the male population has no previous experience with a stolen personal photo posted on an unknown profile, while this figure for women is 66%.

Respondents (17.4%) aged 26 to 35 years stated that they think that they relatively often come across fake profiles on the social network, which respondents aged 36-45 years think that never (42.9%) or rarely (57.1%) it happens. Also, 22.2% of the male population point out that they often come across fake profiles, while this figure among women is 16.7% for relatively frequent encounter of such profiles on the social network.

A total of 43% of respondents aged 26 to 35 years said that they believe that there may be a possibility of security breach by corresponding with strangers on the social networks, which respondents aged 36-45 years 28.6% believe that there is such a possibility.

As shown in the graph, we can point out that 23.2% of the respondents rate the abuse of the respondents at a relatively average level, 6.7% rate it at an almost average level, 10% at an average level, 30% at slightly less than average level, 10% at almost minimal level and 10% think that very little abuse is possible.
We can point out that in terms of the higher level of personal data and the relationship to the data of each individual through a built legal culture, 20% of the respondents said that they believe that the mentioned factors condition a relatively average level, 10% almost average level, 16.7% intermediate level, 10% slightly less than intermediate level, 30% minimum intermediate level, 3.3% at almost minimum and 10% low.

According to the presented results, we can point out that 6.7% of the respondents think that taking all necessary security measures on Facebook has a great impact on improving the security of each user, 16.7% believe that it has almost no effect, 6.7% believe that relatively much affected, 10% rated it as almost intermediate level, 10% at intermediate level, 30% at intermediate level, 13.3% assessed it as slightly less than intermediate level, 6.7% rated it at minimum intermediate level.
From the conducted research based on previously made statistical calculations for rejection or acceptance of the previously set hypotheses\textsuperscript{43}, the following conclusions were made:

- Insufficient normative regulation of data protection conditions them to be susceptible to abuse. The built legal culture and attitude towards the data of each individual conditions the higher level of security of personal data but also of the individuals participating in the social networks.
- Taking all necessary security measures and maximum restriction of shared data with other users on the Facebook network has no impact on improving the security of each of the users.
- If a person who is susceptible to misuse of personal data, theft of personal identity and presentation with their name and surname or posting their picture file criminal charges against the perpetrator, the security rate of the social network Facebook on the territory of the Republic of Macedonia will not change significantly.
- Facebook users will not significantly improve personal security and privacy of the profile if they are careful with whom they share personal data and use "Chat".

4. CONCLUSION

From the conducted research we can conclude that the users of the social network Facebook should increase the level of awareness regarding the protection of their social network account in order to protect their privacy regarding the protection of personal data they share on their profile in order to prevent abuse of their privacy. But another aspect where users' data can be subject to misuse is by Facebook, security structures (police), as well as by hackers. In that domain the users cannot influence in any way to protect their data.

In addition to this, the data obtained from the research indicates that if any person who has been a victim of misuse of personal data on the social network files criminal charges for tampering with personal data there is a possibility of hacked passwords, "hacking" Facebook profiles, and personal data abuse will decrease, but not significantly.

Among other things, it can be stated that the built legal culture and attitude towards the data of each network user stipulates that there is an opportunity to relatively improve the level of personal data security, although it is considered that this will not be of great importance.

Modern society with a high level of Internet technologies puts at risk the security of personal data of each individual, but that is why I believe that more rigorous action is required by the state to violate privacy through social networks and implement more stringent measures for people who intrude on another person's privacy and misuse his or her data.

This paper recommends that further research should be conducted in the future in order to establish links between the use and abuse of Facebook. Furthermore, in order to

\textsuperscript{43} This research was realized in the third cycle of studies at the Faculty of Security as a project on the subject "Methodology of research of security phenomena" and was done with all the statistical calculations needed to determine the hypotheses, their acceptance or rejection after a previous questionnaire. Since this is an extensive presentation of the research results, here we are not able to present all the statistical analyzes, where we concluded that we will elaborate the most important conclusions from it.
strengthen and construct the validity of the use of Facebook, researchers should take a more systematic approach to assessment.

5. REFERENCES

1. Boban, M., 2012, The right to privacy and the right to access information in contemporary ... Proceedings of the Faculty of Law in Split, vol. 49, 3/2012
7. Savic, A., 2011, Social Networks, First Low Gymnasium “Stevan Sremac”, Nis
INSTITUTIONAL TRUST AND PERCEIVED SENCE OF SECURITY – A COMPARATIVE ANALYSIS

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Abstract

Governments and public institutions play a fundamental role in supporting an inclusive society. The concept of the welfare state refers to the level of economic and social welfare and security provided to citizens by the state and its institutions. Prevalence of corruption, exposure to violence, competitiveness of the economy, economic growth rate, perceived levels of risk such as unemployment and financial and economic instability, government success in reducing economic inequalities, are shaping citizen's trust in governments and institutions. Citizens who are satisfied with their financial situation have more confidence in the state and have a sense of a higher standard of living. They also have a favorable perception of the state and democracy, enabling them to play an active role in policy-making and the realization of security and economic goals. The paper will present the results of empirical research through a questionnaire related to the survey of attitudes to the extent to which residents in Serbia feel safe, how much the state protects their interests, and provides them with economic security and poverty protection. The research also includes the question of how much citizens trust institutions: police, judiciary, and parliament. Survey included respondents from Serbia, Hungary and Croatia and the correlation analysis indicated the existence of a statistically significant correlation between institutional trust and the perceived feeling of security. This relationship indicates that a higher level of institutional trust leads to a higher perception of security.

Keywords: security perception, institutional trust, economic security, government, quality of life

1. INTRODUCTION

Indicators of quality of life and societal well-being are the economic and physical security of the population, in addition to material living conditions, employment possibility and labor participation of people aged 15 and over, educational attainment, health status,

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44 This paper was written as part of the 2022 Research Program of the Institute of Social Sciences with the support of the Ministry of Education, Science and Technological Development of the Republic of Serbia
good work-life balance and social interactions, quality of democratic institutions and rule of law, environmental protection, life satisfaction (Galonja & Šunderić, 2017). Perception of vulnerability and feeling insecurity can significantly affect individuals' behavior and quality of life. Security is the ability of individuals, households, or communities to sustainably meet their fundamental needs, physiological, socioeconomic, spiritual, technological, informational and moral ideals, necessary for society's vital activity and prosperity (Tamošiūnienė & Munteanu, 2015). The citizens' security is reflected primarily in a certain future and the possibilities of planning. Insecurity of any kind introduces fear and worry that can harm the overall quality of life and social well-being. Economic security refers to the current financial situation but also to the individual expectations on how that situation may develop in the future positively or negatively. Therefore, economic security has a deep psychological dimension based on future planning and facing economic shocks, unlike poverty and material deprivation, which are focused only on the present moment. Physical insecurity refers to an individual's exposure to dangerous situations that directly threaten their physical safety, such as crimes, accidents, or natural disasters (European Commission, 2015).

The paper will analyze economic security aspects followed by labor market transitions, inability of the individuals and households to face unexpected expenses and obligation that has not received payment by its due date, as well as population financial satisfaction, job satisfaction, overall life satisfaction, and satisfaction with personal relationship. The results of the research on the relationship between the perception of citizens' security and their trust in the institutions (police, judiciary, and parliament) will also be presented by the example of Croatia, Hungary, and Serbia and the correlation between the two observed variables will be determined. Trust in key public institutions is a very important economic, sociological and political issue that significantly determines the functioning of a society and the well-being of citizens. Institutional attributes associated with the achieved level of trust are competence, integrity, relevance, delegation, transparency, efficiency, performance, and accuracy (Kavanagh et al., 2020). Since citizens are vulnerable to the actions and decisions of institutions, there is a need for research design that examines the nature of the relationship between institutional trust and the perception of security.

2. ECONOMIC SECURITY CONCEPT

One of the indicators of economic security and dealing with economic risks is the ability of the household to face unexpected expenses. Unexpected costs could include financial expenses for surgery, burial, replacement of consumer durable goods that should be paid from their funds without seeking financial assistance from others and without borrowing from the bank (Figure 1). Almost a third of the EU population was unable to pay for unexpected expenses in 2020. North Macedonia, Greece, and Croatia have the biggest problem dealing with unplanned financial expenditures from the observed countries in the region. In the last ten years, this indicator declined for 10-25 percentage points on average in all observed countries (EUROSTAT, 2020).
Figure 1. Inability to face unexpected expenses, by country, 2020 (% of population)

Figure 2 shows that among the observed countries, Slovenia and Romania recorded the highest perceived levels of financial, job, life, and personal relationship satisfaction, with scores corresponding to the EU average. Also, the obtained result is in accordance with the low share of people in arrears (less than 15%). However, what attracts attention is the data from Figure 1, which deviates from the previous results, showing that about half of the Romanian population is not prepared for unplanned financial costs.

Figure 2. Percentage of the population rating their satisfaction as low, 2018.
One of the indicators of economic security is the labor market transition and the share of the population that changed status from being unemployed in 2019 to being employed in 2020. This share in Romania is only 11% of the population, while in advanced transition countries it is two to almost three times higher: Hungary 28%, Slovenia and the Czech Republic 26%, Poland 23%. Croatia is also a country with conflicting results. Namely, about half of the population has a problem dealing with unexpected financial expenses and half of the population perceive the degree of satisfaction with financial status as low, but the share of the population in arrears is lower than 15% (Figure 3). On the other hand, the share of the population that changed their labor market status and become employed during 2020 is 22%. From the selected transitional countries that are subjects of the analysis, the Czech Republic and Poland have the lowest share of residents with outstanding liabilities (3% and 5.5% respectively). Also, they record the smallest share of the population that would not be able to overcome future unexpected financial expenditures (19.7% and 25.7% respectively).

![Figure 3. Percent of population in arrears (mortgage or rent, utility bills or hire purchase), 2020.](https://ec.europa.eu/eurostat/databrowser/view/ilc_mdes05$DV_422/default/table?lang=en)

Bulgaria, Serbia, and North Macedonia are the countries with the highest proportion of people with low financial satisfaction. About one-third of the population of Serbia, North Macedonia, and Greece is in arrears, while dealing with the future unexpected expenditures most affect the citizens of Greece, North Macedonia, and Croatia (around a half of the population).
3. INSTITUTIONAL TRUST AND SECURITY PERCEPTION - A COMPARATIVE ANALYSIS

3.1. Literature review

Political trust represents confidence in institutions such as the legislature, the judiciary, the executive apparatus such as bureaucracy and the police, regional or international organizations, etc. Institutional trust reflects confidence in outcomes - the institutions’ ability to provide citizens with quality services, effectively meets their needs and requirements, and successfully manage social, economic, and political risks, uncertainties, and opportunities (Bauer and Freitag, 2017). Discussion of trust in public institutions across political science, psychology, and sociology indicates that it is based on both objective considerations - institutional competence, integrity, efficiency, capacity to deliver the service, and subjective factors - institutions protect the interests of citizens sharing common values. Misplaced trust will damage the citizen’s interests and the citizen as a service-user will face uncertainty (Taylor-Gooby, 2008). "In a more unstable society, institutional trust rests on a continuing quest for grounds on which trust might be based, leading to a more engaged and ‘dialogic’ democracy" (Beck and Beck-Gernsheim, 2002). Also, institutional trust has been seen as “a democratic good in and of itself as well as an important gauge of a democracy’s political health” (Dalton, 2004).

Prevalence of corruption, exposure to violence, the state of the economy and economic growth rate, perceived levels of risk such as unemployment and financial and economic instability, government success in reducing economic inequalities are shaping citizen's trust in governments and institutions (Kettl, 2017; Kroknes et al., 2016). In the literature, institutional trust is most often associated with a sense of security among citizens, the level of education of the population, the level of corruption, and citizens’ willingness to obey the law and the regulations. Study confirms that in corrupt societies education is negatively correlated with institutional trust, while is positively correlated with institutional trust in pure societies. Further, the corrosive effect of corruption on trust in institutions worsens as education improves (Hakhverdian and Mayn, 2012). Also, crime victimization in the short term reduces trust in public security institutions while undermining trust in institutions in charge of upholding criminal sanctions in the long run (Cozzubo et al., 2021). Another result confirmed by research is that a low level of institutional trust could undermine the effectiveness of government action and its ability to enforce laws, since individuals with a low level of trust in institutions are much more likely to engage in illegal activities, especially those related to the tax system (Marien and Hooghe, 2011).

What must be emphasized is that citizens’ trust in government is diminishing, judging by the latest results of the perception survey. Only 43% of the global population trusts the government and believes that the government "is doing what is right". If the research area is limited to OECD countries, the share of residents with political trust is even lower and amounts to 38% (Kumagai and Iorio, 2020). The decline of trust in government is due to changes in the values and expectations of citizens (Dalton, 2004). The results of the empirical research, which examines the existence of a statistically significant relationship between the trust of the citizens of Serbia, Croatia, and Hungary in the institutions and their perceived sense of security, will be presented below.
3.2. Descriptive Statistics

In order to investigate the relationship between security perception and institutional trust, we rely on data from the ninth-wave European Social Survey. The European Social Survey (ESS) is a biennial cross-national survey run by the ESS European Research Infrastructure Consortium (ESS ERIC). Data was collected from 2018 to 2020 through face-to-face interviews in 27 European countries. The following data is weighted by the `pspwght` (post-stratified design weight) variable. In our study, we observed Serbia, Croatia, and Hungary. Sample size per country is: (n= 2043), (n= 1810), (n= 1661), respectively. We began our interpretation of the results by presenting the descriptive statistics.

![Figure 4](image1.png)  
**Figure 4.** How safe do you feel while walking alone in the dark in your neighborhood? (%)

![Figure 5](image2.png)  
**Figure 5.** Have you or any member of your household been the victim of a burglary or physical assault in the last five years? (%)

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Figure 6. It is important for me to live in a safe environment. I avoid anything that could endanger my safety (%)

Figure 7. It is important that the government guarantees my safety from all threats. I want strong state that can protect its citizens (%)

The analysis of data from Figures 4, 5, 6, and 7, found that in all three observed countries a high proportion of respondents feel safe while walking around the neighborhood at night: Serbia (79.9%), Hungary (78.6%), and Croatia (89.7%). Also, the largest share of respondents in all three countries stated that they were not victims of burglary or physical attack in the last five years: Serbia (88.4%), Hungary (96.7%), and Croatia (95.6%). What all respondents in the observed countries have in common is that it is important to live in a safe environment, the government should guarantee citizens' security from all threats and only a strong state can protect its citizens.
3.3. Scale reliability analysis

The next step in the analysis is to measure the level of institutional trust in each of the observed countries. From the database of the European Social Survey, in order to measure the level of trust in institutions, the following question was analyzed: On a scale from 0 to 10, how much do you personally believe in each of these institutions: police, judiciary, and parliament?

![Figure 8. Distribution of institutional trust scale responses (%)](image)

The statements are set so that lower grades show distrust and higher trust in institutions (0 means that you do not trust the institution at all, and 10 that you have complete confidence). Scale reliability analysis is used to determine whether the stated attitudes measure institutional trust. The following values of Cronbach Alpha have been recorded: Hungary (0.844), Croatia (0.710), and Serbia (0.823). The obtained results show that a reliable measuring instrument is represented in the case of all three observed countries. Figure 8. presents the distribution of responses on the scale of institutional trust in the case of all three countries.

3.4. Correlation analysis

Finally, the degree of quantitative agreement of the variation between institutional trust and the perceived feeling of security was examined. The results of the correlation analysis indicate the existence of a statistically significant relationship between two observed variables. However, the strength of the relationship tells how strong the relationship is, and only in the case of Serbia the correlation between two variables is considered to be weak (Table 1). This relationship indicates that a higher level of institutional trust leads to a higher perception of security. It should be noted that inverse relationship is represented only because in the case of the question of the perception of security, the answers are the opposite: 1 - very safe and 4 - very unsafe.

<table>
<thead>
<tr>
<th>Country</th>
<th>Spearman's rho</th>
<th>Sig</th>
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<tbody>
<tr>
<td>Hungary</td>
<td>-.060</td>
<td>.014</td>
</tr>
<tr>
<td>Croatia</td>
<td>-.080</td>
<td>.001</td>
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<tr>
<td>Serbia</td>
<td>-.188</td>
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Table 1. Values of correlation analysis of variables of institutional trust and security perception
The main methodological limitation is the incapability of observing other countries in the region (i.e., Macedonia and Montenegro did not participate in the ESS ninth wave). Additionally, in our study, only three institutions represent the institutional trust scale. Although trust in other institutions is part of institutional trust, we assume that they were not relevant for our study.

4. CONCLUSION

Issues of economic and physical security seem to be relevant today more than ever now. Europe and the world as a whole are faced first with a pandemic crisis and then with the war in Ukraine. Both crises directly affected citizens’ sense of economic security as well as their perception of physical safety. Some countries entered into those turbulences better prepared than others. In this paper, we tried to detect perceptions of citizens related to economic and physical security in selected transitional countries in the before-crisis period that could be an indicator of their preparedness for turbulences. Our research revealed some inconsistencies in citizens’ perceptions like in the case of Romania where citizens’ satisfaction with the financial situation was at the EU average level, while Romanians' preparedness for unplanned financial costs was significantly lower with each second citizen admitting he or she is not prepared for unforeseen expenses. Since we are now faced with a rapid surge in prices, this discrepancy may indicate hidden risks because citizens overlooked (overestimated) some aspects of security, such as financial and job security. To test if the risk was undervalued, new research is needed that would cover the present period when rising costs put a significant burden on households in Europe.

In addition, the relationship between the trust of the citizens of Serbia, Croatia, and Hungary in the institutions and their perceived sense of security was tested as well. Our research confirmed the existence of a statistically significant relationship, which means that in countries where citizens' trust in the institutions is at a higher level, they feel safer. However, in future research, the application of partial correlation analysis is needed, which would help to better understand the relationship between institutional trust and the perception of security while other variables are kept under control. Furthermore, there is a need to define significant predictors of security perception by other types of analysis.

5. REFERENCES


HUMAN RIGHTS IN COVID-19 PANDEMIC
COVID-19 THREAT TO INTERNATIONAL PEACE AND SECURITY: THE ROLE OF THE UN SECURITY COUNCIL

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Abstract

The COVID-19 pandemic spreading around the world in the first months of 2020 not only affected personal security, but also had potential international security implications. Recognizing that the unprecedented extent of the novel coronavirus pandemic “is likely to endanger the maintenance of the international peace and security”, the UN Security Council (UNSC) on 1 July 2020 adopted Resolution 2532 in which “a general and immediate cessation of hostilities in all situations on its agenda is demanded”. This is the first time that the UNSC has called for a general ceasefire and humanitarian pause in armed conflicts around the world.

The article analyzes whether, how, and under what circumstances the Council might have a positive role in addressing global threats such as the Covid-19 pandemic and the legal nature of the measures called for in the Resolution 2532.

Keywords: Covid-19, United Nations, UN Security Council, international relations, Resolution 2532

1. INTRODUCTION

For the first 55 years of its existence, the United Nations Security Council (UNSC) showed little interest in health as a topic, interpreting its mandate narrowly to focus on more traditional threats to international peace and security such as international and civil armed conflicts. In addition, the dynamics of the Cold War at the time further limited the range of security threats to be discussed at the UNSC, sideling pandemics even though the 1946 preamble of the World Health Organization (WHO) Constitution had acknowledged the link between health and security (WHO, 1946).

At the turn of the century, it was the increased attention given to “non-traditional” or transnational threats such as climate change, pandemics, terrorism, and cyber-attacks. Namely, in 2000, the Council turned its attention to HIV/AIDS adopting Resolution 1308 on HIV/AIDS. After that further health-related resolutions followed, including on Ebola in West Africa and the Democratic Republic of Congo (DRC), attacks on health infrastructure in armed conflicts, and now on COVID-19.

The emergence of infectious diseases as threats to international peace and security was already addressed by UN Secretary-General (UNSG) in 2005, in his report “In Larger Freedom”. In that report, former UN Secretary-General Kofi Annan highlighted that: threats

45 Human immunodeficiency viruses/acquired immunodeficiency syndrome -HIV/AIDS.
to peace and security in the twenty-first century include not just international war and conflict but civil violence, organized crime, terrorism and weapons of mass destruction. They also include poverty, deadly infectious disease and environmental degradation since these can have equally catastrophic consequences (United Nations, 2005).

The global dimension of the COVID-19 pandemic, and the impossibility of any state to singlehandedly cope with its impact, have raised the question of what role the international institutions can play in devising effective responses. The UN and its UNSC certainly does not escape the reach of this question. Considering the threat posed by COVID-19, one of the most powerful international bodies should take some sort of action. Having in mind UNSC’s mandate under Article 24 of the UN Charter, notably the maintenance of international peace and security, the question is when and how do problems posed by the cross-border spread of a disease fall within the SC’s purview? And to what extent can the UNSC’s actions lead to an effective response to what is, first and foremost, a global health matter?

The UNSC has become one of the most important UN bodies, which is involved in resolving the COVID-19 pandemic as a threat to humanity. At the same time, the UNSC’s activities in 2020 were significantly influenced by the global COVID-19 pandemic politicization process, which manifested in the intentional manipulation of the current pandemic by its Member States to realize foreign policy interests and use the Council’s sessions to promote its vision of dealing with the problem. As a result, due to the lack of attention to consensus-building on a common approach to preventing the spread of the virus in the early stages of the pandemic, the UNSC has become the focus of the politicization of the current pandemic, and its ineffective activities have become the subject of political debate about its real ability to address similar potential global health threats in the future.

2. INTERNATIONAL PEACE AND SECURITY VS GLOBAL HEALTH

In Chapter V of the UN Charter, members of the UN “confer on the Security Council primary responsibility for the maintenance of international peace and security and agree that in carrying out its duties under this responsibility the Security Council acts on their behalf.” Such statement leaves open the question of what constitutes a threat to “international peace and security.” This flexibility was part of the design of the UNSC as an adaptable political decision-making body. The founding members of the UN “wanted a Security Council for all contingencies,” one that was capable of responding “to a theoretically unlimited range of possible threats at a time and in a manner of its choosing.” (Luck, 2008)

The core goals of the maintenance of international peace and security for the purposes of the UN Charter have been interpreted as the prevention not only of military conflict but also of the underlying issues likely to cause it. The UNSC’s role as the body with the primary responsibility in this area may, at times, require the imposition of sanctions or even the use of force, as envisaged in Chapter VII of the UN Charter. A core legal basis is Article 24 (1) of the UN Charter, which endows the UNSC with ‘primary responsibility’ in “the maintenance of international peace and security”.

But the field of ‘international peace and security’ within the United Nations in general, as well as, in the UNSC, has gradually evolved towards the incorporation of the more multidimensional concept of human security. Its emergence is characterized by the

46 The UNDP’s 1994 Human Development Report defined human security as ‘safety from chronic threats, hunger, disease and repression’ and ‘protection from sudden and hurtful disruption in the patterns of daily life’. This understanding of human security draws on the distinction between
incorporation of non-military threats as preconditions for international peace and security, including issues of social and economic development, including public health. The concept of human security was arguably one of the main catalysts for the expansion of the UNSC’s activities in global health fields such as the HIV/AIDS pandemic firstly and Ebola and COVID-19 later.

In turn, the normative goals of global health find their legal basis in multiple legal instruments, including those based on human rights approaches. The Constitution of the WHO is a key example, by enshrining in its preamble the “enjoyment of the highest attainable standard of health” as a fundamental right. Here, ‘health’ is understood as “a state of complete physical, mental, and social well-being and not merely the absence of disease or infirmity”. This normative goal is meant to inform institutional policies, programs and practices at the international and national levels.

By following the broader concept of human security, the normative goals of global health can converge with those of the maintenance of international peace and security. Both areas have overlapped in the past, mainly in communicable disease control. The logic of international security has also been applied to the main instrument designed to tackle the cross-border spread of disease - the WHO’s International Health Regulations 2005. However, security is not explicitly listed amongst this legal instrument’s objectives and purposes.

Since 2000, health issues have increasingly been discussed at the UNSC without consensus being built on how and when the Council address health topics, or on its role in global health governance. A high-profile infectious disease outbreaks as well as the disruption of healthcare delivery and assistance in conflict settings have driven the health agenda at UNSC debates, but that agenda has remained ad hoc. Health topics seem most likely to be put on the agenda when the P5 perceive a particular health issue as a threat to international peace and security, or when the social and economic consequences of a health crisis potentially destabilize countries or regions. That raises another political question, however: under what circumstances are they likely to perceive health issues in those terms, and whose interests are being prioritized in such a determination?

The UNSC is not the only actor at the international level to foster the process of global health securitization, but it can play and has played a central role in it. Yet its course is highly dependent on the shifting political goals of its members, particularly the veto-holding permanent members - ‘permanent five’ (P5).

The logic of UNSC’s global health securitization can be divided into two strands: 1) ‘diseases within security’, consisting of outbreaks emerging amidst armed conflict or general instability; and 2) ‘securitized diseases’, occurring when disease outbreaks are considered to be a threat to the international peace and security due to their inherent destabilizing effects.

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negative and positive peace developed by Johan Galtung, and the notion of sustainable human development, including the works of Amartya Sen, and reflects a move away from a conventional military understanding of threats and response: see Pavone, 2017, pp.312-313. In Security Council Report, 2021 the concept of “human security” is defined as ‘an approach to assist the Member States in identifying and addressing widespread and cross-cutting challenges to the survival, livelihood, and dignity of their people” (Security Council Report, 2021, p. 4).


3. THE UNSC AND PANDEMICS

The Security Council’s interpretation of threats to international peace and security has expanded considerably since the UN Charter was drafted. In 1945, the UN’s founders would have assumed that the Council would typically respond to conventional security threats to national political independence and territorial integrity. But in recent decades the Council has increasingly characterized non-conventional phenomena, including civil wars, international terrorism, serious violations of human rights, pandemics, and even climate change, as threats to international peace and security. In fact, the Council has identified previous global health crises as a threat to international peace and security, doing so in relation to HIV/AIDS and Ebola. In passing resolutions on HIV/AIDS and Ebola, the UN Security Council has shown at least a passing interest in health emergencies.49

Even though the 1946 preamble of the World Health Organization Constitution had acknowledged the link between health and security, the dynamics of the Cold War at the time further limited the range of security threats to be discussed at the UNSC, sidelining pandemics. But it was changed at the turn of the century when the increased attention given to “non-traditional” threats such as climate change, pandemics, terrorism, and cyber-attacks brought pandemics to the UNSC agenda.

In January 2000, the Security Council held its first meeting aimed at discussing a health issue as a security threat. That meeting was a landmark first step in the practice of the Security Council since its President (then Al Gore, Vice-President of the USA) recognized that the Council was exploring a brand-new definition of world security, which would open the door to seeing security through a new and wider prism and, forever after, thinking about it according to a new and more expansive definition (UN, 2000). On that occasion, the Security Council unanimously adopted Resolution 1308, recognizing that the HIV/AIDS pandemic represented a potential “risk to stability and security,” especially in consideration of the possible adverse impact of the disease on the health of international personnel engaged in peacekeeping operations (Security Council, 2000).

It was the first resolution in which the Security Council detected a health issue as a security threat. In the preamble, it was stressed how much the coordinated efforts of the member states and other United Nations bodies, specifically the General Assembly (GA) and Secretary-General (SG), are important in fighting this disease (Security Council, 2000).

But the main part of the Resolution was dedicated to the personnel of the peacekeeping missions who ought to have proper education, protection, prevention, and counselling. Namely the Resolution was limited to recognizing and expressing concern “at the potential damaging impact of HIV/AIDS on the health of international peacekeeping personnel” and requesting that the secretary-general “take further steps towards the provision of training” for preventing the spread of HIV/AIDS (Security Council, 2000). It was a compromise reached after several member states questioned the competence of the UNSC in matters of global health.

The Ebola outbreak in West Africa, in 2014, led to a much stronger UN’s response as well as, the UN’s first emergency health mission. But this happened after the initial failure of the national governments and the WHO responses of the Ebola spread. The inability of

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49 Following the West African Ebola epidemic of 2014–2016, the Harvard-LSHTM expert panel recommended the establishment of a Global Health Committee of the UN Security Council ‘to expedite and elevate political attention to health issues posing a serious risk to international peace and security and provide a prominent arena to mobilize political leadership’ (Moon et al.2015).
national authorities from Guinea, Liberia, and Sierra Leone to stem or mitigate the spread of the Ebola virus, as well as the WHO’s delayed response in declaring it a public health emergency of international concern, led to the collapse of the already fragile healthcare systems in these three countries. The situation risked destabilization of the region, since the magnitude of the Ebola outbreak was viewed as a potential source of civil unrest and severely deteriorating national institutions, including those related to security. In a letter addressed to the UNSC and UN General Assembly, Secretary-General Ban Ki-moon writes that the Ebola crisis is no longer just a public health crisis, but has become multidimensional, with significant political, social, economic, humanitarian, logistical and security dimensions (United Nations, General Assembly and Security Council, 17 September 2014). He also cited the need to pair the WHO’s “strategic perspective with a very strong logistics and operational capability” to establish the UN Mission for Ebola Emergency Response (UNMEER) operation. The UNSC immediately supported the decision with Resolution 2177. The resolution had 130 cosponsors and determined that the West African epidemic constituted “a threat to international peace and security” (Security Council, 2014).

The focal point of Resolution 2177 was the situation in West Africa - Liberia, Guinea, Sierra Leone and Nigeria. The Security Council encouraged the governments of these countries to establish national mechanisms when it comes to dealing with Ebola but also to widen their politics on public health. Some paragraphs were dedicated to the sanctions and economic isolation of the mentioned countries and communication issues. The Resolution urged the member states to provide medical help and assistance and to implement the International Health Regulations from 2005. Finally, the WHO and the UN Secretary-General ought to help and contribute to the fight against Ebola (Security Council, 2014). The first-ever UN emergency health mission - the UN Mission for Ebola Emergency Response (UNMEER), was established on 19 September 2014. The UNMEER’s mandate, as a temporary measure, was to harness the capabilities of all the relevant UN actors under a singular operational crisis management system to reinforce unity of purpose among responders and to ensure a rapid and effective response to the Ebola crisis (Global Ebola Response, n.d.). The Mission was closed on 31 July 2015, having achieved its core objective of scaling up the response on the ground.

Resolution 2177 recognized the leading role played by the WHO, recalled the International Health Regulations (2005) and underscored the importance of abiding by the commitments stemming therefrom, while urging WHO member states to follow the temporary recommendations issued by the WHO Director-General. Despite this taking the Ebola epidemic to the UNSC was an acknowledgement of the deficiencies of the regional and WHO responses, of the severity of the perceived threat posed, and of the need for an exceptional intervention.

4. RESOLUTION 2532

On 30 January 2020, the coronavirus outbreak was declared a “public health emergency of international concern” by the Director-General of the WHO in accordance with Art. 12.1 of the International Health Regulations (2005). COVID-19 as a global pandemic was declared by the World Health Organization on 11 March 2020. But it was not until the beginning of July that the Security Council issued Resolution 2532. Namely, on 1 July 2020, concerned at the health and humanitarian consequences of the COVID-19 pandemic, the UNSC adopted the Resolution 2532 on the effects of the COVID-19 pandemic
across the world and its impact on the international peace and security.\textsuperscript{50} Although the Resolution was adopted unanimously, the passing of it marked the end of a lengthy and difficult political process. The process began when UN Secretary-General Antonio Guterres called for a global COVID ceasefire on 23 March 2020 to focus efforts on fighting the pandemic and open humanitarian corridors to deliver aid to those most vulnerable (UNSG, 2020a). He described it as the most challenging crisis since the Second World War. Guterres’ call was an opportunity to support peace processes during an unprecedented international health crisis. That was the theory.\textsuperscript{51} The UN General Assembly followed by passing Resolution 74/270 on 2 April calling for intensified international cooperation to contain, mitigate and defeat the pandemic. This resolution reaffirmed the General Assembly’s “commitment to international cooperation and multilateralism and its strong support for the central role of the UN system in the global response to the coronavirus disease 2019 (COVID-19) pandemic” (UNGA, 2020 3 April).

Amidst exponentially rising case numbers, fatalities and increasingly apparent global consequences of the pandemic, the Security Council remained silent, embroiled in political disagreements between its permanent members, most notably China and the United States. So, on 9 April, the Secretary-General addressed the Security Council to bring its attention to the significant threats to the maintenance of international peace and security posed by the COVID-19 pandemic, “potentially leading to an increase in social unrest and violence that would greatly undermine the world’s ability to fight the disease” (UNSG, 2020b). The underlying assumption was that conflicts facilitated the spread of the disease and, at the same time, hampered local and international response capacities. The Secretary-General, also, wrote in the letter that the engagement of the Security Council would be critical in maintaining peace and security and recalled the crucial role that the Security Council had in the HIV/AIDS crisis and the Ebola outbreak. He called for global and overall solidarity (UNSG, 2020b).

The WHO has been criticized for being too slow to react to several health emergencies (including COVID-19), but it looks rapid in its response when compared to the Security Council. Also, the activism of the Secretary-General and of the GA was in sharp contrast with the wavering attitude of the SC. (Sommario, 2020). Namely, it took over three months to compose the text of the Resolution 2532 that the Security Council adopted on 1 July 2020\textsuperscript{52}. Although the Resolution was adopted unanimously, it showed the rivalry amongst the permanent members and the predominance of domestic interests over the need for coordination. The adoption of the Resolution was a lengthy and difficult process caused by a political disagreement between the USA and China over the origins of the virus and disagreements on whether to mention the WHO in the resolution. China strongly insisted on mandatory indication of the exclusive role of the WHO and expression of support for its operations by the UNSC. But it was completely unacceptable for the US delegates, who even resorted to blocking the Resolution. The United States, at the time under the Trump Administration, objected to any mentioning and endorsement of the WHO, criticized the

\textsuperscript{50} Due to the extraordinary situation caused by the pandemic, the resolution was approved pursuant to the special written voting procedure indicated in a letter of the Security Council’s Chinese President dated March 27, 2020 (U.N. Doc. S/2020/253, Mar. 31, 2020).

\textsuperscript{51} The Council’s 2020 call for a global ceasefire to assist in responding to COVID19 in conflict-affected countries had almost no effect: only one party to a conflict—the ELN in Colombia—responded to the call, via an offer (subsequently rejected by the Colombian government) to pause hostilities (Gowan and Pradhan, 2020).

\textsuperscript{52} By July 1, when the first COVID resolution was adopted, there had already been over 500,000 deaths worldwide (WHO, 2020).
way it dealt with the pandemic. In particular, the US mentioned “the charges against the Director-General of the WHO as being under China’s control in the wake of the COVID-19 outbreak”. Furthermore, the US used every opportunity to put China’s responsibility in focus by calling the disease the “Wuhan virus” or “Chinese virus” and accuse China of concealing morbidity data (Pavone, 2021, p. 2-3). On the other hand, China objected to the US proposal to include an open reference to state commitments to transparency and accountability in the management of the pandemic (Negri, 2021, p. 24). Although the Resolution was adopted unanimously it showed the rivalry amongst the permanent members and the predominance of domestic interests over the need for coordination. Unlike the previous resolutions of UNSC adopted on the topic of public health, Resolution 2532 does not have any reference to the WHO, and it recognizes the United Nations as the main and key actor in the global response to the pandemic.

The operative part of the resolution consists of eight paragraphs. After demanding a general and immediate cessation of hostilities, the Security Council specifically called on all parties to an armed conflict to take a pause for at least 90 consecutive days. The goal was to enable the safe and sustained delivery of humanitarian assistance. The foundation for this call lies in the principles of humanity, neutrality, impartiality, and independence, but also in international humanitarian law and refugee law. But this call does not apply to military operations against the Islamic State in Iraq and the Levant (ISIL), Al Qaeda and Al Nusra Front (ANF) and all other individuals, groups, undertakings and entities associated with Al Qaeda or ISIL, and other terrorist groups, which have been designated by the Security Council (Security Council, 2020, point 3).

Neither Resolution 2532 nor its predecessors clarify the specific provision of the UN Charter under which the Security Council is acting. When it comes to the legal foundation of the Resolution, it is Article 36, para. 1 of the Charter of the United Nations, which gives power to the Security Council to adopt the recommendations in “a situation that might endanger peace and security”. While the Resolution underscored the potential danger posed by the pandemic to the maintenance of international peace and security, it did not lead to the adoption of extraordinary measures under Chapter VII of the UN Charter. The resolution’s wording states that the ongoing pandemic “is likely to endanger the maintenance of peace and security”, language that clearly recalls Chapter VI of the UN Charter than Chapter VII. However a distinction between Chapter VI and Chapter VII is blurred and that “the difference between a potential ‘danger’ and a current ‘threat’ to peace and international security . . . is difficult to define in the abstract.” (Negri, 2020, p.25) Also, it may happen that the legal basis for a Security Council resolution is connected to one chapter, while the operative part refers to another. This is a case with Resolution 2532 since the Council’s demand for an immediate global ceasefire falls within the category of provisional measures.

53 In the early stages of the pandemic, the US president, Donald Trump, regularly praised China and the WHO for their response to the COVID-19 outbreak. However, as cases escalated in the US this praise quickly turned to condemnation. By mid-April, Trump had announced that the US was suspending funding for the WHO and by late May, Trump had announced a withdrawal from the WHO. (https://theconversation.com/coronavirus-un-security-council-finally-calls-for-global-ceasefire-after-us-and-china-delay-talks-141858)
54 UN Doc. S/RES/2532 (2020), para. 2. Other measures include requests that the Secretary-General provide updates and the coordination of the response within the UN system including UN Country Teams (paras. 4 and 5), and to instruct peace-keeping operations to support host country authorities and the protection of safety, security, and health of UN personnel in UN peace operations (para. 6) in addition to a general call for action to minimize disproportionate negative impact of the pandemic on especially vulnerable groups including women and girls (para. 7).
55 See especially Articles 33 and 34 of the UN Charter.
measures under Article 40 of the Charter, while the preamble is more akin to Chapter VI language. In similar cases, it would be correct to classify the act under either Chapter VI or Chapter VII by giving pre-eminence to the operative paragraphs as the most important part of the resolution. (Negri, 2020, p. 26)

Resolution 2532 is especially noteworthy since it is the first ever Security Council resolution calling for a global ceasefire and a “durable humanitarian pause” aimed at enabling a coordinated international response to a public health emergency of global concern. Resolution 2532 also offers UNSG (now Guterres) a platform to keep the Security Council up to date on how the pandemic is affecting the international security landscape.

5. CONCLUSION

COVID-19 is and will be a long-term challenge with serious consequences, including for the UNSC’s aspirations to face possible unconventional threats to international peace and security.

When we talk about the UNSC’s engagement with health emergencies, the structure and working methods of the Security Council create significant problems. These problems apply to its engagement with health emergencies in just the same way as more traditional concerns of international peace and security—although with some added complications arising from continuing uncertainty over the extent to which disease is really part of the Council’s mandate. There have also been long-running tensions between members, especially the P5, over the appropriate scope of the UNSC’s role. China and Russia have historically opposed the expansion of the Council’s agenda into areas they deem to be outside the Council’s core mandate of international peace and security. As a result, these countries, but not only these two, have not always been enthusiastic at the prospect of addressing health emergencies.

The Security Council has been divided by geopolitical rivalries for most of its existence. The fact that each of the P5 could veto a resolution has meant that action has often not been possible on issues on which they see their vital interests to be at stake. The Council is fundamentally and inescapably a political body, one in which geopolitics and perceived national interests are the guiding concern. This could seriously hamper its ability to act on future outbreaks.

Another problem with relying on the Security Council is that it does not have a good record of intervening early in emergencies, such as slow reaction to several health emergencies including COVID-19. The lesson learned from successive pandemics is that late action costs lives. Responding early, before an outbreak gets out of hand, is vital.

There are, also, questions over whether the UNSC has the right ‘toolbox’ for dealing with global health emergencies. According to the UN Charter the UNSC can enforce its decisions through various means, including economic sanctions or even, where necessary, the use of force. But it is hard to envisage many situations in which such powers might be productive responses to health emergencies. Almost certainly more important is the Council’s normative power: its ability to declare the behaviors expected of UN member states, to call for greater cooperative efforts, and implicitly or explicitly to criticize states which fail to live up to their obligations.

This health crisis of COVID-19 has had and will have an influence on perhaps every aspect of life, which means, it may influence international potential conflicts. Therefore, it is a question of international security, and the Security Council may pass a resolution on the matter. At the end, its actions can be effective only if the Council members can accurately
grasp the nature and scope of the health threat posed by the global spread of a communicable disease, as well as the most appropriate responses. Without insights from the area of medicine and public health, this can hardly occur. In such a setting, the Security Council runs the risk of doing more harm than good through its future resolutions.

6. REFERENCES


RESTRICTIONS ON FREEDOM OF PEACEFUL ASSEMBLY AT THE TIME OF THE COVID-19 PANDEMIC

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Abstract

The freedom of peaceful assembly is not an absolute human right. International documents provide restrictions that may be invoked in specific circumstances by States Parties, which are obliged to bring their national legislation into line with international standards. In the period of the global COVID-19 pandemic, restrictions on freedom of assembly have been a rule rather than an exception in many countries worldwide. Some countries have managed to strike a balance between the freedom of assembly and the need to protect human health. Other states have been blamed for undue interference with the freedom of peaceful assembly, which ultimately resulted in proceedings in front of domestic and international courts. In this paper, the authors underscore the need to maintain a balance between the freedom of peaceful assembly and the duty of the state to protect public health. To this effect, the authors indicate some novelties in decision-making processes at the international level and analyze the recent case law of the European Court of Human Rights (ECHR) on this subject matter. On the basis of the presented considerations, the authors ultimately draw conclusions on whether this balance has been achieved in the circumstances of the COVID-19 pandemic.

Keywords: freedom of peaceful assembly, COVID-19 pandemic, international documents, human rights.

1. INTRODUCTION

Human rights proclaimed in both national and international documents often contain some restrictions which may be invoked under certain conditions. A restriction cannot be interpreted as a rule but only as an exception, which is applicable only when it is deemed necessary. Even then, there is a need to strike a fair balance between the competing interests. In effect, a restriction implies the possibility to reduce the scope of a particular right to a permissible level, while concurrently ensuring that the right at issue is not completely derogated.

The right to peaceful assembly is one of the fundamental human rights prescribed in many international documents. First, the freedom of assembly and association is explicitly

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56This research was financially supported by the Ministry of Education, Science and Technological Development of the Republic of Serbia (Contract No. 451-03-68/2022-14/200120).
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guaranteed in Article 11 of the European Convention on Human Rights (1950)\(^59\) (hereinafter: ECHR). As such, it is subject of consideration in front of the European Court of Human Rights (hereinafter: ECtHR). Second, the right to peaceful assembly is also guaranteed in Article 21 of the UN International Covenant on Civil and Political Rights (1966)\(^60\) (hereinafter: ICCPR), which recognized the right to peaceful assembly as well as the legitimate aims for potential restrictions on this right. However, with the outbreak of Coronavirus disease (COVID-19) and its rapid global spread, it was necessary to establish new international principles which would additionally clarify the actual scope of protection of this right to peaceful assembly and specify the restrictions, conditions, rules and responsibilities applicable in the circumstances of the global pandemic. To that effect, acting within the framework of the ICCPR, in 2020, the UN Human Rights Committee adopted General Comment no. 37 (2020) on the right of peaceful assembly (Article 21 ICCPR)\(^61\), with the aim of facilitating the consideration of current problems in the circumstances of the COVID-19 pandemic.

The adoption of this document has contributed to resolving numerous issues, but it has also generated an increasing number of applications that were filed with the ECtHR on the legal ground of violation of Article 11 ECHR (freedom of peaceful assembly and association). Due to the excessive caseload, a vast majority of these cases are currently in the decision-making phase. It means that the Court case law on this matter will be established in the forthcoming period. It further implies that the first judgment on this matter will be a kind of pilot decision for applications that are likely to be submitted in the future.

2. ACTIVITY OF THE UN HUMAN RIGHTS COMMITTEE

Article 21 of the International Covenant on Civil and Political Rights (1966) expressly recognizes the right to peaceful assembly and specifies that restrictions may be imposed only if they are “in conformity with the law” and if they are “necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals, or the protection of rights and freedoms of others” (Article 21 ICCPR). In the past few years, in response to the threats of the global pandemic caused by the SARS-CoV-19 virus (hereinafter: COVID-19), many states have resorted to imposing unprecedented restrictions on human rights. The right to peaceful assembly has also been the subject matter of such restrictions. Many states throughout the world have advocated and supported the opinion that citizens’ right to peaceful assembly must be restricted, particularly bearing in mind that the contagious COVID-19 disease spreads much faster and more easily if “social distancing” measures are not observed; they also noted that a violation of such measures is expected in the case of mass gatherings.

As a result, different states rendered various decisions in an attempt to address the emerging problems, but the decisions on the freedom of assembly differed from one country to another. The major difference in their approach was whether the ban on gatherings applied to open or closed spaces, whether that kind of action included additional restrictions or it only referred to a restriction pertaining to a maximum number of people who can be in the

\(^{59}\) The European Convention on Human Rights (1950), as amended by Protocols Nos. 11, 14 and 15, and supplemented by Protocols Nos. 1, 4, 6, 7, 12, 13 and 16, Council of Europe, Strasbourg, France.


same place at the same time, whether it included the social distancing and mask-wearing, etc. The state-imposed restrictions on human rights generated new problems. In order to ensure public health protection, states resorted to imposing bans more often, which triggered citizens’ dissatisfaction and resulted in numerous protests and riots. Instead of prescribing spatial and temporal restrictions, mask-wearing (etc.), some countries opted for additional human rights restrictions by prescribing bans on protests, which were justified by reasons of public health protection. Thus, state restrictions created a vicious circle.

Considering the circumstances amidst the global pandemic, the potential systematic violations of the right to freedom of assembly and the prevalent citizen discontent, on 27 July 2020, the UN Human Rights Committee (hereinafter: the HR Committee) adopted the General Comment no. 37 on the right of peaceful assembly, envisaged in Article 21 of the ICCPR. The Committee established additional criteria regarding the right to peaceful assembly, justifying them by necessity, particularly bearing in mind the increasing number of mass protests, many of which ended in riots either owing to the actions of the participants or due to the unjustified use of force by law enforcement authorities (Just Security, 2020).62

First, it should be noted that Item 6 of the General Comment no. 37 stipulates that peaceful gatherings that are protected under Article 21 ICCPR include: “demonstrations, protests, meetings, processions, rallies, sit-ins, candlelit vigils and flash mobs”, regardless of where they take place: “outdoors, indoors or online, in public or private spaces, or a combination thereof. Item 8 of the Comment explicitly states that, although the state prescribes restrictions on this right, these restrictions cannot override this right completely, as “there are limits on the restrictions that may be imposed”. This unequivocally clarifies the primary question that was posed worldwide: whether state authorities may ban any form of gathering in order to protect public health or impose restrictions only within the prescribed limits. This solution underscores the balance between the two conflicting rights. On the one hand, the state has the right to take measures to prevent the spread of infectious diseases and protect the population (the right to public health protection); on the other hand, the citizens’ right to peaceful assembly does not remain a dead letter of the law.

Moreover, Item 46 of the General Comment no. 37 specifies that restrictions must prove to be proportionate, which further entails evaluation and “balancing the nature and extent of interference against the reason for interfering”. Accordingly, in the event of a contagious disease, states may restrict the freedom of assembly by calling upon the protection of public health because gatherings can be dangerous for the population in general. This restriction is also justified if there is a significant risk for the participants of the gathering, as well as for the wider population. Looking into the stipulated rules, we can address two problems.

2.1. Deterrent effect

The first problem arises due to the so-called "deterrent effect". In addition to stipulating that the restriction has to meet the requirements of legality, necessity, proportionality and non-discrimination, Item 36 of the General Comment no. 37 clearly specifies that state-imposed restrictions on the freedom of assembly, must not be aimed at discouraging participation in assemblies or causing a chilling effect”. Urging or pleading to

citizens not to attend assemblies of any kind in the circumstances of the pandemic, followed by an unequivocal explanation that mass gatherings contribute to spreading the deadly disease and increasing the number of deaths, may be a deterrent effect. In spite of the fear that may arise from such a message, every citizen has the right to exercise his/her right to peaceful assembly, while state authorities have to set potential boundaries to protect both the participants and other citizens.

Another deterrent effect may be embodied in the state-imposed acts establishing an absolute ban on gatherings and specifying that any conduct contrary to the imposed ban will be punished. At the outbreak of the COVID-19 pandemic, the most common forms of punishment for inobservance of the ban were fines and imprisonment. There is no doubt that such decisions were in conflict with the international standard that freedom of assembly should not be banned but only restricted. The threat of punishment, in case an individual or a group of persons exercise their guaranteed human rights, is impermissible and clearly illustrates the unnecessary and disproportionate interference of the state.

\[2.2.\text{ Restriction by the State}\]

Another problem is whether the states, in setting their boundaries, have respected the adopted international legal standards. One of the greatest dilemmas today is whether the states have the right to limit the number of people in public gatherings and whether gatherings can be limited in terms of time and place. Thus, this problem generates other problems. As a matter of fact, restrictions on the freedom of assembly automatically entail restrictions on the freedom of movement; thus, the accumulated problems are further compounded. In some countries, the state response to potential violations of the ban or movement restrictions often led to the arbitrary detention of citizens, without considering whether the decisions at the state level were in accordance with the national laws and international documents.

\[2.2.1.\text{ Limiting the number of people in one place}\]

In the circumstances of the global pandemic, many states resorted to limiting the number of people per square meter. This was one of the most common measures which was applied to prevent mass gatherings, ensure social distancing and provide for public safety. In some countries, such as Germany, the USA and Australia, there were protests against the government decisions on compulsory mask-wearing and social distancing. \(\text{Civicus, 2021}\).\[63\]

It was determined that the number of people during the gathering could be limited (General Comment no. 37, Article 49), only for the reasons that are strictly stated in the Article 21 of the ICCPR, where the protection of public health is unequivocally classified. Item 47 of the General Comment no. 37 refers to the legitimate grounds for restrictions on the right to peaceful assembly, which are expressly enlisted in Article 21 of the ICCPR: national security, public safety, public order, protection of public health, and protection of rights and freedoms of others. Item 49 of the General Comment no.37 further specifies that public safety may be invoked as a ground for restrictions on the right to peaceful assembly if the gathering creates a significant and immediate risk or danger to one’s life, physical integrity and personal safety. It follows that the number of people in a gathering may be

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limited only for reasons explicitly listed in Article 21 of the ICCPR, which include the protection of public health and public safety.

In many states, the limited number of people in the same space was justified by scientific facts established by experts from relevant scientific fields, who purported that the pandemic would not be reduced to the level of an epidemic and human life would not be brought back to “normal” unless the spread of the COVID-19 virus was rapidly prevented. Scientists also claimed that the virus would spread much faster if there was no physical distance between people, which is logically more difficult to ensure if there is a huge and uncontrollable number of people per square meter. Accordingly, it may be concluded that such a state-imposed restriction is in accordance with international law, but it does not exclude the obligation of the state to regulate this matter by enacting national legislation.

2.2.2. Restriction of freedom of assembly and freedom of movement

Another commonly practiced restriction on the right to freedom of assembly entails limiting the duration of the specific gathering. Here, the freedom of peaceful assembly overlaps with the freedom of movement. Thus, the states that opted for restrictions on freedom of movement by instituting lockdowns (prohibiting their citizens from leaving their homes at certain times of the day or prohibiting them to leave their place of residence due to the ban on travel from one city to another within state borders) automatically restricted their citizens’ freedom of assembly. Item 54 of the General Comment no. 37 specifies that restrictions regarding the precise date, timing, duration, or frequency of a gathering “raises concerns about their compatibility with the ICCPR”. Thus, if a state decides to restrict the freedom of movement, it has concurrently restricted the freedom of assembly of its citizens. If an individual or a group of citizens decide to organize a gathering at a time when the assembly is strictly prohibited, they run the risk of being punished by the competent state authorities. In such cases, they may be held liable for the violation of both rights: the freedom of peaceful assembly and the freedom of movement.

2.2.3. Restriction on freedom of assembly and arbitrariness in depriving citizens of their liberty

In addition to the cumulative violation of the previously described human rights, there were concerns about the violation of other guaranteed human rights. At the outset of the COVID-19 pandemic, we could witness a huge increase in the application of temporary apprehension or detention measures, which were aimed at preventing citizens’ participation in gatherings. Item 93 of the General Comment no. 37 clearly stipulates that preventive detention of targeted individuals in order to prevent them from participating in an assembly as well as the indiscriminate arrest of a large number of protesters before, during, or after an assembly may constitute an arbitrary deprivation of liberty and illegal act of state authorities. Such actions are incompatible with internationally guaranteed human rights, including the right to peaceful assembly, regardless of whether the national legislation envisages detention in such situations. This conclusion is based on the analysis of the entire document (General Comment no. 37), particularly bearing in mind that states are clearly obliged to refrain from taking radical measures, which can be taken only in the case of violence which cannot be prevented or ended in any other way. Ordering detention based on the assumption that riots may occur during a gathering, and in order to protect public health during the pandemic, undermines the guaranteed right to peaceful assembly, particularly having in mind the provisions that clearly prohibit intimidation of individuals by the state.
2.3. Inadequacy of applied measures

Statistical data collected by the NGO “Human Rights Watch” show non-compliance with international principles by countries around the world. Since January 2020, more than 83 countries have violated a number of human rights, justifying their impermissible actions by the COVID-19 pandemic. The imposition of restrictive measures by state authorities indisputably contributed to the restriction of human rights and triggered people's dissatisfaction. According to the collected data, over a dozen countries arbitrarily banned or stopped protests, including Turkey, Ukraine, Russia, Hong Kong, and many others (HRW, 2021).64

On the basis of all provisions of the General Comment no. 37, we may deduce that such actions constituted a disproportionate interference of states, as it clearly and unambiguously states that any kind of public gathering cannot be completely banned due to the COVID-19 pandemic. According to Item 59 of the General Comment No. 37, restrictions that may be considered and allowed, on the basis of proved legitimate grounds and for the purpose of protecting public health and safety, include limiting the number of people in gatherings and/or keeping physical distance. Notably, Item 13 of the General Comment no. 37 reiterates that the exercise of the right to peaceful assembly extends to online gatherings, which are explicitly protected in Article 21 of the ICCPR. Therefore, we can conclude that many countries banned protests in order to prevent the spread of dissenting views which were contrary to the official government policy. The bans resulted in violations of freedom of speech, thus creating a new vicious circle of systematic violations. Instead of imposing absolute bans on gatherings, states could have approached the problem in line with Item 13 of the General Comment no. 37, for example, by inviting people to express their opinions through any online platform (virtually), which would preclude the need for physical gatherings.

2.4. Violation of the right to privacy of participants in demonstrations

Anonymity is a crucial element of the right to privacy, which should be protected in both physical and virtual environments. The right to privacy may be infringed not only by violating one’s anonymity but also by failing to provide for one’s personal data protection (Items 34, 60, 61 of the General Comment no. 37). As data protection issues have surfaced at a time of greater technological achievements and greater modernization of society, international documents and national acts on this subject matter have provided an opportunity to individuals to protect their private data; thus, each individual should give express consent to competent authorities or entities for the collecting and processing of personal data, in every single case. However, major problems arise with using modern technology for surveillance purposes, monitoring individual social media profiles, recording and identification of protesters (Items 61 and 62 of the General comment no 37). There were cases where private data of specific individuals (names, surnames, addresses, etc.) were collected by recoding protesters and using facial recognition technology; after processing the data collected in such a manner, the assembly participants were charged and punished.

In the context of using new technologies, Item 60 of the General Comment no. 37 has resolved several issues: first, whether the use of a mask, hood or any other clothing item aimed at concealing one’s identity may indicate the potentially violent behavior of that

individual; second, whether these individuals are wearing such clothing in order to prevent the competent law enforcement authorities to detect the potential perpetrators of a criminal offence or misdemeanour. Given the fact that such practices constitute a direct violation of the presumption of innocence, Item 60 of General Comment No. 37 clearly states that any kind of clothing, face covering or disguises (masks or hoods) aimed at ensuring the anonymity of assembly participants should be allowed unless the participants’ violent conduct or other compelling reasons (such as carrying weapons or dangerous tools) constitute a reasonable ground for intervention and arrest.

Considering that we have witnessed the actions of state governments around the world, where peaceful protesters were targeted and punished for participating in protests despite the fact that they did not use any form of force and violence, we may pose the question of how the personal data of those protesters were collected. Considering that all public assemblies shall be secured by law enforcement authorities to ensure public peace and safety, there is an issue of who was responsible for collecting and storing the recorded data. Moreover, the analysis of such recordings for the purpose of detecting one’s identity constitutes a violation of one’s right to anonymity, whereas detention and punishment constitute a deprivation of one’s right to peaceful assembly.

2.5. Inadequate use of force

In order to justify its actions, such as more or less extensive restriction of human rights and possible punishment of the participants in a peaceful assembly, the state shall prove that its activities have been based on legitimate grounds and supported by appropriate evidence. In order to ensure the freedom of peaceful assembly and provide for adequate protection of assembly participants from arbitrary actions of competent state authorities, Item 9 of the General Comment no. 37 prescribes the obligation of the state to ensure the protection of other overlapping rights: freedom of expression, association and political participation, without unwarranted interference. Item 91 of the General Comment no. 37 obliges the states that any use of force by law enforcement officials must be recorded in a transparent report, which is absolutely necessary as factual evidence of events; in case of any injury or damage, it will be used in assessing whether the use of force was necessary and proportionate. In that context, the information in the report should be relevant and detailed, including the reasons for the use of force, the effectiveness and consequences of its use.

In the circumstances of the COVID-19 pandemic, such a rule was necessary because state restrictions were based on the need to protect public health and the use of force was often applied as a rule rather than an exception, even when riots were not caused by assembly protesters. Item 36 of the General Comment no. 37 specifies that restrictions must never impair or violate the very essence of the right to peaceful assembly; thus, any unnecessary and disproportionate limitations or measures, including the use of such force against peaceful protesters, constitute a gross violation of Article 21 of the ICCPR.

3. RECENT CASE LAW OF THE EUROPEAN COURT OF HUMAN RIGHTS

The provisions of Article 11 of the European Convention on Human Rights (ECHR) guarantee the freedom of assembly and association, specifying that restrictions on the exercise of these rights may occur provided that they are prescribed by law, that they have a legitimate aim, and that they are “necessary in a democratic society in the interests of national security or public safety, for prevention of disorder or crime, for the protection of
health or morals, or for the protection of the rights and freedoms of others” (Article 11, para. 2, ECHR). In order to ensure the guaranteed protection of the right to peaceful assembly, the European Court of Human Rights (ECtHR) has to decide on the merits of each individual application by taking into account three cumulative factors: whether the organizers of the gathering call for violence; whether the gathering was peaceful; whether the applicant himself had used violence during the rally, and whether he had inflicted bodily harm on anyone (ECtHR, Shmorgunov and Others v. Ukraine, § 491).65 In addition to all the mentioned criteria, it is also necessary to examine the issue of public health protection as one of the legitimate goals that is dominant today in the circumstance of the global pandemic. In recent years, since the spread of the COVID-19 in early 2020, the dominant question referred to the ECtHR has been as follows: do the State Parties have the right to restrict or even deny the possibility of enjoying the rights envisaged in Article 11 of the ECHR even if the three cumulative conditions above have been met and if there is a risk of further spread of a contagious disease. Under the ECHR, a number of proclaimed human rights are subject to restrictions under certain conditions. Thus, Article 15 (para. 1) of the ECHR (Derogation in time of emergency) unequivocally provides the possibility for High Contracting States to derogate from certain guaranteed rights in times of war, in case of danger or other public emergency threatening the survival of the nation. With reference to Article 15 (para.2) of this Article, we may infer that this provision is also applicable to Article 11 of the ECHR which prescribes the right to peaceful assembly. However, despite the fact that the majority of States acted in accordance with Article 15 (para. 3) ECHR, informing the Secretary General of the Council of Europe about the taken measures and derogation of the enumerated rights, we cannot ignore the fact that Article 15 (para. 1) ECHR does not provide the opportunity for the States to fully suspend human rights and freedoms. The danger or other public emergency threatening the survival of the nation is a broader concept, but its interpretation should not be too extensive. Regardless of the existing situation, the very essence of the guaranteed right cannot be neglected, which further means that the minimum requirements must be preserved even in emergency situations. Even though many states opted for the total suspension of human rights at the outset of the pandemic, the ECHR only allows for some permissible deviations. It is clearly indicated in Article 15 (para. 2) ECHR, which states that Article 15 (para.1) ECHR does not allow a complete derogation of human rights. In previous sections of this paper, the authors pointed out the most common failures of states in determining restrictions on the freedom of assembly in the circumstances of the COVID-19 pandemic. Many states considered that citizens’ human rights were not violated and that in line with government decisions aimed at protecting public health and safety each individual had to put up with certain restrictions on his/her rights. Due to the growing dissatisfaction of citizens who did not find protection and relevant legal remedy at the national level, the number of applications filed with the ECtHR was growing. An example that indicates the Court’s excessive caseload is the case of Zambrano v. France (2021), which was declared inadmissible. This decision was made after it was established that the applicant had abused his right to submit an application; namely, dissatisfied with the introduction of Covid-passes which limited many human rights and freedoms, he invited people who visited his website to fill out a form and join him in lodging a collective

application with the ECtHR by submitting multiple applications through an automatically generated and standardized application form. As a result, almost 18,000 applications had already been sent to the Court. Considering the comments which were publicly available through the site, it was revealed that the goal of this deliberate action was to increase the Court workload, cause “congestion”, delay and “derail its operations”, in order to undermine the Convention system and the operation of the Court (Zambrano v. France41994/21).66

At the outbreak of the COVID-19 disease and the outstart of global spread, the restriction on certain human rights, including the right to freedom of assembly, may be understood to some extent. In order to prevent the spread of the infectious disease, state authorities resorted to imposing certain restrictive measures, such as wearing masks, restricting movement, introducing Covid-passes, etc.). The problem occurred when citizens decided to express their dissatisfaction with the imposed measures through protests. In these circumstances, instead of considering the benefits or drawbacks of the imposed restrictions, states authorities opted to tighten and expand the already taken measures, by banning or restricting the freedom of movement and assembly. It actually created a vicious circle of events: derogation of certain rights by the state; organization of protests by citizens; introduction of bans or restrictions on the right to assembly; frustration and anger on the part of citizens who opposed the state-imposed rules by violating the imposed bans; mass protests against certain restrictive measures; and state reaction embodied in detention, criminal or misdemeanour charges and convictions. In reference to these facts, it is particularly important to provide a clear answer to the following question: whether states have the right to fully deny the freedom of peaceful assembly, or whether they only have the power to restrict the right if such a restriction has a legitimate aim.

In the case Berladir and others v. Russia (2006)67, the ECtHR considered that there was interference with the exercise of the rights provided in Article 11 ECHR if the demonstration is officially approved by competent state authorities but under the condition that the assembly has to be organized at an alternative location, or if the approval is accompanied by a designation of a shorter period than planned, or if the state prescribes a limit on the duration (Berladir and others v. Russia, §§ 47-51). In the circumstance of the COVID-19 pandemic, most states were prone to completely suspend the freedom of peaceful assembly until the pandemic situation calmed down; thus, they neglected the possibility of applying less restrictive measures. An example of a positive approach to this issue and dubious consideration of less restrictive measures may be found in the Republic of Ireland, which opted for granting permits for local protests over Corona-virus health issues but recommended wearing masks and keeping social distance (Independent.ie 2020).68

During the first half of 2020, a dozen High Contracting States which are signatories to the ECHR forwarded a notification to the Secretary General of the Council of Europe on the derogation of certain guaranteed rights due to the COVID-19 pandemic. Some of these


67Berladir and others v. Russia, app. no. 34202/06, ECtHR judgment 10 July 2012 (§§ 47-51);https://hudoc.echr.coe.int/eng#{%22itemid%22:[%222001-11201%22]}.

After the COVID-19 pandemic, states are Lithuania, Romania, Macedonia, Albania, Serbia, and others. The most frequent derogations concerned the rights envisaged in Articles 5 (liberty), 8 (privacy) and 11 (expression) of the ECHR, as well as the rights envisaged in Protocols No. 1, 2 and 4 to the Convention (Jovičić, 2020: 547). Consequently, in a vast majority of applications, the Court has been requested to rule on the violation of the aforesaid Articles. As previously mentioned, only a small number of judgments have been rendered final, which most commonly refer to cases where it has been unequivocally determined that the application is inadmissible, most frequently due to the abuse of the right to petition.

Analyzing the available data on the applications which the ECtHR has taken into consideration, we will refer to several interesting cases that ruled on the subject matter but the judgment is still not rendered final. The first case is *Communauté genevoise d'action syndicale (CGAS) v. Switzerland*, 21881/20, where the applicant (labour union association) claimed to have been deprived of the right to organize peaceful public demonstration at the outset of the COVID-19 pandemic. The state measures aimed at preventing the further spread of the pandemic imposed an absolute ban on freedom of assembly, and thus the freedom to organize and participate in demonstrations, and prescribes fines or imprisonment for a violation of the ban. Under threat of criminal sanctions, the association had to withdraw its request for approval of the planned demonstrations and was denied the right to express its views for a long period of time, particularly considering the association’s sphere of activity; the applicant also claimed that some demonstrators were prosecuted for violating the ban in other organized demonstrations. After considering three significant issues (the applicant’s victim status; exhaustion of domestic remedies; and proportionality of state interference with the right to freedom of peaceful assembly), ECtHR ruled that there was a violation of Article 11 on all these issues (ECtHR, *Communauté genevoise d'action syndicale (CGAS) v. Switzerland*, 21881/20).

Similarly, the case *Central Unitaria de Traballadores/AS v. Spain* concerns the right to organize and participate in a peaceful demonstration during the Covid-19 pandemic. In Spain, the right to peaceful assembly was banned. The applicant (a workers’ union) notified the authorities of its intention to hold a demonstration on Labour Day (1 May 2020), proposed to apply sanitary measures to prevent the spread of the virus, and expressed willingness to adopt further measures as advised. The administrative authorities refused to authorize the demonstration, stating that it would endanger people’s lives and worsen the existing pandemic situation. The domestic court took the stand that the decision to suspend the applicant's rights was justified considering the serious circumstances of the raging pandemic (*Central Unitaria de Traballadores/AS v. Spain*). The case is still pending adjudication before the ECtHR.

The ECtHR decisions in these first adjudicated cases will be crucial for incoming cases, particularly in terms of applying the provisions of General Comment no 37. Uniform case law and uniform international legal standards in particular may significantly reduce the likelihood of human rights violations, even in the unforeseeable circumstances or emergency situations (such as pandemics) that states may encounter in the future. At the outbreak of the COVID-19 disease, countries worldwide largely decided to impose restrictions on human rights at the very beginning of the pandemic, in an attempt to fight against a new contagious

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69*Communauté genevoise d'action syndicale (CGAS) v. Switzerland*, app. no. 21881/20, ECtHR, Information Note on the Court’s case-law 260, March 22, 2022;https://hudoc.echr.coe.int/eng?i=001-213143.

disease of unknown origin that was spreading fast on the global scale and affecting the entire population with most severe consequences. This attitude could justify the State's position to temporarily limit certain human rights for the benefit of preserving the public health and safety of the entire population. However, when science started providing answers to many questions about Covid-19, it remains unclear why States prevented individuals from exercising their internationally guaranteed rights, particularly given the fact that the virulence was enhanced even during the periods of total lockdowns.

4. CONCLUSION

The issue presented in this paper unequivocally indicates that new international standards were necessary in the new epidemiological situation caused by the COVID-19 pandemic. States Parties to the ICCPR are required to comply with the provisions of this document. Restrictions on human rights must be an exception rather than a rule. Thus, there must be a clear distinction between what is actually a restriction and what is a suspension. Although many cases are still pending before the ECtHR, it can already be concluded that many countries have exceeded the limits of their discretionary authority to assess what kind of restrictive measures are in accordance with the provisions of the ECHR or not.

In the circumstances of the global pandemic, it is indisputable that the ECtHR will not have a dilemma about the existence or non-existence of immediate danger to the survival of the nation, but it does not mean that it will find justification for some extremely restrictive measures. The burden of proving the proportionality of the measures taken to protect public health and safety rests on the States. Although their good intentions are not disputed, they will have difficulties in proving them and justifying the imposed restrictive measures. The measures taken at the very beginning of the pandemic may be justified by the need to protect the population affected by the largely unknown contagious disease. However, after learning more about Covid-19 and taking measures to reduce the virulence of the virus, it remains unclear why state authorities persisted in imposing restrictions on human rights, including the blockade of entire cities, limited freedom of movement, assembly, expression, etc. It also casts doubt on their further actions and measures because the question arises whether such restrictive measures were necessary.

In anticipation of final ECtHR decisions in cases pertaining to the period of the COVID-19 pandemic, it is up to the States to harmonize their laws, actions and measures aimed at protecting their population from the spread of infectious diseases with the international documents which they have acceded to. Although human health is imperative, it is necessary to strike a fair balance between ensuring the exercise of the guaranteed human rights in full and restricting them only to the extent necessary, for the purpose of achieving a legitimate goal.

REFERENCES


**Legal documents**

CoE European Convention on Human Rights (1950), as amended by Protocols Nos. 11, 14 and 15 and supplemented by Protocols Nos. 1, 4, 6, 7, 12, 13 and 16, Council of Europe, Strasbourg, France; https://www.echr.coe.int/documents/convention_eng.pdf


ECtHR Case law

*Berladir and others v. Russia*, app. no. 34202/06, ECtHR judgment 10 July 2012 (§§ 47-51); https://hudoc.echr.coe.int/eng/?i=001-112101

*Central Unitaria de Traballadores/AS v. Spain*, app. no. 49363/20, ECtHR, Communicated case, 13. October 2021; https://hudoc.echr.coe.int/eng/?i=001-213143

*Communauté genevoise d'action syndicale (CGAS) v. Switzerland*, app. no. 21881/20, ECtHR, March 22, 2022 Information Note on Court’s case-law 260; https://hudoc.echr.coe.int/fre/?i=002-13596


Abstract

This paper discusses the causes of delays in all criminal cases, challenging the assertion that COVID-19 caused the backlog. The paper questions whether post-COVID recovery plans are realistic, particularly in relation to any increase in remote hearings. It concludes that a more fundamental shift should take place in dealing with criminal cases to enable faster and more effective access to justice for victims of all crimes. This article gives reports on the impact of court delays through analysis of the Macedonian law on the criminal procedure through the provisions and the process of pre-trial detention and detention on remand as well as the main hearing.

If the physical presence of a lawyer in proximity to the detained person is not possible, there should be a confidential and unobserved line of communication between them, to enable detainees to have effective, frequent, and confidential access to their lawyers. The current Law on Criminal Procedure does not contain a basis for conducting a remote trial, i.e., a trial through a two-way communication platform without physical presence. There is a possibility for interrogation through video conference and telephone conference, but only for a witness and an expert, and not for a defendant.

This paper suggests that a more fundamental shift needs to take place in dealing with criminal cases, which both reduces the number of cases going to court and deals more effectively with those that do. The COVID pandemic only emphasized the need to support the process of digitalization of the judiciary in the direction of greater efficiency, transparency, and access to justice. The digitalization process in the judiciary needs to be multifaceted, starting with the establishment of the legislative framework as a basis for taking procedural actions, tools for remote trials, or presenting only some evidence in that way, through timely and appropriate equipping the courts with ICT equipment.

**Keywords:** COVID, main hearing, pre-trial detention, digitalization, criminal cases.

1. INTRODUCTION

The court system is crucial to the proper functioning of any state. Independent courts can ensure that other branches of power guarantee human rights and fundamental freedoms. The COVID-19 pandemic created significant challenges to the functioning of the court system, and the right to a fair trial has been under severe pressure across regions due to various restrictive measures imposed during the pandemic. (OSCE/ODIHR, 2021)
These policy recommendations provide guidance to policymakers, representatives of the judiciary, legal professionals, civil society and other stakeholders on how to develop, implement and follow legislation and rules in line with the right to a fair trial and other relevant rights during public health emergencies, with attention to equality and diversity.

A pandemic, such as COVID-19, is a public health emergency and these recommendations reflect its special nature. They may be less relevant in other types of emergencies, such as military emergencies or natural disasters. Public health emergencies pose significant and specific challenges to the normal functioning of the judiciary, but it is essential that courts operations are maintained during such emergencies as safe and possible. In order to prevent a disease from spreading, states may be forced to adopt emergency rules and regulations related to the functioning of the judiciary. However, these emergency rules and regulations should not fundamentally undermine the delivery of justice in a human rights-compliant manner.

These policy recommendations draw inspiration from international standards related to the operation of the judiciary during public health emergencies, relevant human rights standards developed by the European Court of Human Rights, and international human rights institutions. Furthermore, they should not be used to justify the limitation of rights. In fact, national standards that go beyond those outlined here to ensure the effective functioning of the judiciary during public health emergencies can be introduced if states deem them appropriate and possible.

Online trials are just one aspect of digitalization that encompasses a range of other electronic possibilities, such as e-submission, digital hearing registration, electronic record creation, the exchange of digital information and evidence, etc., some of which fall within the scope of interoperability.

The protection of human rights, in general, with particular emphasis on the many guarantees that make up the right to a public, fair trial within a reasonable time with respect for the presumption of innocence and the protection of privacy, remains the main focus of interest.

International standards and comparative experiences are particularly important in choosing the model and trajectory along which the digitalization and inclusion of artificial intelligence in the judiciary will be achieved. Standards must be appropriately embedded, present, and secured, and comparative experiences used to avoid perceived weaknesses, at the expense of exploiting strengths and benefits. The data presented in this analysis show that the courts have neither staff nor equipment; there are frequent problems with the speed and consistency of the Internet connection; electronic delivery and electronic bulletin boards are not used. However, despite this situation, the analysis showed that there is a willingness of the courts to contribute to the development of legal solutions, specifying the technical performance that must be met and improving personal literacy skills such as necessary prerequisites for holding trials or presenting evidence through digital platforms and enjoying the benefits of interoperability.

2. OVERALL OBSERVATIONS AND CHALLENGES

2.1. Differences across countries and courts

Courts have faced a myriad of challenges during the pandemic. Some courthouses and buildings closed fully, others partially, dealing with only “urgent” cases. The extent to which judges and court staff have been able to operate in person and virtually during this time has depended on the particular State’s response to the pandemic, the regulations
imposed by the authorities, and the type of court and cases they deal with. (Fundamental Rights Agency, Bulletin No. 2, April 2020)

Not all courthouses, staff members, or members of the judiciary have been available, impacting how cases were prioritized and allocated. In some countries, it was necessary for courts to share facilities and staff among different courts (family, criminal, civil, and administrative courts, where they are separated), and these courts may have considered different criteria to determine priorities.

This situation, and the immediate aftermath, has had a number of consequences. (Susskind, 2020). There has been a speedy shift to online working in order to deal with the lockdown and rules on physical distancing. Emergency legislation has been adopted, sometimes with limited parliamentary oversight. In addition, the speed of amendments to laws and regulations has made it difficult for legal challenges to be brought to the courts. There have been numerous laws, regulations and policies directed towards the judiciary, amended frequently, and not always consistent in their approach. Moreover, judicial self-governing bodies and judges’ associations have not always been consulted on measures and their possible impacts on the judicial system. In addition, tensions have arisen between the judiciary and lawyers or between state authorities (such as the executive versus the judicial branch) with each having its own priorities and demands.

Overall, one can see in many jurisdictions a lack of a unified approach to justice during a state of emergency. Not all courts in all states have experienced the same issues. There was a significant variation in how countries approached the management of courts, and there have also been disparities within those countries. Similarly, common law and civil law jurisdictions may have experienced different challenges in adapting to the pandemic. Furthermore, the various courts and tribunals, whether they are criminal, administrative, civil, immigration, or family – first instance or appellate – have not all facing the same challenges in continuing to operate during this time. (OSCE, October 2020)

2.2. Need for constant revision and adaptation

The environment has been changing rapidly during the pandemic. What was considered urgent at one point in time changed as countries went through different stages in the pandemic, in particular after the end of lockdowns. In addition, there can be different or competing pressures on what are considered to be priorities, including from the point of view of judges and lawyers.

As countries started to emerge from lockdowns, courts initiated the development of “exit strategies”. (OSCE, 16 May 2020).

In Denmark, for example, a “Plan for Reopening Courts” set out the cases that can proceed without physical presence, those that should be carried out at home and those that demand particular attention. The plan included criteria for prioritizing cases, managing health and safety in court buildings, dealing with those who are infected, those who have symptoms of COVID-19 or individuals at risk, and approaching cases flexibly. (Marianne Gram Nybroe, 2020)

Another example is Finland, where the National Courts Administration published a “recovery plan” on 29 May 2020, drafted in cooperation with occupational health professionals. (CEPEJ, 2020)

2.3. Backdrop of existing challenges for judicial systems

The responses to the COVID-19 pandemic have taken place against a backdrop of challenges that courts have been facing for many years in a number of States. Financial
constraints, ineffective procedures and the inability to deliver speedy justice, remained. In addition, rule of law concerns observed in some countries has been exacerbated by the crisis. Some participating States have seen a power shift during the pandemic away from the judiciary towards the executive, with a concern that this may become “normalized” and permanent. Further, in some jurisdictions, the absence of a functioning Constitutional and Supreme Court impeded effective oversight of emergency legislation. (ODIHR, 2020, example, Belgium)

On the positive side, the pandemic has created an incentive for countries to review and reform justice systems. This has reignited discussions, for example, on virtual justice and remote delivery, as well as debates on how to reduce over-criminalization and over-incarceration by enhancing the use of non-custodial sentences and community-based approaches to offender treatment (e.g., refraining from responding to minor, non-violent offenses with imprisonment). (Global Prison Trends, 2020)

2.4. Cooperation between legal professions and the importance of communication

The judicial system is based on the interaction between many actors, including various professions (e.g., lawyers, paralegals, probation officers), as well as members of the public. Policymakers and practitioners should, therefore, consult with relevant legal professionals when adopting measures during and in the aftermath of the pandemic.

This is crucial in order to take into account all possible effects and impacts of measures adopted, to ensure the earliest possible dissemination of information to all parties potentially affected and to avoid conflict within the judicial sector at a time of crisis. For example, lawyers in Greece went on strike after the reopening of some courts was announced, arguing that they had not been consulted on the plans and neither had the health authorities approved the reopening. In Spain, on 1 April, three of the four main judges' associations sent an urgent letter to the Permanent Commission of the General Council of the Judiciary, warning that they would refuse to work if not provided with real means of health protection. (Amelang, 2020)

Therefore, as the European Commission for the Efficiency of Justice (CEPEJ) noted, “Greater consultation and coordination with all justice professionals (including lawyers, enforcement agents, mediators and social services) will help to ensure a good level of access to justice.” (CEPEJ Declaration, Strasbourg, 10 June 2020)

Sharing of experiences is also crucial in order to incorporate lessons learned in any future responses to the pandemic.

Judicial cooperation in the establishment of emergency measures (Albania): On 16 April, the Albanian Judicial Council (KLGJ) established a Temporary Committee mandated to analyze the legal framework, and identify problems relating to the infrastructure of courts. It was also asked to draft, propose and oversee measures for judicial services during the COVID pandemic in collaboration with the court councils and chief judges. Based on this mandate, the Committee drafted a guiding instruction for the courts on the measures to be taken during the pandemic on the judicial services. It included preventive measures for the spread of the infection, provisions on planning and administrative measures for the conduct of proceedings and administrative measures for court services. (Supreme Judicial Council of the Republic of Albania, Instruction No. 146, 27 April 2020.)

Furthermore, measures and protocols adopted in relation to courts shall be communicated to all relevant persons including lawyers and their associations and their views sought. (CEPEJ Declaration. Lessons learned and challenges faced by the judiciary
During and after the COVID-19 pandemic”, CEPEJ, Ad hoc virtual CEPEJ plenary meeting, Strasbourg, 10 June 2020.)

Due to the nature of the pandemic and the rapid adjustments it necessitates, effective communication is required within a particularly short period of time on, for example, how to visit courts in person, in which cases hearings will be held remotely, which criteria are used to determine urgent cases and how cases will be prioritized in managing the backlog.

A number of courts have provided detailed information on their websites to this end. For example, the Courts Service of Ireland published updates on the operation and conduct of various court businesses including e-filing and remote hearings. (The Courts Service of Ireland, 2020) A “courts and tribunals tracker list” by the Government of the United Kingdom provides information on which courts are open, staffed or suspended. (UK Government, 2 October 2020)

Different forms of communication may be needed to reach other audiences. Those who have to attend court in person, for example, may need to know whether this is feasible and if so, what procedures will be in place when they arrive. In Slovenia, for example, when individuals were invited to attend court, they were provided with detailed protocols explaining how the processes will be managed. (Consultations from webinars held in June 2020)

In States outside the OSCE, some courts have used the application WhatsApp to keep in touch with lawyers and provide them with information. This practice reduced the number of people who needed to enter court buildings. (International Criminal Court, 2020, e.g., Paraguay)

3. ANALYSIS OF THE MACEDONIAN LAW ON CRIMINAL PROCEDURE THROUGH THE PROVISIONS OF REMOTE TRIAL

The current Law on Criminal Procedure does not contain a basis for conducting a remote trial, i.e., a trial through a two-way communication platform without physical presence. There is a possibility for interrogation through video conference and telephone conference, but only for a witness and an expert, and not for a defendant. (Official Gazette of Republic of North Macedonia, 150/2010, 100/2012, 142/2016 and 198/2018)

Regarding electronic communication, the following provisions are contained:

**Submitting letters to the court:**
- Private lawsuits, indictments, motions, remedies and other statements and announcements (submissions) can be submitted electronically to the receiving department of the competent authority (court or public prosecutor's office);
- The submissions submitted by lawyers, state administration bodies, legal entities and persons exercising public authorizations should also contain data for an electronic mailbox for delivery of the written registration registered in accordance with the law.

**Submitting writs from the court to other entities:**
- In other ways, they can be delivered electronically to the recipient's mailbox address through the information system of the competent authority; thereby, by sending the written letter to the recipient of the delivery to his / her e-mail address, a notification is also sent that a written document has been sent from the information system of the competent body, which the holder of the address must take over; the e-mail from
the e-mail box must be received no later than eight days from the day of its sending, and if the e-mail from the e-mail box is not received within the determined deadline, the delivery will be considered complete;

- The recipient of the electronic mail with his / her electronic signature proves his / her identity, inspects his / her electronic mailbox and electronically signs the written letter which he / she sends to the competent body, i.e., confirms the receipt of the electronic mail.
- The legal possibilities for a witness or expert to be examined by telephone or video conference are limited only in the case when:
  - Is in the territory of another state or at the main hearing it is found out that the witness cannot appear in court or his / her arrival is significantly difficult.
  - The only provision that allows the use of a closed technical device for telecommunication (video conferencing) refers to the conduct of an evidentiary hearing.

The proposal for amendments to the LCP from 2018 contains certain provisions regarding electronic evidence and registration during the main hearing, which are insufficient to provide the legal framework for online trials and it is necessary to further elaborate them in a system of norms that will enable the realization of guarantees for fair action and in case the trial is conducted remotely.

In this context, the following proposed provisions deserve attention:

- the possibility for the state bodies and the bodies of the local self-government units to submit to the public prosecutor the requested data in electronic form with an authorized electronic signature;
- within the presentation of material and written evidence, there is a possibility for the electronic evidence and recordings to be presented by presenting them in electronic form as they were submitted to the state bodies or the bodies of the local self-government units;
- The course of the main hearing is registered in the form of a recording which is a visual-audio recording of the held hearing, and another computer program can be used to record the course of the hearing.
- the video conference is recorded, and the parties receive a copy of the recording;
- the possibility for a witness or expert to be examined by videoconference, regardless of where he or she is, is extended;
- If the defendant is in custody or serving a prison sentence, his presence at the session before the appellate court can be provided through a video conference connection. (Lazetic, Nanev, Gorgieva, Nedelkova, OSCE, 2020.)

How inevitable is the question of supplementing the provisions of the LCP regarding the possibility of online trials, the obligation to report an electronic mailbox from the parties and other participants in the procedure, provided guarantees for the right of defense, the public in the proceedings, wider use of electronic evidence, use on the recording in the case of repetition of the procedure, i.e., as soon as there was recording of the procedure, it should not start again and in case when there was a change in the composition of the court or time elapsed for holding a hearing from the main hearing, etc.
4. THE PROCESS OF PRE-TRIAL DETENTION AND DETENTION ON REMAND

Anyone detained should appear before a judge. A detainee has the right to be brought physically in front of a judge. The rule-makers must ensure that this right is given priority. If the public health emergency does not allow physical presence, an online or hybrid hearing needs to be organized using a high-definition video camera. A defense lawyer should preferably be present at the same location as the detainee during the hearing. If the physical presence of a lawyer in proximity to the detained person is not possible, there should be a confidential and unobserved line of communication between them, for example, access to secured rooms with a secure communication channel or via a separate video link, to enable detainees to have effective, frequent and confidential access to their lawyers. (OSCE/ODIHR 2021)

The right to have a confidential access to a lawyer should be guaranteed, to the extent possible during public health emergencies. Those detained on remand should have access to a lawyer. If necessary, the remand facilities need to be equipped with unsupervised video-conferencing. Necessary restrictions can be imposed to ensure the safety of lawyers and detainees but should not undermine the core of the right of access to a lawyer. The duration of the visits might be limited in time, but these restrictions need to be proportionate and justified, for example by a lack of facilities and other relevant factors. Police stations, prisons and courts should be equipped with properly functioning video-conferencing facilities that can enable lawyers to participate effectively in online or hybrid hearings. (OSCE/ODIHR 2021)

Law enforcement authorities should use bail as much as possible during public health emergencies. Where possible and appropriate, the national judicial institutions should consider the exigencies of the public health emergency and use alternative forms of restrictions such as bail or house arrest instead of pre-trial detention.

5. TRIAL MONITORING AND PUBLIC HEARINGS CHALLENGES CAUSED BY THE COVID – 19

Court hearings should be held publicly as much as possible. It is recommended that online and hybrid hearings are made public to the extent possible. Public access to hearings can be ensured by allowing the public to attend the hearing in real-time or by uploading the audio/video recordings on the courts’ website. National courts should consider the privacy of the participants, the presumption of innocence, the need to avoid disruptions to hearings, whether the case is of public interest and other relevant factors when deciding whether to allow the public to access the online hearing or to upload the recordings.

A blanket ban on public hearings during public health emergencies is likely to be disproportionate. A blanket rule preventing the general public and trial monitors from attending online, hybrid or regular hearings is likely to be disproportionate and the authorities should find ways to allow some access to hearings. Certain temporary prohibition might be acceptable at particular stages of an emergency, but these restrictions should be justified and then gradually lifted as circumstances change. All emergency rules should be practical, accessible and proportionate.
Judicial self-governing bodies need to develop a communication strategy during public health emergencies. In the circumstances of public health emergencies when trial monitoring may be restricted, the national judiciary needs to effectively communicate with its stakeholders and the general public, for example by regularly producing press releases on particular cases and informing about the proceedings. Press officers should be available to provide information about cases of major importance. Judicial self-governing bodies should also find alternative routes to accommodate the access of trial to monitors to cases of interest.

If hearings have to be conducted in camera due to a public health emergency, courts can use other means to accommodate some degree of trial monitoring, for example by providing access to some court documents and to video/audio recordings.

These bodies should also apply uniform rules to facilitate access of monitors across the state. The applicable rules in relation to trial monitoring should be unified across the state, but there might be fluctuations due to the building capacity, health situation and other relevant factors. These differences must be taken into account by the emergency rules. For instance, the emergency rules can provide some restrictions on the number of monitors and other attendees allowed in the courtroom of a particular size.

Access to trials should be practical and effective, not formal and declaratory. When the emergency rules allow fast and easy access of monitors to trials, such access cannot be curtailed by complex rules of admission that effectively prevent monitors from attending hearings. For instance, a lengthy waiting time for permission might prevent a monitor from accessing a particular trial of interest. Health-related limitations should be reasonable and explicitly stated.

6. CONCLUSIONS AND RECOMMENDATION

Flexible exit strategies for emerging from restrictions imposed by the pandemic should be considered by courts.

States should avoid “hyper-production” of laws, decrees, regulations, and instructions on emergency measures for the judiciary from different levels of power (legislative, executive or judicial). Such laws, decrees, regulations, and instructions should not be contradictory or vaguely formulated and should be clear on the time when the measures start and end. Laws and regulations adopted as a response to the emergency should include sunset clauses, be temporary in nature, and preferably be kept separate from regular, non-emergency legislation.

Courts should ensure that the right to a fair trial is respected during states of emergency and that nobody is ever subject to measures that would circumvent non-derogable rights.

Judicial oversight should be available to review both the constitutionality and legality of any declaration of a state of emergency and any implementing measures, to evaluate the proportionality of the restrictions, as well as procedural fairness of the application of emergency legislation.

Higher judicial authorities and court presidents should issue guidance to assist individual judges in determining how to manage their responses to the pandemic. Feedback should be sought, and guidance should be amended accordingly.

Courts, when determining measures, should consider how to maintain a balance between clarity and predictability and judicial discretion and flexibility.
Courts could consider the establishment of committees to propose and oversee measures to manage the pandemic.

The judiciary should identify ways to share practices on their responses to the pandemic, among and across different courts, different regions of the country, and different jurisdictions.

Dialogue should be established with a wide range of professions, in particular with lawyers and bar associations, in order to ensure that considerations of access to justice and safety measures are adequately taken into account.

When designing their protocols and responses to the pandemic, courts should consider the needs of vulnerable persons and the particular impact on their rights to a fair trial and access to justice.

Any measures and protocols should be communicated to all users rapidly and regularly, and in ways that are accessible and which take account of vulnerabilities. Those attending court should be provided with detailed guidance.

Alternative means of communicating with court users should be considered in order to reduce the number of persons attending court in person.

The secure and confidential transmission of data should be ensured in the provision of any technology used by the courts.

Online and hybrid hearings must be compatible with human rights standards and the rule of law. Online or hybrid hearings should be used as an alternative to in-person hearings only if the latter are not safe or not possible. Online or hybrid hearings should be conducted in accordance with national legislation and in compliance with the rule of law and human rights, including rules guaranteeing data security, privacy of communications and judicial independence. The increased number of online or hybrid hearings during a public health emergency might require special laws, guidelines and protocols developed by rule-makers in collaboration with IT specialists, data protection experts and judicial self-governing bodies. These rules should be circulated among judges and other stakeholders and made publicly available.

Online or hybrid hearings are not appropriate in all cases and flexibility should be allowed. The rule-makers should allow discretion when deciding if online or hybrid hearings are possible and desirable, prioritizing in-person hearings as much as possible. The presiding judge needs to consider the implications of a possible delay on the rights of the parties, the nature of the hearing, access and availability of the necessary equipment, the need to physically examine the evidence, as well as vulnerabilities of the parties and witnesses. Thus, online or hybrid hearings might not be possible in all cases and should be used only if appropriate. The presiding judge should consider the opinion of the parties and of the witnesses in this respect and decide in the form of a reasoned judgment.

Introduction of new technologies should be accompanied by planning, capacity and human rights-compatibility assessments. The rule-makers should conduct a thorough human rights and rule of law compatibility and technical assessment before introducing new courtroom technologies. For example, the mere application of new technologies should not undermine the equality of arms; it should not become an extra hurdle for effectuating the procedural rights of the parties. The emergency rules should explain how the hearings should be organized, what software and hardware are required, how unsupervised communication of the parties with their lawyers can be arranged, what the presiding judge should do with disruptive witnesses or other trial participants, what to do in case of bad Internet connectivity, if a participant cannot be heard and in other comparable situations.
Judicial self-governing bodies should facilitate sufficient training for all participants of online and hybrid hearings. Judges, court staff and other professional participants of online and hybrid hearings should be provided with sufficient training in IT solutions, as well as data protection and standards of human rights protection during online or hybrid hearings. The parties, defendants, witnesses and other ad hoc participants should be given instructions as to how to operate the software and hardware. It is recommended that an online meeting between the hearing participants and a person responsible for technical support is arranged prior to the hearing. This person should confirm that the participants are able to use the software and hardware and participate in the hearing.

An online case and document management system might be required for effective online or hybrid hearings. The rule-makers should introduce electronic case management systems linking all the stakeholders to facilitate social distancing before, during and after hearings. In order to facilitate online or hybrid hearings, the rule-makers might need to ensure that new simplified rules related to the circulation of documents are introduced. These rules should not compromise the authenticity of these documents. Acceptance of scanned copies of documents and e-signatures might be appropriate in some cases. Online case and document management systems must not interfere with the independence of the judiciary and the privacy rights of the participants; for instance, access to court materials should be properly protected.

Confidential communication between parties and their lawyers should always be ensured. It is recommended that the rule-makers and judicial self-governing bodies ensure that confidential communication is facilitated between the parties (defendants in criminal cases or parties in civil cases) and their legal representatives before and during online and hybrid hearings. If possible, such communication should be done in person or through a secure and confidential channel. This recommendation is especially relevant if the defendant is in pre-trial detention.

Rule-makers and presiding judges should ensure that the participants of online or hybrid hearings are able to take part without pressure, intimidation or fear. It is more challenging to ensure that the participants are not under pressure during online or hybrid hearings than during in-person hearings. For instance, victims of domestic violence should not give evidence from home in the presence of the defendant. Those complaining about ill-treatment should not give their statements in a police station. To the extent possible and necessary, the participants of online or hybrid hearings should be able to observe all other participants.

Emergency rules should clarify the legal effects on hybrid and online hearings of a failure of the system. Emergency rules should include solutions in the case of an IT system failure. This is especially pertinent when such failures can result in interference with the human right safeguards or procedural entitlements of the parties.

Technical support and high-quality equipment should be made available to all trial participants in order to ensure their effective engagement with the process. Judges, parties, court staff and all other trial participants should be able to access IT support in order to avoid delays and technical difficulties during online or hybrid hearings. The quality of Internet connections and video cameras (including vision and sound) used in hybrid or online hearings should be appropriate in order not to interfere with the trial.

If the emergency continues for an extended period of time it is recommended to develop a specific software to facilitate online or hybrid hearings. Generic video conferencing tools are appropriate as a temporary solution during a public health emergency, but more tailor-made tools are required in the longer run. The rule-makers also need to
ensure that courts, pre-trial detention centers and other relevant criminal justice institutions have appropriate equipment and software to facilitate the online or hybrid hearings. This equipment would ensure preparedness of the national judiciary for future public health emergencies.

5. REFERENCES:

6. Marianne Gram Nybroe, “Plan for re-opening the courts of Denmark”, 14 May 2020

18. Fair Trail Rights and Public Health Emergencies, Published by the OSCE Office for Democratic Institutions and Human Rights (ODIHR), OSCE/ODIHR 2021 ISBN 978-83-66690-21-9, pg. 15
DOMESTIC VIOLENCE DURING COVID-19 PANDEMIC

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Abstract

The most widespread type of gender-based violence is the violence against women which results in psychological, physical, and sexual violence. Domestic violence is a crime that is most often reported by the victims of domestic violence. However, it can be reported by anyone who has got indication and knowledge about it, such as a family member, or someone from the neighborhood, relatives, friends, etc.

Institutions which work in this domain, such as the Ministry of Interior, the Ministry of Labor and Social Policy, the Ministry of Health, the Ministry of Justice, as well as the non-governmental sector which offers free legal aid to the victims of domestic violence, are of particular importance. During the corona virus pandemic, the victims of domestic violence who need help, most often women and girls, are given support to be encouraged to report these cases to the competent institutions on the telephone number 192, or at the nearest police station. In addition to restrictive measures during curfew and prohibited movement of citizens, potential victims of domestic violence get a feeling of anxiety, fear, powerlessness, and captivity with the perpetrator of violence.

The subject of the research are reported cases in the field of domestic violence before and during the pandemic of Covid-19, i.e., criminal acts and complaints from domestic violence, as well as the structural analysis by the Departments of Interior. The time frame that will be covered is the statistics for 2018, 2019, and 2020 from the Ministry of Interior in the Republic of North Macedonia.

The Ministry of Interior is the main institution in undertaking a series of measures and activities, as follows: prevention of this type of violence, receiving reports, on-site inspection, protection of the victim, detection and finding the perpetrator of violence, examination and search, documentation at an event, finding objects to prove the crime, confiscation of the firearm if the perpetrator owns or has committed a crime with it.

Keywords: domestic violence, victim, perpetrator, crime, pandemic, curfew, etc.

1. INTRODUCTION

The National Law on Prevention and Protection from Violence against Women and Domestic Violence of 2021 provides an integrated multidisciplinary response in dealing with violence against women and domestic violence, and respecting human rights following international standards.

"Violence against women" is a violation of human rights and discrimination against women, and refers to all acts of gender-based violence that lead to, or will likely lead to physical, sexual, psychological, or economic harm or suffering to women, including indirect or direct threats; intimidation of such acts is a violation of human rights, discrimination
against extortion, arbitrary restriction, or deprivation of liberty, whether in public or in private.

"Gender-based violence against women" is violence directed against a woman only because she is a woman or who disproportionately affects her. Gender-based violence against women covers the causes and consequences of unequal power relations between women and men as a result of a societal rather than an individual problem.

"Domestic violence" means harassment, insult, endangerment of security, bodily harm, sexual or other psychological, physical, or economic violence that causes a feeling of insecurity, threat, or fear, including threats of such actions, towards a spouse, parents or children or other persons living in a marital or extramarital union or joint household, as well as towards a current or former partner or extramarital partner or persons who have a child together or are in a close personal relationship, regardless of whether the perpetrator shares or has shared the same residence with the victim or not. ("Official Gazette of the Republic of North Macedonia", No. 24/2021).

The police should ensure the privacy of the victim by conducting the conversation in a separate room, away from the perpetrator, witnesses, or other police officers who are not involved in the work. Before starting the conversation with the victim, the police officer needs to keep in mind that the victim is injured (mentally torn between breaking up the family or prolonging life with the abuser), therefore there is a need for a humane and tolerant attitude (mvrgov.mk). According to Bacanovikj (1997), the victim should be at the center of attention of the police, especially when it comes to preventive action (not neglecting the detection, proving, etc.). This is explained by the fact that it is easier to predict who will be a potential victim than a possible perpetrator of a crime.

The type of violence against women which is defined as domestic violence is the continuous use of physical and psychological force against family members by endangering and violating the sense of security and trust, fulfilling control and superiority over family members, regardless of whether such behavior is provided for in the criminal law as a criminal offense and whether the perpetrator of the crime has been reported to the law enforcement authorities. It occurs in different forms and with different family members (Konstantinovikj, 2005). Disproportionately, women are victims of violence, and men are perpetrators.

In the Republic of North Macedonia, the Government declared a state of emergency on March 18, 2020, for the entire country, to prevent the spread of Covid-19. During the state of emergency, the Government of the Republic of North Macedonia held 70 sessions at which new decisions and measures were made (vlada.gov.mk). The adopted measures were aimed at alleviating the health, social and economic crisis, which may deepen as a consequence of the state of emergency. However, a particularly vulnerable category that was completely excluded from the measures and recommendations were the victims of domestic violence, i.e., women and children at increased risk of domestic violence. Due to the physical presence of the perpetrators, women were not able to call the help and support lines or report the violence. Many women were afraid to seek health care and medical care because of the risk of Covid-19 infection. Many women did not want to leave the violent environment and be placed in centers for victims of domestic violence or shelters, due to the risk of Covid-19 infection. Women were afraid to report violence and leave home because they feared losing their jobs (if employed) after the end of the government measures or if they were unemployed, there was a fear of low employment opportunities and economic independence after the end of emergency due to the expected economic crisis. According to Grbikj (2020), key instruments in the fight against the spread of the pandemic are: social isolation,
restriction of movement, and curfew. These instruments provide an ideal increase in violence against women and girls under 24-hour control by the perpetrators.

For victims of violence, there is a risk of facing new violence from the current perpetrator after reporting, but also secondary victimization by the system's institutions. In both cases, the risk largely depends on the location and functioning of the victim protection system (Mirceva, Chacheva, 2013).

The hypothetical basis starts from the impact of restrictive measures during the Covid-19 pandemic, and the number of reported events for police protection of victims of domestic violence and violence against women in the Ministry of Interior.

2. CONDITIONS REGARDING REPORTED EVENTS IN THE POLICE FROM DOMESTIC VIOLENCE BEFORE AND DURING COVID-19: ANALYTICAL REVIEW

From a methodological point of view, the analysis is based on two pillars: 1) Analysis of the total number of committed crimes of domestic violence, according to the legal basis per year, and 2) Analysis of the total number of complaints, according to the Sector of Internal Affairs (SIA) per years. In the first pillar, the analysis includes descriptive analysis and ANOVA test, for the total number of committed crimes of domestic violence per year, as well as on a legal basis. In the second pillar, the analysis includes descriptive analysis and ANOVA test of the total number of complaints per year, as well as according to the SIA; Structural analysis of the total number of complaints per year and according to the SIA; Correlation analysis between the total number of complaints and the total number of perpetrators; as well as a correlation analysis between physical and psychological violence complaints.

Results from the empirical analysis

2.1. Analysis of the total number of committed crimes of domestic violence, according to the legal basis per years

According to the conducted descriptive analysis, from 2018 to 2020, a total of 2,987 crimes of domestic violence were committed, with the biggest number of crimes in 2018 (1,006 crimes), while the least in 2019 (989 crimes). On average, about 996 criminal acts are committed annually with a standard deviation equal to 9. If the legal basis is taken, on average, about 110 criminal acts of domestic violence are committed annually on one of the 9 legal bases, with a standard deviation of about 209.

Table 1: Descriptive indicators for the committed crimes of domestic violence, per years

<table>
<thead>
<tr>
<th>Year</th>
<th>N</th>
<th>Total committed crimes</th>
<th>Average number of crimes</th>
<th>Std. deviation</th>
<th>Minimum</th>
<th>Maximum</th>
</tr>
</thead>
<tbody>
<tr>
<td>2018</td>
<td>9</td>
<td>1,006</td>
<td>111.78</td>
<td>225,972</td>
<td>0</td>
<td>644</td>
</tr>
<tr>
<td>2019</td>
<td>9</td>
<td>989</td>
<td>109.89</td>
<td>215,521</td>
<td>0</td>
<td>588</td>
</tr>
<tr>
<td>2020</td>
<td>9</td>
<td>992</td>
<td>110.22</td>
<td>211,626</td>
<td>0</td>
<td>594</td>
</tr>
<tr>
<td>Total</td>
<td>27</td>
<td>2,987</td>
<td>110.63</td>
<td>209,248</td>
<td>0</td>
<td>644</td>
</tr>
</tbody>
</table>

Source: Author's calculation
Regarding the question of whether there are statistically significant differences over the years in the average number of crimes of domestic violence, the conducted ANOVA test shows that there are no statistically significant differences. Namely, the average sum of squares between the groups (years) is 9,148, while within the group (years) it is 47,432,667. If these two amounts are divided, we get F-statistics in the amount of almost 0, as well as an appropriate P-value in the amount of 1. The victims initially reported domestic violence and violence against women and girls, after taking the initial measures and actions, it is concluded whether the report will be a complaint or has elements of a crime. Considering the descriptive analysis for the three significant years, it is clear and identical that the criminal events with the evidence were proven as crimes and with the Anova test that there are no statistically significant differences. This result means that we can certainly say that there is no difference between the years in the average number of crimes committed by domestic violence.

Table 2: ANOVA test for the average number of committed crimes per year

<table>
<thead>
<tr>
<th></th>
<th>Sum of squares</th>
<th>Degrees of freedom</th>
<th>Average sum of squares</th>
<th>F–Statistics</th>
<th>P–Value</th>
</tr>
</thead>
<tbody>
<tr>
<td>Between the groups</td>
<td>18,296</td>
<td>2</td>
<td>9,148</td>
<td>0,000</td>
<td>1,000</td>
</tr>
<tr>
<td>Within the groups</td>
<td>1138384,000</td>
<td>24</td>
<td>47,432,667</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Total</td>
<td>1138402,296</td>
<td>26</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Source: Author's calculation

From the aspect of the type of crime, in the period from 2018 to 2020, most crimes were committed in the type of bodily injury according to Article 130, paragraph 2, which is over 60% of the total number of committed crimes. Second in the structure is the crime of endangering security, according to Article 144 paragraph 2, with a total of 1028 crimes or about 35%. All other committed crimes account for only about 5% of the structure of the
The total number of committed domestic violence crimes. On average, in the Republic of North Macedonia, about 609 crimes of domestic violence are committed every year according to Article 130, paragraph 2, bodily injury, while according to Article 144, paragraph 2, on average, about 343 crimes are committed per year.

Table 3: Descriptive indicators for the committed crimes of domestic violence, by type of crime

<table>
<thead>
<tr>
<th>Type of crime</th>
<th>N</th>
<th>Average number of crimes</th>
<th>Std. Deviation</th>
<th>Minimum</th>
<th>Maximum</th>
</tr>
</thead>
<tbody>
<tr>
<td>Murder</td>
<td>3</td>
<td>5.33</td>
<td>1.528</td>
<td>4</td>
<td>7</td>
</tr>
<tr>
<td>Attempted murder</td>
<td>3</td>
<td>2.33</td>
<td>1.528</td>
<td>1</td>
<td>4</td>
</tr>
<tr>
<td>Bodily injury</td>
<td>3</td>
<td>608.67</td>
<td>30.746</td>
<td>588</td>
<td>644</td>
</tr>
<tr>
<td>Severe bodily injury</td>
<td>3</td>
<td>25.67</td>
<td>4.619</td>
<td>23</td>
<td>31</td>
</tr>
<tr>
<td>Coercion</td>
<td>3</td>
<td>4.00</td>
<td>4.359</td>
<td>1</td>
<td>9</td>
</tr>
<tr>
<td>Unlawful deprivation of liberty</td>
<td>3</td>
<td>6.33</td>
<td>4.933</td>
<td>3</td>
<td>12</td>
</tr>
<tr>
<td>Threat to security</td>
<td>3</td>
<td>342.67</td>
<td>21.079</td>
<td>325</td>
<td>366</td>
</tr>
<tr>
<td>Adultery by abusing a position</td>
<td>3</td>
<td>.00</td>
<td>.000</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Mediation in conducting prostitution</td>
<td>3</td>
<td>.67</td>
<td>.577</td>
<td>0</td>
<td>1</td>
</tr>
<tr>
<td>Total</td>
<td>27</td>
<td>110.63</td>
<td>209.248</td>
<td>0</td>
<td>644</td>
</tr>
</tbody>
</table>

Source: Author’s calculation

Chart 2: Committed crimes of domestic violence, by type of crime
The differences in the average number of committed crimes of domestic violence, from the aspect of the type of crime, are statistically significant, with crimes of the type of bodily injury and endangering security significantly dominating the structure. The F-statistics from the ANOVA test is 875.34, while the corresponding P-value is equal to zero. Such a result means that at a significance level of 0.05 the null hypothesis is rejected that there are no significant differences between the different types of domestic violence crimes in the average number of crimes committed. Also, the measures and policies of the state should be aimed at reducing crimes in the field of domestic violence.

Table 4: ANOVA test for the average number of committed crimes by type of crime

<table>
<thead>
<tr>
<th></th>
<th>Sum of squares</th>
<th>Degrees of freedom</th>
<th>Average sum of squares</th>
<th>F - Statistics</th>
<th>P - Value</th>
</tr>
</thead>
<tbody>
<tr>
<td>Between the groups</td>
<td>1135483,630</td>
<td>8</td>
<td>141935,454</td>
<td>875,344</td>
<td>.000</td>
</tr>
<tr>
<td>Within the group</td>
<td>2918,667</td>
<td>18</td>
<td>162,148</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Total</td>
<td>1138402,296</td>
<td>26</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Source: Author's calculation

2.2. Analysis of the total number of complaints, according to the SIA, per years

Regarding the number of complaints (reports) of domestic violence, we have seen a certain upward trend over the years. Thus, in 2018 a total of 2750 complaints were registered, in 2019 a total of 3196 (16% growth) were registered, while in 2020 the total number of complaints is 3759 (18% growth). The growing trend in the movement of domestic violence complaints is also reflected in the average number of complaints per year. Namely, in 2018, there were an average of about 344 complaints of domestic violence; in 2019 that number is around 400, while in 2020 the average number of complaints is 470.

It is interesting to note that despite the increase in the total and an average number of domestic violence complaints over the years, there is a decrease in the variability of domestic violence complaints. Namely, the standard deviation in 2018 is 205.3, in 2019 it is around 170, while in 2020 the standard deviation is 175. Accordingly, the coefficient of variation in 2018 is about 60%; in 2019 it is about 43%; while in 2020 it is around 37%

Table 5: Descriptive indicators for the total number of complaints, per years

<table>
<thead>
<tr>
<th>Year</th>
<th>N</th>
<th>Average number of complaints</th>
<th>Std. deviation</th>
<th>Minimum</th>
<th>Maximum</th>
</tr>
</thead>
<tbody>
<tr>
<td>2018</td>
<td>8</td>
<td>343,75</td>
<td>205,287</td>
<td>101</td>
<td>641</td>
</tr>
<tr>
<td>2019</td>
<td>8</td>
<td>399,50</td>
<td>169,850</td>
<td>171</td>
<td>638</td>
</tr>
<tr>
<td>2020</td>
<td>8</td>
<td>469,88</td>
<td>175,355</td>
<td>244</td>
<td>729</td>
</tr>
<tr>
<td>total</td>
<td>24</td>
<td>404,38</td>
<td>183,694</td>
<td>101</td>
<td>729</td>
</tr>
</tbody>
</table>

Source: Author’s calculation
In total for all three years, the average number of complaints is 404, while the standard deviation is around 184. If such variations are considered, the ANOVA test shows that although there seems to be a significant increase, it is most likely due to random variations in the data. The F-statistic of this test is 0.942, while the corresponding P-value is equal to 0.406. The impact of the Covid-19 pandemic on the daily life and restrictive measures by the Government with the introduction of curfew and restricted movement has led to an increasing number of complaints. Both the victim and the perpetrator are under the same roof during curfew. Domestic violence also resulted in major consequences for other family members.

Table 6: ANOVA test for the average number of complaints per year

<table>
<thead>
<tr>
<th></th>
<th>Sum of squares</th>
<th>Degrees of freedom</th>
<th>Average sum of squares</th>
<th>F Statistics</th>
<th>P - Value</th>
</tr>
</thead>
<tbody>
<tr>
<td>Between groups</td>
<td>63915,250</td>
<td>2</td>
<td>31957,625</td>
<td>0.942</td>
<td>0.406</td>
</tr>
<tr>
<td>Within the group</td>
<td>712188,375</td>
<td>21</td>
<td>33913,732</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Total</td>
<td>776103,625</td>
<td>23</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Source: Author's calculation

Observed by the Sector for Internal Affairs, most of the complaints from domestic violence are in SIA Shtip and SIA Bitola, 1923 and 1911 complaints respectively. Out of a total of 9705 complaints about the entire period, almost 40% are registered in SIA Shtip and SIA Bitola and at least in SIA Ohrid. On average, 641 complaints are registered annually in SIA Shtip, while in SIA Bitola the average number of complaints of domestic violence is 637.
Table 7: Descriptive statistics on the total number of complaints, SIA

<table>
<thead>
<tr>
<th>SIA</th>
<th>H</th>
<th>Average number of complaints</th>
<th>Std. Deviation</th>
<th>Minimum</th>
<th>Maximum</th>
</tr>
</thead>
<tbody>
<tr>
<td>Skopje</td>
<td>3</td>
<td>378.67</td>
<td>248,967</td>
<td>101</td>
<td>582</td>
</tr>
<tr>
<td>Bitola</td>
<td>3</td>
<td>637.00</td>
<td>4,583</td>
<td>632</td>
<td>641</td>
</tr>
<tr>
<td>Veles</td>
<td>3</td>
<td>393.67</td>
<td>106,852</td>
<td>329</td>
<td>517</td>
</tr>
<tr>
<td>Kumanovo</td>
<td>3</td>
<td>280.67</td>
<td>10,408</td>
<td>269</td>
<td>289</td>
</tr>
<tr>
<td>Ohrid</td>
<td>3</td>
<td>202.67</td>
<td>104,175</td>
<td>118</td>
<td>319</td>
</tr>
<tr>
<td>Strumitsa</td>
<td>3</td>
<td>463.67</td>
<td>18,771</td>
<td>447</td>
<td>484</td>
</tr>
<tr>
<td>Tetovo</td>
<td>3</td>
<td>237.67</td>
<td>15,503</td>
<td>220</td>
<td>249</td>
</tr>
<tr>
<td>Shtip</td>
<td>3</td>
<td>641.00</td>
<td>76,210</td>
<td>597</td>
<td>729</td>
</tr>
<tr>
<td>Total</td>
<td>24</td>
<td>404.38</td>
<td>183,694</td>
<td>101</td>
<td>729</td>
</tr>
</tbody>
</table>

Source: Author's calculation

Chart 4: Total and average number of complaints, per SIA

Source: Author's illustration

Namely, although the area of the SIA Skopje may cover the largest number of residents and households, according to the total and an average number of complaints of domestic violence, it is somewhere in the middle. As we said above, if we were to measure the data with the total number of inhabitants per SIA, maybe in the SIA Skopje the least complaints of domestic violence would be registered. Hence, all factors that distinguish the population under the SIA Skopje region from other sectors (demographic, sociological, economic, cultural, and other factors) should be considered.
The standard deviation here is 249, while the average is 379, which gives a coefficient of variability of about 66%. If you look at the years, you can see that in 2018 in the SIA Skopje there were only 101 complaints of domestic violence, while that number has increased several times in 2019 and 2020. The reasons for this increase can be various, and one of them is the impact of the crisis management measures during the corona pandemic in 2020.

The growing trend of complaints in 2020 compared to 2018, is due to the impact of restrictive measures by the Government of the Republic of North Macedonia to deal with the pandemic Covid-19, when it was forbidden to leave homes and banned movement for a while and mostly at night. The perpetrators were locked up in their homes for a long time and the victims suffered violence under the same roof with the perpetrators.
According to the conducted ANOVA test, the differences in the average number of domestic violence complaints by the Ministry of Interior in the Republic of North Macedonia are statistically significant. The F-statistic of the conducted test is 7.5, while the corresponding P-value is equal to 0. This means that with almost 100% certainty the null hypothesis that there are no statistically significant differences between the departments of the interior in the average number of complaints of domestic violence can be rejected.

2.3. Structural analysis per years

In the period from 2018 to 2020, the total number of complaints of domestic violence increases by about 17% per year on average. But what is especially interesting are the changes in the structure of the type of complaints. If we look at it in more detail, it can be noticed that the increase in the total number of complaints of domestic violence in the Republic of North Macedonia is mostly due to the increase in complaints of psychological violence. Namely, psychological abuse participates with over 80% in the total number of complaints each year. In 2019, the number of complaints of psychological violence increased by 15%, while in 2020 the growth was 25%. In the case of physical violence, an increase of almost 80% was observed in 2019, reaching 557 complaints in total, while in 2020 there was a decrease in the total number of complaints by about 10%. Regarding the economic violence, over the years we have recorded a continuous decline, a decline of 60% in 2019 and a decline of 33% in 2020.

From the aspect of the perpetrators against whom there are complaints (reports) of domestic violence, in about 98% of the cases the complaints refer to one person, while in 2% of the cases the complaints refer to more than one person. The correlation coefficient between the total number of domestic violence complaints and the total number of perpetrators is almost 1, which means that there is an almost 100% linear correlation between these two variables. On average, about 17% of perpetrators of domestic violence complaints are women and about 83% are men, and this ratio is relatively stable over the years, although in absolute terms we have an increase in the number of complaints and the number of perpetrators, which confirms that during curfew and restrictive measures the violent behavior increased or in some cases was repeated because the perpetrators and victims live together.

2.4. Structural analysis by sectors

If we observe the structure of the complaints by sector for internal affairs, it can be concluded that SIA Shtip is a sector where the biggest part of the structure has the psychological violence, 92%, while the physical violence with 4% has the smallest part. In contrast, the largest part of physical violence in the total number of complaints is in the SIA Bitola, 24%, while the lowest part of psychological violence was observed in the SIA Tetovo. At the same time, the SIA Tetovo has the highest percentage of economic violence, 15%, which is much higher compared to other sectors. To illustrate, the part of economic violence in other sectors in the total number of complaints averages about 3%, which is 5 times lower than the share observed in the SIA Tetovo.

If an analysis is made regarding the correlation between physical and psychological violence, it can be noticed that there is no real linear realtionship between these two variables, i.e., there is a weak linear correlation. Namely, the correlation coefficient, in this case, is 0.18, which means that the linear relationship between mental and physical violence, in total for all sectors and the entire analysis period, is an intensity of about 18%. This result
shows that the growth of psychological abuse will not necessarily be accompanied by an increase in physical violence and vice versa.

From the aspect of the gender of the perpetrators, on average about 17% of the perpetrators are women. Observed by the Ministry of Interior, women as perpetrators take the largest part in the total number of perpetrators in the SIA Ohrid, 26%, while women take the lowest part in the total number of perpetrators in the SIA Kumanovo, with 12%.

3. CONCLUSION

- In the period 2018 - 2020, a total of 2,987 crimes of domestic violence were committed, with the most crimes in 2018 (1,006 crimes), while the least in 2019. Despite such differences, according to the conducted ANOVA test, they are not statistically significant.

- From the aspect of the type of crime, in the period from 2018 to 2020 over 60% of the committed crimes are of the type of bodily injury according to Article 130, paragraph 2. Furthermore, the act of endangering security follows, according the Article 144 paragraph 2, with about 35%, while all other committed crimes cost only about 5% in the structure of the total number of committed crimes of domestic violence. According to the conducted ANOVA test, such differences in terms of the type of crimes committed by domestic violence are statistically significant.

- In the period from 2018 to 2020 in the Republic of North Macedonia, we record an increase in the number of complaints (reports) of domestic violence, an increase of 16% in 2019 and an increase of 18% in 2020. However, according to the conducted ANOVA test, despite the increase in absolute amount, it is not statistically significant if the analysis takes into account the variability of complaints.

- The highest number of complaints of domestic violence is in SIA Shtip and SIA Bitola, almost 40%, while the least number of complaints of domestic violence are registered in SIA Ohrid and SIA Tetovo, 13%. In SIA Skopje we have several times increased the number of complaints of domestic violence, from 101 complaints in 2018 to 453 in 2019 and 582 in 2020. According to the ANOVA test, the differences in the total number of domestic violence complaints by sectors are statistically significant.

- The increase in the total number of complaints of domestic violence in the Republic of North Macedonia is mostly due to the increase in the complaints of psychological violence, which participates for over 80% of the total number of complaints each year. The largest part of psychological violence at the level of the sector for internal affairs is registered in SIA Shtip (92%), while the smallest part of psychological violence is in SIA Tetovo (63%). At the SIA Tetovo, the highest part of economic violence was recorded (15%), while the largest part of physical violence was in the SIA Bitola (24%). According to the conducted correlation analysis, the growth of psychological violence will not necessarily be accompanied by an increase in physical violence and vice versa. Namely, the correlation coefficient between these two types of domestic violence is around 0.1.
4. LITERATURE

2. Grbikj P. N., (2020), "Domestic abuse during pandemics" Saraevo,
3. Konstantinovikj N. V. (2005), "Criminology", Nish,
9. Law on Prevention and Protection from Violence against Women and Domestic Violence ("Official Gazette of RSM" no. 24/2021),
11. Brochure "Local Coordination Body for Protection against Discrimination" with the support of HERA within the project "Parliament and local governments in promoting LGBT rights" funded by the Embassy of the Kingdom of the Netherlands in the Republic of Macedonia, available at https://hera.org.mk/wp-content/uploads/2018/12/LGBT_broshura_web.pdf,
INTEGRITY AND CORRUPTION PROBLEM IN MACEDONIAN CUSTOMS

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Faculty of Tourism and Hospitality-Ohrid
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Abstract
Integrity in Macedonian customs is an essential issue with a high impact on the legitimacy and capacity to successfully perform its role. The main objective of this paper is to analyze integrity and corruption problems in Macedonian customs. Using statistical data on corruption, an analysis of integrity and corruption problems in Macedonian customs will be made. Analyzing data presented in Corruption Assessment Report: Level of corruption 2021 - it is evident that there is an increase in the perception of corruption of customs officials. Statistics show that Macedonian customs remain one of the most vulnerable sectors exposed to high levels of corruption. Introducing and strengthening integrity requires an uncompromising and non-selective fight against corruption as a crime. Implementation of integrity in the Macedonian customs can only be achieved by strengthening the systems of prevention and repression of corruption.

Keywords: Integrity, Corruption, Customs, Macedonian customs

1. INTRODUCTION
The term integrity can be described as the behavior of individuals and organizations in accordance with the rule of law. Two forms of integrity can be defined according to Customs Guidelines (ICC, 2012). The first form refers to the misconduct of individuals in an organization that has established institutional integrity. The basis for this type of corruption is a personal character defect, an urgent great financial need, or a fear caused by threats of physical violence. The second form refers to the organization as a whole that behaves badly to a large extent, where well-behaved individuals are a rare exception. This form of corruption is usually a reflection of a particular cultural and social environment.

The World Bank and the WCO define corruption simply as “the misuse of public power for private benefit” (World Bank, 1997). In some countries, the practice of corruption is so widespread in the working relationship between customs officials and members of the business community that it has become an accepted practice. Corruption includes any action that the employee will perform while on his duty, and for what he requires return or accepts some benefit, convenience, or interest, as well as overdraft and violation of standard procedures, misuse of the official duty, or overstepping of legal authorizations (Miloshoska, Reckoski, 2018).

Integrity in Customs was initially placed on the WCO Agenda in the late 1980s to address the problem of corruption in public service and more specifically in Customs. It culminated in 1993 with the adoption of the WCO Arusha Declaration concerning Integrity in Customs, showing the willingness of the international customs community to comply with rules governing Integrity in order to reduce and, eventually, eliminate opportunities for
corruption. The Arusha Declaration was revised in 2003 and it is a global and effective approach to preventing corruption and increasing the level of integrity in Customs. The Declaration reveals that an effective national Customs integrity program must address the following key factors:

1. Leadership and Commitment
2. Regulatory Framework
3. Transparency
4. Automation
5. Reform and Modernization
6. Audit and Investigation
7. Code of Conduct

2. INTEGRITY AND CORRUPTION PROBLEM IN MACEDONIAN CUSTOMS

Integrity and corruption are two opposing phenomena, that is, any corrupt action involves a violation of integrity. Integrity is a quality of action in accordance with generally accepted moral values and norms in favor of the public interest (Law on Prevention of Corruption and Conflict of Interests, Article 4). Customs integrity can be defined as the lawful, independent, impartial, ethical, accountable and transparent work by customs officers to maintain their reputation and the reputation of the institution. The term customs integrity encompasses individual and institutional integrity.

Individual integrity implies a personal attitude towards corruption issues, conflict of interest, and a personal ability to recognize the public interest. Individual integrity encompasses the ability to build resistance to corruption as a personal way of working. It implies the professional, ethical and correct performance of competencies determined by laws and other regulations.

Institutional integrity encompasses the “institution's resistance” to corruption. The term institutional integrity means an established system of policies, standards, mechanisms and procedures that reduce the risk of corrupt behavior of customs officers, and also motivate them to an honest and professional attitude in the performance of their official duties.

Introducing and maintaining a high level of integrity in customs operations is the main responsibility of the management team of the Customs administration. The priority of the management should be to fight against corruption, conflict of interest, abuse of official powers, and unprofessional and unethical behavior. Integrity as a necessity requires increasing the awareness of customs officials about the importance of transparency in their operations. Participants in customs procedures expect a high level of security and support from customs officials. Therefore, it is necessary to work transparently, responsibly and professionally. The ethical conduct of customs officials is the basic element of individual and institutional integrity. Strengthening the integrity at the personal and institutional level requires continuous development of policies and systems in order to develop and maintain public confidence. Customs officials are obliged to respect and implement legal regulations, bylaws, operational instructions, and internal documents conscientiously, responsibly, professionally, and impartially. Customs officials must constantly behave ethically, whether they are in their workplace or not. Professional, legal, and ethical behavior will strengthen the integrity of employees, thus contributing to the elimination of corruption. The promotion of integrity is a key tool in the fight against corruption. The above-mentioned principles will be ensured through the application of the ethical code of conduct, annual priorities and plans, financial management and control, information security management, control of operations.
and assessment, internal audit and disciplinary and other procedures. The Code of Conduct of the Customs Officers in the Macedonian Customs is fully harmonized with the Arusha Declaration and in a practical and precise manner determines the ethical conduct of the customs officers. The Strategy for integrity and fight against corruption in the Macedonian customs 2019-2022 is based on the following elements which are also leading activities essential for the integrity and the fight against corruption: leadership, rule of law, transparency, ethical behavior, personal and institutional integrity, prevention of conflicts of interest etc.

Corruption as a social phenomenon takes many forms. Its occurrence is influenced by economic, legal, political, sociological and other factors. The negative effects of corruption on the public, private and civil society sectors are enormous. Corrupt behavior undermines confidence in institutions, efficient use of public resources, and is a threat to democracy and the exercise of human rights due to the erosion of social values. In the Law on Anti-Corruption and Conflict of Interest corruption is defined as "abuse of power, public power, office or position for the purpose of the benefit, directly or through an intermediary, for oneself or for another", and conflict of interest means “a situation in which the official has a private interest that affects or may affect the impartial performance of his/her public powers or official duties” (Law on Prevention of Corruption and Conflict of Interests, Article 2 (1)(3)).

The European Commission reports on the progress of the Republic of North Macedonia, GRECO evaluations 2020, as well as the reports of other relevant organizations continuously indicate that corruption is deep and widespread in all spheres of society. In Transparency International’s Corruption Perceptions Index the country’s score increased steadily between 2006 and 2014, but then dropped in 2015-2017. The score in 2018 has improved. Corruption Index in Macedonia remained unchanged in 2020 from 2019 (Transparency International).

According to Corruption Assessment Report in 2021 corruption is recognized as the largest problem in the Republic of N. Macedonia. Forty-six percent of the population identified corruption as the largest problem, which is an increase of 49% compared to 2016. Unlike previous years when unemployment was recognized as the largest problem, in 2021 Macedonian citizens ranked corruption as the biggest problem among the 11 options offered. After that is unemployment, followed by high prices, low incomes, and poverty (Figure 1).

![Figure 1: Key issues, 2016, 2018, 2019, 2021 (% of the population that identified the relevant factors as a problem)](image)

Source: Corruption Assessment Report: Level of corruption 2021, based on Corruption Monitoring System (CMS) 2021
Respondents’ perceptions that corruption is widespread between officials in public administration have not changed in relation to 2019. About 69% of the citizens have the opinion that the officials are involved in corruption, same as in 2019 (Corruption Assessment Report: Level of corruption 2021, p.33). The number of those who think that almost everyone is involved has increased from 21% in 2019 to 30.7% in 2021 while the number of those who think that most of the employees are involved in corruption has decreased from 45% in 2019 to 38.9% (Corruption Assessment Report: Level of corruption 2021, p.33). Only 5.4% of citizens think that rarely are any of the officials involved (Figure 2).

The Corruption Assessment Report shows that according to the respondents’ perceptions, corruption is most prevalent among Ministers, Judges, Public prosecutors, and Customs (Figure 3). Similarly, when asked about professional holders of specific public positions, citizens put on top customs officers, judges, ministers, public prosecutors, tax officers, and political party leaders (Figure 4). For years, certain professions have been perceived as most corrupt. From 2001 to 2021 it is evident that there is an increase in the perception of corruption of judges, public prosecutors, and customs officials.

**Figure 2: Perception of the prevalence of corruption among the state officials**
Source: Corruption Assessment Report: Level of corruption 2021, based on Corruption Monitoring System (CMS) 2021

![Figure 2](image-url)

**Figure 3: Corruption in state institutions**
Source: Corruption Assessment Report: Level of corruption 2021, based on Corruption Monitoring System (CMS) 2021

![Figure 3](image-url)
Respondents’ perceptions say that corruption is most prevalent in courts, ministers, customs and the prosecution. On a scale from one to five, where 1 is “Almost none is involved” and 5 is “Almost everybody is involved”- the highest level of corruption, 75% of the citizens gave the highest scores (four and five) on the prevalence of corruption in the courts, 71% on the prevalence of corruption in the prosecution and over 66% consider that corruption is widespread in the Government and Customs (Corruption Assessment Report: Level of corruption 2021, p. 36).

![Figure 4: Perceptions of corruptness according to the profession – most corrupted](source)

Analyzing figures (Figure 5) show that there is a slight decrease in corruptness in Macedonian customs from 3.4 in 2001 to 3.1 in 2021 (1 is “Almost none is involved” and 5 is “Almost everybody is involved”). But, still Macedonian customs remains one of the most vulnerable sectors exposed to high levels of corruption. The corrupt behavior of customs officers in their everyday operations causes erosion of the integrity of Macedonian customs.

![Figure 5: Perceptions of corruptness in Macedonian customs](source)
The practices observed in the Republic of N. Macedonia show that each step of the customs clearance procedure can present an opportunity for a corrupt act. While all such acts involve the use of public office for private gains, they vary in nature (Miloshoska, 2015). They may be of three forms (The classification is according to OECD Development Centre, Working Paper No. 175):
- Routine corruption: private operators pay bribes to obtain a normal or hastened completion of customs operations.
- Fraudulent corruption: operators try to pay less tax than due or no tax at all, by not accomplishing the customs clearance process properly. They pay bribes to buy customs officers’ blind eye or their active co-operation.
- Criminal corruption: operators pay bribes to permit a totally illegal, lucrative operation (drug trafficking, weapon trafficking, etc.).

The key problems observed in the operation of the Macedonian customs, vulnerable to various forms of corruption, are related to:
1. Consistent compliance with the prescribed procedures and determining the rules for action in specific circumstances such as cases of passive bribery, collecting relevant evidence of corrupt conduct, self-assessment of high-risk processes.
2. Lack of assessment of the risk of corruption in the Customs Administration in all its activities and work processes.
3. Insufficiently developed system of communication and cooperation with the public.

Analysis of the Integrity and corruption problems in Macedonian customs noted several activities and measures to be taken (Miloshoska, Reckoski, 2018):
1. Strengthening the capacities of the internal control and creating a system of regular and extraordinary controls over the work of the customs officers in order to ensure that the standard operating procedures are consistently respected and implemented;
   Improving the capacities of the internal control unit, together with the measures to strengthen individual integrity, are the main drivers for consistent compliance with the standard procedures and the established deadlines. Therefore, it is necessary to strengthen the controls at border crossings and customs checkpoints; implement continuous training for effective implementation of the Code of Conduct for the Customs Officials and undertake all the legal measures to detect and punish the cases of corruption.
2. Implementing a system for corruption risk assessment in the customs services, with measures to strengthen the individual and institutional integrity;
   Customs Administration should assess the risk of corruption in all aspects of the customs operations, with measures to strengthen individual and institutional integrity. That will contribute to preventing the possible forms of corruption while helping to improve the organization of work and the utilization of the existing resources.
3. Introducing a more efficient system for communication with the public.
   The introduction of a more efficient system of communication with the public will allow for the institutions to open to the citizens and publicize all the necessary documents for all customs services. In this manner, conditions will be created for more efficient service delivery to the citizens, improved cooperation in identifying the bottlenecks in the work of the customs services as a source of corruption, as well as more active cooperation by the citizens in recognizing and preventing corrupt behavior.
4. CONCLUSION

Customs play a central role in trade facilitation, revenue collection, community protection and national security. Customs are the first window through which the world views a country. The employees of the Customs Administrations are obliged to respect and enforce legal regulations and bylaws responsibly and professionally. Integrity is essential for the effective functioning of a professional Customs administration. The lack of integrity in Customs causes revenue reduction, reduction of foreign investments, increased trade costs, barriers to international trade and reduction of public trust in government institutions. The need for high levels of integrity in Customs administrations must be stressed and the fight against corruption must be uncompromised. Analysis of the Integrity and corruption problem in Macedonian customs throws up some key conclusions:

The first conclusion is that integrity and corruption are opposite social phenomena, whereby any corrupt behavior of customs officials causes erosion of individual and institutional integrity. And vice versa, strengthening personal and institutional integrity leads to moral, ethical and professional behavior of customs officials and reduction of corruption. The Code of Conduct of the Customs Officers in the Macedonian Customs in a practical and precise manner determines the ethical conduct of the customs officers.

The second conclusion is that in 2021 corruption will be recognized as the largest problem in the Republic of N. Macedonia. The Corruption Assessment Report shows that corruption is most prevalent among Ministers, Judges, Public prosecutors, and Customs. Macedonian customs remain one of the most vulnerable sectors exposed to high levels of corruption. The corrupt behavior of customs officers in their everyday operations causes erosion of the integrity of Macedonian customs.

The third conclusion is that strengthened integrity of the Macedonian customs and a successful fight against corruption can be achieved only by acceptance of the following principles by customs officials in their everyday work:

1. Realization of public interest;
2. Ensuring transparency;
3. Individual responsibility and setting a positive personal example;
4. Establishing a culture of corruption intolerance.
5. REFERENCES

1. Customs administration of Republic of Macedonia, Code of Conduct of the Customs Officers in the Macedonian Customs, Skopje, 2016
2. Customs administration of Republic of Macedonia, Strategy for integrity and fight against corruption in the Macedonian customs 2019-2022, Skopje, 2019
3. International Chamber of Commerce (ICC), Customs Guidelines, Document No. 103-6/12, June 2012
5. Law on Prevention of Corruption and Conflict of Interests, Official Gazette No. 12/2019
7. Miloshoska, D., Customs Ethical Issues, International conference CHALLENGES OF CONTEMPORARY SOCIETY, 12 November 2015, Skopje
9. Miloshoska, D., Reckoski, R., Countering Corruption in Customs - the Case of the Republic of Macedonia, International Scientific Conference INSCOSES 2018, Faculty of Tourism and Hospitality-Ohrid, 2018
11. World Customs Organization (WCO), The Arusha Declaration — Declaration of the Customs Co-operation Council Concerning Integrity in Customs, 1993
12. World Customs Organization (WCO), revised integrity development guide, Brussels, 2012
EUROPEAN AND EURO-ATLANTIC SECURITY AND POLICY – RELATIONS EAST AND WEST

POLITICAL SCIENCES

ECONOMIC SCIENCES
METHODS OF DIPLOMATIC NEGOTIATION

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Abstract

In a world full of wars in which we live today, diplomacy emerges as the only means of conducting nonviolent relations between the nations by peaceful means. More specifically, diplomacy signifies a process and mechanism for conducting peaceful negotiations. The state of the League of Nations and the United Nations usher in a new era of diplomacy by applying the principles used in dialogue. In this context, the research is aimed at analyzing the most appropriate methods and principles of diplomacy in order to have successful negotiations to be used in the contemporary world.

Keywords: methods of negotiation, diplomacy, international relations

1. INTRODUCTION

For negotiations to be needed, there must be some international dispute. International disputes can arise for many reasons. They can be political and legal. Political disputes are when there are conflicting interests of the state, the resolution of which can be sought by the methods of diplomacy, and the solution should satisfy the interests of both parties. On the other hand, legal disputes are resolved by applying the rules of international law (international court, arbitration). Negotiations are the oldest way and the first step in resolving international disputes. They are guided by the principle of sovereign equality and equality of the states, by authorized representatives of the states in dispute and who, by exchanging opinions, in direct contact seek to find a solution to the dispute. Direct negotiations between the parties to the dispute are conducted "withdrawn", away from the public eye, and are conducted patiently through diplomatic channels. They are usually led by the Ministry of Foreign Affairs; depending on the stage of the dispute, negotiators can be: lower-ranking officials, experts, senior diplomats, top government officials (heads of state, Prime Ministers, etc.).

2. THE INTEREST OF THE NEGOTIATORS

First, it is essential whether there is a political will on both sides to resolve the dispute through negotiations. If such a will exists, a method can be found. Every negotiator has two types of interests: the problem, and the relations with the other side.71 For business partners, regular customer relationships, family members, and the state, relationships are often more important than the outcome of negotiations. Therefore, the negotiations should be conducted in such a way that they will contribute to the improvement of relations and the facilitation of future negotiations, and not to jeopardize the already achieved level in the overall relations.

3. PLACING IN SOMEONE ELSE'S SKIN

It is very important to understand the way of thinking of the other side, not only as a useful approach for more successful preparations for the negotiations, but also because the differences in the views in the negotiations are mostly due to the differences in the way of thinking of both parties. In fact, conflict often comes not from objective reality, but from the human head. People see what they want to see. Fears, even if unfounded, are real fears and it is necessary to work on them in order to remove them. Hope and expectations, even when unrealistic, can lead to war. Therefore, the facts, even when established, do not necessarily mean that they will be sufficient to solve the problem. This is not only the case with humans but also with nations. Morocco and Algeria were on the brink of war over the part of the Western Sahara, which was not essentially necessary for any of the countries. Therefore, one of the most important qualities of a good negotiator is to put him/herself in someone else's shoes, to try to look at the problem from the point of view of the other side, and not only from the point of view of facts or objectively the best, i.e., the fairest solution. Normally, understanding the other side's point of view does not mean agreeing with it, but drawing the conclusion that it is best to act. On the other hand, one should not suppose from one's own fears and emotions the intentions of the other party. It is easy to misinterpret what the other party does, says, or suggests. If our negotiators were guided by what is sometimes heard in the local public, an agreement would never have been reached. In effort to put yourself in someone else's shoes, the negotiator has to do something that is contrary to the other party's likely perception, or, in other words, to send them a message different from what is probably expected. For example, the unexpected visit of the Egyptian President Sadat to Jerusalem in November 1977 had a beneficial effect on further negotiations. The Israelis saw Sadat and Egypt as enemies they suddenly attacked four years ago. To influence such a change in perception, Sadat bravely and wisely decided to fly unannounced to Jerusalem, which only Israel considers its capital (even America, their most loyal friend, does not recognize it). So, instead of being an enemy, Sadat acts as a partner. Without that dramatic gesture, successful negotiations, which ended with the signing of the Egyptian-Israeli agreement, would hardly have taken place.

4. PRESERVATION OF THE CHEEK

Negotiators must pay special attention to a syndrome called cheek preservation. First of all, for the proposal to be acceptable to the other party, it is not enough for it to be reasonable and fair. The other party must be involved from the beginning in the process of preparing the draft proposal, so that at an early stage they agree with it. The whole negotiation process becomes mutually acceptable if both parties contribute little by little in shaping the final solution. Every criticism of the proposed conditions, every suggestion, every change, every concession - bear a personal stamp that the negotiators leave on the final proposal. The most important part of preserving the cheek is avoiding the feeling and the impression in the public that the other side has given in. In other words, it is wise to keep any negotiating party from making concessions that are interpreted as treacherous to the domestic public. This is especially important for the so-called a culture of shame, where the most important thing is not to be ashamed - say, like the nations of the Arab Middle East.

72 Berridge, G.R., Diplomacy – Theory and Practice, Palgrave, New York, 2002,
73 Boutros-Ghali, Boutros, An Agenda for Peace, United Nations, New York, 1995,
When the cheek is an important consideration, questions about the content, structure and title of the agreement can be an important and controversial element of the negotiations. Certain types of package arrangements will be more acceptable from the point of view of hiding some of the concessions that must be made. Controversial, because usually one side wants to hide what the other side wants to emphasize. The solution to the Iranian hostage crisis was greatly helped by the fact that the Algerian mediators suggested that Ayatollah Khomeini make a gesture of goodwill towards a third party - the Algerians, and not against Satan - the Americans. This aspect was not important to the Americans at all.

5. EMOTIONS

Emotions are an important element which should not be overlooked or simply discarded; they are worth paying attention to. They are, for example, a very restrictive, aggravating, and disruptive element in the decades-long negotiations between the Palestinians and the Israelis, which begin with the help and pressure of international mediators and then end up with mutual accusations, producing worse relations than those established before with the previous negotiation phase. Both sides are firmly convinced that the other side is working behind their backs, that it is a threat to their national and human existence, and that only their view is fair. With such intense emotions, even the most practical issue, such as the distribution of water in the West Bank, cannot even be seriously discussed, let alone resolved. A similar example is the water supply of Herceg Novi. Prior to the war, a project was jointly funded to supply water from Lake Trebinjica through Kanavla to Herceg Novi. But now the source is in one country (BiH, Republika Srpska), the water supply system passes through another country (Croatia), and the thirsty citizens are from a third country (Montenegro, in a former state union with Serbia). The situation is further complicated by the fact that these are municipalities from which volunteers left to attack and loot through Kanavla and Dubrovnik, and because they are in power, in three municipalities, parties that supported military policy, so that objectively unhealed wounds and even more intense emotions with the inability of local authorities for normal talks, negotiations, compromise and understanding. Each side presented its view as the only legally grounded and just. One NGO, the Igman Initiative, proposed an independent expert group under the auspices of the OSCE to analyze the situation from a legal, financial, and technological point of view and make suggestions for a solution. If the accumulated emotions make it impossible to negotiate and reach an agreement, it is useful to hire mediators who, willingly or unwillingly, will have to be accepted by all parties. It is often helpful to allow negotiators on the other side to express their emotions and fears, to show that they are not soft and not to forget to do injustice, and then to enter freely into the negotiation process, mutual concessions, and compromises. It is best to respond calmly to the emotional outbursts of negotiators on the other side. It is important to maintain self-control, to listen calmly to the other party, not to retaliate, and even occasionally, if silent, to ask the talker if he or she might have something to add. Of course, in interstate negotiations it is often impossible not to respond to an attack, but instead of a counterclaim, it is better to state briefly that such accusations are unacceptable and unjustified, but that it is in the interest of reaching an agreement to move on to the specific matter of the negotiation.

74 Dallek, Robert, Franklin D. Roosevelt and American Foreign Policy, 1932-1945, Oxford University Press, New York Oxford, 1995,
6. **SYMBOLIC GESTURES**

Symbolic gestures can contribute to the warming of the atmosphere. Some of them have a stronger impact than the elaborated documents. Condolences on the other side’s loss, a statement of grief over an act or incident, a visit to a cemetery and laying a wreath or flower at a victim's grave - all of which can be a valuable contribution to bringing the antagonized emotional situation closer together and expressing goodwill to start on a new path. The most famous gesture of its kind that went down in history is when German Chancellor Brant knelt in front of the monument to the victims of the Holocaust. Montenegrin President Milo Djukanovic expressed regret over the siege and shelling of Dubrovnik by Montenegrin volunteers. It is worth noting that here there is also a gradation, regret is less than an apology. The President of the State Union of Serbia and Montenegro, Svetozar Markovic, during the state visit of the President of Croatia, Stjepan Mesić, in September 2003, apologized for all the atrocities committed against the citizens of Croatia. Such a gesture could not go unanswered, President Mesić, though unprepared, responded with an apology. The general assessment in both countries and in the international community was that these were gestures of greatest political significance. Of course, an apology or regret does not imply personal responsibility for what has been done. However, these gestures should be spontaneous, not forced - apology requests as a precondition for approaching the normalization of relations can make it difficult instead of facilitating mutual rapprochement. At a conference of the Big Three in Tehran (1943), Roosevelt originally planned to stay at the US Embassy, quite a distance from the Soviet and British embassies, which were one behind the other. His security service was concerned that Roosevelt would not be the object of a bomb attack as he was being transported to a meeting at a British or Soviet compound. At the first plenary session, held at the US Embassy, Roosevelt accepted Stalin's offer to stay in one of the villas in the Soviet complex. Obviously, he did not do so later for security reasons alone - it was a significant symbolic gesture for Stalin. Symbolic gestures may be less important, but they have the same meaning, to establish the most natural contact with the other party and to improve the overall atmosphere. That is why the small gestures, handshake, hug, small gift for the grandchild of the negotiator on the other side, interest about the health of the sick wife, dinner at the same table in a restaurant, telling a convenient joke about the negotiations, invitation to a private dinner, are not insignificant. Benjamin Franklin's favorite technique, an American statesman, diplomat, writer, and scholar, was to ask the negotiator on the other side of the table if he would lend him a book, which in turn would give Franklin the pleasure of owing him an act of kindness.

7. **COMMUNICATION**

It is important to understand that without communication there is no negotiation. The negotiation process is a two-way communication in order to reach an agreement. Communication can be hampered by a variety of obstacles. It happens that the negotiating parties do not communicate, do not talk to each other and make statements for the sake of a third party or the public. Basically, then the negotiators do not turn to the other side, nor try to convince it of the correctness of their own arguments but seek the support of the domestic public or observers for their views. The same negative effect is obtained when the other party is not heard, even though you are addressed directly. Sometimes while the other party

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75 Davis, Kenneth C., Don’t Know Much About History, Avon Books, 1990,
76 Dimitrijevic, Vojin, Stojanovic, Radoslav, Medjunarodni odnosi, Sluzbeni list SRJ, Beograd, 1996,
is speaking, something else is done deliberately, talking to the neighbor, turning around someone or asking for the waiter, thus demonstrating intolerance and contempt for the speaker. It certainly does not lead to a better understanding and could jeopardize negotiations from the outset. It is often the case that while the other party is explaining, the negotiator is already thinking about how he or she will respond to an argument, i.e., they are not listening. It happens that they later fail in their argument, because what they advocated has already been stated by the other side, to which they will be warned. Therefore, careful and active listening is necessary. The impression that great attention is paid to the presentation can be strengthened by the question, "did I understand correctly that you think...." A third obstacle in communication is misunderstanding. Something that one side has said is misinterpreted by the other side. It is better to ask for a more detailed clarification of the given statement, than to immediately start a counterattack or public qualification of what has been said. Misunderstandings can also occur because the same word or phrase may have a different connotation in other languages. For example, the UN Secretary-General Kurt Waldheim has flown into Iran in an attempt to free US hostages. After arriving in Tehran, he made the following statement on Iranian radio and television: "I came here as a mediator to find a compromise." However, the two keywords he used had different connotations in English and Persian. In Persian "mediator" is someone who uninvited interferes in someone else's work, and "compromise" in Persian does not have the positive meaning it has in English, but mainly has a negative meaning related to compromise. Anyway, Waldheim's statement only further angered the Iranians, so his car was stoned on the way to the city. It is important to try to clarify things, not to remain misunderstood. One should have a proactive attitude, not a reactive one. It must be understood that negotiation is neither a debate nor a trial, and therefore no oratory exhibitions are required, let alone blaming the other party for the problem or insulting them. This does not preserve the national dignity, but makes it difficult to create a basis for an agreement.

8. SECRET OR SPECIAL CHANNELS OF COMMUNICATION

In order to avoid the unfavorable influence of the media on the domestic public opinion, and thus on the negotiations, it is sometimes useful to establish personal and confidential channels of communication with the other party. A secret or special channel was named after the secret communication that existed for decades between the United States and the USSR, until the end of the Cold War and was the main means of negotiating in very important issues. It was named after US diplomat Henry Kissinger, where he and Soviet Ambassador Dobrynin regularly used secret channels. Dobrynin used a small entrance at the back of the State Department for face-to-face talks with Kissinger, reserved only for the Secretary of State. Compared to the formal arms control negotiations that took place alternately in Helsinki and Vienna, Kissinger and Dobrynin actually reconciled the key issues at stake. In the run-up to the Dayton talks, US Deputy Secretary of State Strobe Talbott set up a special channel with his Russian counterpart, Deputy Foreign Minister Georgi Mammadov, which helped reduce suspicion, restraint, and even Russian resistance to US leadership in the whole game. Back channel - backdoor is also used as an expression for secret and informal, discreet placement of sensitive information, bypassing the official

79 Kissinger, Henry, Diplomacy, Simon & Schuster, New York, 1994,
diplomatic channels. For example, the Italian government did not want General Walters to be Nixon's official translator during a state visit to Rome (the Italians thought he was involved in a right-wing coup in their country), but they were embarrassed to formally ask the Americans to do so, so they made it known to a CIA man in Rome, who passed it on to his headquarters, and she went straight to the White House, without the use of regular diplomatic channels. All these informal methods make it easier to enter the negotiation process with as few unknowns as possible. The aim is not, as is often thought, to surprise the other side with its proposals and demands, but on the contrary, to make the best possible preparation and informally check whether there are conditions for success even before the start of negotiations. The advantage of these channels is the secrecy, speed and avoidance of long and often fruitless internal bureaucratic clashes and impositions. In terms of shortcomings, it is a weak opportunity to anticipate some key points and especially the weakening of the morale of the official negotiators when they find out that the main things have already been decided elsewhere. That was the case with the main Palestinian negotiator, who did not know that secret negotiations were taking place in Oslo.

9. THREATS

For reaching the agreement, there will be no threat or attitude, "either this way or that way." by using the "stick". This was especially evident during the negotiations in Rambouillet, and partly in Dayton (it was there in large part and combined with various "carrots"). The threat of force or other type of punishment (for example, economic) is certainly not an incentive to negotiate, but rather an ultimatum. In addition, experience has shown that sanctions often did not lead to the desired result and were even counterproductive, as they punished the people more than their influential leaders.

10. PUBLICITY

Many books on diplomacy take the view that publicity is the enemy of negotiation, which is fundamentally true. The secrecy of the negotiations or the content of the negotiations is usually advisable until a serious breakthrough is reached. At the same time, however, it presupposes reporting to domestic political actors, subject to discretion, on the course of negotiations and the prospect of an agreement, in order to secure political support and future ratification. The opposition will more often use the negotiations to criticize the government and accuse it of betraying national interests, so that adequate dosing of public information is an important part of the negotiation process. It is important to keep the negotiation process in full control. Any uncontrolled leak of information can seriously jeopardize not only the success of the negotiations, but also the negotiations as a whole. As secret contacts between the Palestinians and the Israelis continued and the possibility of a rapprochement finally began to emerge, when the June 1993 session was dramatically interrupted by little news from France Press about rumors that secret peace talks were taking place in Oslo. This alarmed both sides and there was a great danger that the talks would lose the necessary secrecy. However, the Norwegian Ministry of Foreign Affairs said that the news was probably related to the multilateral negotiations on the Middle East that took place in May in Oslo and that the secrecy was still kept. In preparation for Dayton, Holbrooke made a special effort to protect himself from information leaks because he did not trust the official channels. That is why before the conference in Geneva he sent a copy of the draft agreement to the Deputy Secretary of State, Talbot with a request to personally hand it to

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80 Hoolbruck, Richard, To End a War, Random House, New York, 1998,
the top officials in the administration. Holbrooke said, any leak of information would be fatal, as it would put pressure on public opinion in Sarajevo to demand more. However, the media should not be ignored and left without information and evaluation, as this will only increase the risk of appearing with unverified news or comments, which can cause invaluable damage to the negotiation process. This is the delicate distinction between the need to keep many things secret until they are ready for publication and the need for the media not to be left without information. On the other hand, it is also true that many negotiators use publicity to start negotiations from a standstill. This is done in different ways. Launching test balloons to check how the other side will react and mobilizing public support for the agreed solution or creating public impression that the success of the negotiations is closer to what is real.

10.1. Release of test balloons

The release of test balloons, both public and private, is of particular importance in the pre-negotiations, but is also used in other stages of the negotiations. It is aimed at speeding up the negotiations by preparing the public for a possible solution, but it is no less used to gain a better insight into the mood, ambitions and concerns of the other side through their reactions to the released balloons. If an idea is publicly accepted or at least not easily rejected, it can be considered a solid starting point for negotiation. During the fourteen weeks of serious negotiations over Rhodesia, which took place in London in 1979, the head of the Information Department, Sir Nicholas Fan, often suggested to the media what might be published so that he could use the negotiations without obstructing them. That was the main motive for the spectacular move of Egyptian President Sadat, who suddenly flew to Jerusalem in November 1977, to address the Israeli public directly by skipping the government, but also to demonstrate to the world public his commitment to a peaceful settlement of the dispute. That motivated President Carter when he later launched a public campaign targeting both the American and Israeli people to begin to reach agreements.

10.2. Optimistic public exaggeration (too much contact with journalists)

Creating the impression in the public that the success of the negotiations is closer to what it really is, is to introduce incompletely based optimism to break the atmosphere of distrust in the possibility of the dispute to be resolved through negotiations. Of course, this tactic cannot be constantly abused, nor can it be effective when there is no real chance of success in the negotiations. In addition, it can provoke an angry reaction on the part of the party that is uncompromising in the negotiations, because it may have trouble with its own public. However, the infrequent use of the impression that progress is in sight can help the negotiation process to succeed. Chester Crocker, the US Assistant Secretary of State, has used this method in an effort to speed up negotiations on the Namibian-Angolan crisis. When he assessed that there was a chance for a breakthrough in the up till now blocked negotiations, he tried to sound optimistic in his public appearances, believing that it would be difficult for both sides to stick to their positions and thus be subject to criticism in influential circles, that a solution will certainly be sought. The report on the use of this tactic was highlighted in a report following the final spread into Geneva in November 1988.

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81 Istorija na diplomacijata, I tom, pod redakcija na V. P. Potemkin, Sofija, 1946,
82 Kennan, George, Diplomacy without Diplomats, Foreign Affairs 76, No.5, 1997,
11. CONCLUSION

From this paper we can conclude that expanding of the diplomatic relations in the whole world and introducing more order in its activities on the basis of more regulation, leads to the questionability of the implementation of old methods. This paper explained the diplomacy benefits from new views and escaping from the narrow circle of the old rulers and politicians, and bigger influence in the political parties, parliaments, or political congresses. Its conduct no longer constitutes the privilege of only one type of politician. It has been widely accepted that new diplomacy has been in place since 1919, when the First World War ended the system of unilateral relations with the formation of the League of Nations and implementing the new methods of conference diplomacy. With technological progress, the exchange of information will increase in a very fast pace. The emergence of unitary organizations, in which policies, economics and technicalities are considered, is a global, regional, and sub-regional balance. The number of sovereign states in the world incredibly increasing at the end of the Second World War, as a result of the decolonization. Most of the new members of the international community are not responsible for accepting the benefits and practices that develop exclusively in Europe for the establishment of their mutual relations. As a result, diplomacy radically changed its rules completely with the codification and progressive development under the auspices of the Nationalities and at least in the regional context. For that reason, this paper suggests that in the framework of the new diplomacy, the methods of the conference diplomacy should be more practiced: in the League of Nations, the Organization of the Nationalities, in the number of most unified organizations and specialized agencies.

12. REFERENCES
5. Davis, Kenneth C., Don’t Know Much About History, Avon Books, 1990,
6. Dimitrijevic, Vojin, Stojanovic, Radoslav, Medjunarodni odnosi, Sluzbeni list SRJ, Beograd, 1996,
10. Istorija na diplomacijata, I tom, pod redakcija na V. P. Potemkin, Sofija, 1946,
11. Kennan, George, Diplomacy without Diplomats, Foreign Affairs 76, No.5, 1997,
SPREAD OF THE RUSSIAN PROPAGANDA ON WESTERN BALKANS – CASE STUDY IN SERBIA

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Abstract

Russian aggression on Ukraine increased spread of disinformation worldwide. Western Balkans and Serbia are also a long-term subject for Russian active measures. Those active measures have several priorities which are only intensifying in crises periods. Russian strategic task for Western Balkan is to prevent full western integrations. So far, Russia has succeeded to blockade Bosnia and Herzegovina and Montenegro very successfully through their proxies on the field.

Like during corona crisis, same patterns are deployed before and after beginning of the aggression on Ukraine. This work aims to identify, explain and counter main anti-western narratives in context of the Russian aggression. No doubts Russia is losing its international capacity but capacity for cover activities is still untouched on Western Balkans. In this scientific work authors will make a brief case study on Serbia and try to provide better understanding why Russian disinformation is so successful in Serbia. What are the main triggers? What can be done to prevent such subversive activities? Also, authors will trace and analyze the main advisories’ narratives from their deployment to their effects.

Russian active measures have the potential to trigger inner and international conflicts in the Western Balkan region. They have already successfully divided the society. Meanwhile Serbia had a parliamentary election with results which are in direct connection with the war in Ukraine. Right wing parties achieved their record success in the last 10 years. Our article will try to find what can be done in a way to prevent Russian active measures. What is the role of media, state institutions and civil societies? This challenge will unfortunately be a security challenge in the future years, full western integration will not be a “silver bullet” for Russian activities. Russia is a global challenger that will exploit every possibility to endanger West. Non-integrated territories will be more vulnerable to became anti-western launch pad in the region.

Keywords: active measures, security, politics, economy, disinformation, international relations, strategy

1. CONCEPTUAL FRAMEWORK OF HYBRID WARFARE

In the period of global confrontation, the application of hybrid actions is not lacking. During the Cold War, such activities were called by different names depending on the authors and their ideological positions. Some of the better-known concepts are special
warfare, active measures, deep operations, reflexive control, cognitive warfare, and finally hybrid warfare. Depending on the terminology, we see that the word war dominates, one of the definitions of war as a legal condition, which equally permits two or more groups to carry on conflict by armed forces (Walzer 2000). If the term war is used as a definition of political conflict, it certainly contains its own political goals. We will prove in this paper how the political goals of the Russian Federation are achieved in the case of Serbia through hybrid actions.

It is of great scientific importance to correctly distinguish terms, concepts and groups of concepts in order to be able to adequately apply protection mechanisms in practice. It is necessary to consider what the manifestations of the threat are, what the carriers are and what the goals are. There is still a lively debate about whether a hybrid attack can trigger collective security mechanisms. If we analyze Russian hybrid actions, we should take into account the societies capacity to defend itself. Hybrid actions are successful because they are not perceived as an imminent threat, as a result of which insufficiently trained staff of security services and political actors are underestimating it, which allows hybrid threats to be fully realized due to lack of understanding of their corrosive and long-lasting effects. When the consequences of hybrid action become noticeable, at that moment there was already a greater or lesser paralysis of the state bodies and the society as a whole.

It is necessary to distinguish that all countries in the world are fighting for the favor of others. However, it is necessary to distinguish public diplomacy from the use of irregular tactics used to influence the behavior, decisions and attitudes of decision-makers under the influence and public opinion formed by hybrid actions of another stronger state.

What is a hybrid war? The term first appears in Colonel Robert Walker's master's thesis in 1998, where he states that hybrid warfare is the one which lies in the interstices between special and conventional warfare (Walker, 1998). If war is waged by warfare laws and conventional forces whose actions are limited by humanitarian law, it can be concluded that hybrid warfare is waged by military rules from irregular forces by armed and unarmed means.

We can define hybrid action as a planned, organized, pre-prepared, coordinated, economic action of the state actors against the civilian population, institutions and interests of sovereign states, with the integral use of the principles of military tactics and intelligence, primarily subversive action with the ultimate goal of paralyzing society, on basis to put state systems under duress in order to make certain concessions and the desired state actions as a whole (Životić, Obradović 2022). The definition tells us that hybrid actions are not spontaneous activities, nor do they represent excesses. The foreign policy objectives are closely linked to the operational objectives of the hybrid operations. All of the above have long been known in the science of security as active measures, and their famous product of disinformation. The ultimate goal of these activities is political influence on the state and its population. During the Cold War, these activities were aimed at public opinion, which would later put pressure on political authorities. In Soviet intelligence doctrine, the concept of “active measures” covers a wide span of practices including disinformation operations, political influence effort, and the activates of Soviet front groups and foreign communist parties. (Kux, 2019).

If we replace the word Soviet with Russian, we will see that there are no significant changes in the manifestation of the active measures. Today, instead of financing communist parties and terrorist organizations, right-wing and nationalist political parties and groups are financed. The matrix has remained the same as from the Cold War period, and is maintained in denigrating opponents. In his essays, Count Vladimir Volkov writes about Soviet
propaganda, distinguishing between white, gray and black propaganda. Through the analysis of the content of the term active measure, we realize that two components are crucial. The first is projecting impact, and the second is placing misinformation as a tool. Disinformation is the basic feature of active measures. Through their placement, a misperception is created by the public opinion, in order for the disinformation to be successful, they are cultivated, planned and placed while concealing the source. If it is about gray propaganda, the client is known, and the content is fake or manipulative. And in the case of black propaganda, the masked connections between the ordering party, i.e., the creator and executor of active measures are hidden. Thus, active measures or hybrid action is a modern form of conflict that takes place in such a way as not to provoke a conventional response. The key question which arises is whether disinformation can be answered with disinformation? Can the damage caused by one misinformation be compensated in the form of revenge on the other side by placing misinformation? Of course, hybrid conflict cannot be considered conventional. In the field of hybrid conflict, you will either successfully disable or not hybrid performance.

In our case study, we deal predominantly with the placement of misinformation and the impact operations as well as the consequences they produce on public opinion in Serbia. These two segments can be divided into information operations and influence operations.

Rand Corporation in its publication\(^83\) defines influence operations are the coordinated, integrated, and synchronized application of national diplomatic, informational, military, economic, and other capabilities in peacetime, crisis, conflict, and post conflict to foster attitudes, behaviors, or decisions by foreign target audiences.

According to NATO and the US Department of Defense, information operations are defined as ‘the integrated employment, during military operations, of information-related capabilities in concert with other lines of operation to influence, disrupt, corrupt, or usurp the decision-making of adversaries and potential adversaries while protecting our own.’ This definition is quite applicable at the time of the Russian aggression on Ukraine. The Russian Federation approaches this conflict as a total conventional war against Ukraine, while the rest of the EU and NATO consider Russia as their enemies to whom it emits daily threats.\(^84\) Non-integrated territories such as the Western Balkans are a testing ground for Russia, where it can fight for affection, but also to form a new front towards the Euro-Atlantic community. The stated foreign policy goals achieve their synergetic effect through the integration of information operations and operations of influence into one whole, which is synchronously manifested in a certain area. This kind of performance is what we call hybrid action, and Russia calls it active measures. In the absence of conventional military coercion, not the possibility of directly projecting the influence on political leadership in action, we have the application of asymmetric action. It manifests itself by influencing public opinion and creating pressure groups. The ultimate goal of hybrid action carriers is to achieve the desired effect. The diffusion of varying hybrid threats essentially challenges the Western binary thinking on war and peace as well as conventional and unconventional warfare (Weissmann, Nilsson, Palmertz 2021). In fact, hybrid actions in their full capacity are possible only with societies in which there is no censorship or very little censorship. Strictly controlled information societies such as the People's Republic of China, North Korea and the Russian Federation have a lower risk of hybrid threats because they prevent freedom of expression.

\(^83\) https://www.rand.org/content/dam/rand/pubs/monographs/2009/RAND_MG654.pdf
through authoritarian rule. In order to avoid social unrest, the Russian Federation has preventively prescribed a prison sentence for every journalist who does not report in accordance with the official policy. Open societies, primarily Western democracies, are more vulnerable to misinformation, i.e., the creation of polarizations in society. The same concept is applied in Serbia and the Western Balkans. Hybrid warfare below the threshold of war or direct overt violence pays dividends despite being easier, cheaper, and less risky than kinetic operations (Bilal, 2021). This feature is manifested in the use of non-state actors in coordination with the state services of foreign governments.

Hybrid warfare can be described as the synchronized use of multiple instruments of power tailored to specific vulnerabilities across the full spectrum of societal functions to achieve synergistic effects (Cullen, Reichborn-Kjennerud 2017).

The term hybrid threat refers to an action conducted by state or non-state actors, whose goal is to undermine or harm a target by influencing its decision-making at the local, regional, state or institutional level. Such actions are coordinated and synchronized and deliberately target the vulnerabilities of the democratic states and institutions. European Centre of Excellence for Countering Hybrid Threats in Helsinki gives a descriptive definition of hybrid warfare which can be very suitable for state decision makers and intelligence agencies which confront hybrid activities. Determinant influence on decision-making is a key feature of the hybrid action of the Russian Federation in the Western Balkans and Serbia. In the continuation of the work, we will deal with the case study of how the Russian Federation is conducting operations of influence in Serbia in the light of the Ukrainian crisis. NATO Stratcom COE consider Hybrid threats as levers of influence which can therefore be considered as information or influence activities. These are actions which influence audience perception and decision-making. Such activities are not limited to the ‘Information’ instrument but involve the combination of different instruments of power, including Diplomatic, Economic and Military

85 https://www.hybridcoe.fi/hybrid-threats-as-a-phenomenon/
2. SCHEMATIC REPRESENTATION OF THE HYBRID ACTION OF THE RUSSIAN FEDERATION IN WESTERN BALKANS AND SERBIA

3. THE ACTIVE MEASURES ON WESTERN BALKANS ARE NOT A MYTH

The Kremlin’s goals in the Western Balkans have been clearly proclaimed, and that is to prevent the countries of the Western Balkans from becoming members of NATO and the EU. Anti-NATO narratives are used exclusively as a means to achieve the ultimate goal, which is to prevent the region from becoming a full member of the EU. NATO\(^6\) notes that the annexation of Crimea intensifies the work of platforms for the spread of Russian disinformation in the Western Balkans. The emergence of these narratives in Bosnia and Herzegovina, Montenegro, and Serbia coincides with the illegal annexation of Crimea in March 2014. The Sputnik news service was launched in Serbian language, in February 2015, soon followed by Russia Beyond. Dozens of portals with and without impressum (i.e., a legally mandated statement of ownership and authorship) have appeared, generating or distributing similar messages.

Sputnik’s content is republished by media outlets in both Serbia and Republika Srpska, while Sputnik republishes news from Serbian media. Debunking alleged that most of Sputnik’s articles are disinformation, clickbait, fake news, conspiracy theories and factual manipulations\(^7\).

In the last 10 years, we have several examples of disinformation which preceded street violence and even attempted coups. The first case was an attempted coup in Montenegro in 2016, then riots in Skopje in 2018, religious protests in Montenegro in 2020, riots in Belgrade in 2020 until the organization of a rally in support of the Russian Federation in Belgrade in 2022.

\(^6\) https://www.nato.int/docu/review/articles/2020/12/21/disinformation-in-the-western-balkans/index.html
\(^7\) https://balkaninsight.com/2020/08/31/how-fake-news-spreads-mainstream-media-republish-suspect-sites-stories/
The case of a coup attempt in Montenegro is a combination of hybrid action with the use of irregular armed groups gathered in an agency network. In both Montenegro and North Macedonia, Russia has proven its ability to exploit domestic conflicts. In Montenegro, for instance, it sided with the anti-NATO opposition, which also attacked Prime Minister Milo Đukanović and his governing Democratic Party of Socialists (DPS) on grounds of corruption. The coup attempt in Montenegro had its preparation through the broadcasting of strong anti-Western narratives. The operation of obscure media portals had the role of manipulating public opinion to the complete radicalization and polarization of the population. This incident had its own judicial epilogue, but it is also the first case in the Western Balkans to court tail agents of the Russian GRU in absentia. Montenegro's aspiration to become a member of NATO was taken as an occasion.

The riots in Skopje caused by the Prespan Agreement were strongly accompanied by an insulting tone of Russian officials towards Northern Macedonia, spreading misinformation through obscure portals, but also throughorchestrating street riots in both Northern Macedonia and Greece. The hooligan groups that took part in the riots belong to clubs that were owned by Russian oligarchs at that time.

Russia's second attempt to take over Montenegro took place in 2020, during the social tension caused by the law on freedom of religion.

Anti-covid protests escalated into mass riots in 2020 in Belgrade. According to experts and politicians the riots were largely orchestrated and directed by a structure associated with the Russian Federation. Until then, the peaceful and cynical Russian diplomacy and media network showed very active and strong activity to deny these claims. The main propaganda engine in preserving the image of the Russian Federation, due to involvement in riots, was the Serbian language portal Sputnik.

Russia is the only great power which maintains an absolutely favorable media narrative in Serbian language, which extends to the entire region of the Western Balkans and represents a literally integrated desirable media narrative.

4. RUSSIAN INFLUENCE OPERATION IN SERBIA DURING AGGRESSION ON UKRAINE

After the aggression on Ukraine, the application of influence and information operations towards the institutions of the Republic of Serbia and its citizens intensified in Serbia.

The influence on the civilian population can be divided into several key activities:

- Spreading of disinformation and deceptive content;
- Organization of demonstrations and rallies of support to Russia;
- Diplomatic activity of the Russian Federation;
- Abuse of energy dependence;

4.1. The role of disinformation and deceptive content

The danger of spreading Russian disinformation is well documented and recognized by EU member states. The vulnerability of the Serbian media was recognized in the reports

89 https://www.slobodnaevropa.org/a/vagner-sormaz-demonstracije/31836979.html
of the European Parliament. Our paper seeks to offer a theoretical framework in terms of disinformation mechanisms, and not to deal with each individual case that is present in the Serbian information space. The application of active measures towards the citizens of Serbia creates a false dilemma between the choice of the West or Russia. Serbia is not a participant in the conflict, but through disinformation, the bearers of Russian hybrid activities are trying to turn Serbia and its citizens into a real or proxy ground for settling conflict with the West.

The basic characteristics of Russian disinformation in the Serbian information space can be divided into categories according to a certain dominant structure. Disinformation based on conspiracy theories and war propaganda is the most common form. Some of the most popular false narratives about Russian aggression against Ukraine presented in the Serbian information space, which are weapons of war propaganda, are:

1. The conflict between America and Russia is taking place in Ukraine;
   - America incited Ukraine against Russia;
   - America is fighting Russia to the last Ukrainian;
   - America had an interest in the war.
2. NATO targeted training of 400,000 Ukrainian soldiers and armed them for a violent fight to attack the Russians;
3. Russian language, Russian culture, Russian education and Russian media have been banned since 2014;
4. Ukraine is a divided state in which half are Russians, half Ukrainians, with a religious division of 50% -50% Orthodox and Catholics. This division is used as a continuation of many years of active measures by which the Catholic Church presents itself as the ideological creator of the plan for the destruction of Serbia and Orthodoxy;
5. Sanctions against Russia were imposed by a smaller part of the world, 15% of the planet, which presents the EU to the Serbian citizens as irrelevant and unimportant, of course keeping silent about the geographical position of Serbia and the relationship between countries that imposed sanctions on Russia and others which did not. Those which did not impose sanctions are the ones which did not respect human rights and freedoms, economic prosperity, living standards and which are not key Serbian economic partners;
6. NATO is expanding to the East, Russia had nowhere to go to protect its security. This narrative is a consequence of the poor informing of the population in Serbia about all the member states of the NATO that have been bordering the Russian Federation for decades;
7. The coup forced Ukraine to join the EU and NATO. This thesis aims to draw a parallel with the October 5, 2000 changes in Serbia and the democratic changes that the Russian Federation, by implementing active measures, also represents as a consequence of the actions of the American secret services;
8. Russia is facing a security threat from NATO, so it had to react. This narrative directly relies on the abuse of the culture of remembrance of the citizens of Serbia related to the NATO bombing in 1999;
9. Russia had to protect its people. A narrative that finds its support among the citizens of Serbia in the almost thirty-year renunciation of the responsibility of the former

holders of power for everything that happened in the former Yugoslavia with the protection of the Serbian people, to which great media attention is paid;

10. Biological weapons and bio laboratories are topics that continue through active measures on conspiracy theories which flooded Serbian media during the Covid 19 pandemic, which served as an excellent preparation.

11. The strength of the Russian army, Russia does not use all its capacities and takes care of civilians. These are the theses that raise the myth of the strength of the Russian army built during the Second World War, which insidiously creates the illusion that the army is so powerful that its help to Serbia in a new war in the Balkans would prevail and secured victory and that is why it is important to be on Russia’s side.

12. Ukraine commits war crimes against civilians. They forcibly hold civilians as human shields. This narrative is used to justify the destruction of entire cities, about which news occasionally appear in the Serbian media. Disinformation on the issue of biological weapons in Ukraine is a misrepresentation of international cooperation, but also misinformation that has found its application in endangering the public health of Serbian citizens. Additional elaboration of this misinformation depended on the strategic goals for each information space. Several goals have been identified for this hybrid action in Serbia:

• Undermining international cooperation
• Spreading irrational fear of imminent life-threatening biological weapons
• Compromising US and European Union donations
• Reversing the effects of Western donations
• Spreading distrust in Serbian authorities
• Encouraging conspiratorial worldview and justifying Russian military aggression
• Endangering public health.

The most striking example of geopolitically motivated disinformation in Serbian information space is an attack on the Cardiac Surgery Clinic in Nis. The video clip that has been published so far has had 20,000 views, the narrator uses half-truths. Complete disinformation is designed to undo the effects of $1 million in US military equipment donations92.

4.2. Organization of demonstrations and support rallies

In the first days after the aggression on Ukraine, right-wing organizations, in the presence of politicians from parliamentary and non-parliamentary parties, held demonstrations on March 4, 2022, entitled "Gathering of support for the Russian people." The organizers of the gatherings called for historical, allied, political and military initiatives and, above all, solidarity. Yet, the fact that Russia shamelessly attacked Ukraine, and not vice versa, was ignored. This did not prevent the masses from carrying symbols of the Russian aggression with the letter "z"; there were more Russian than Serbian flags at the gathering, and it is estimated that up to 5,000 people gathered at the rally.

92 Report Prelivanje globalnih dezinformacija u Srbiju- slučaj biološkog oružja
At the rally, in the presence of militant right-wingers in various paramilitary uniforms, it was announced that the demonstrations will be even more massive if Serbia imposes sanctions on Russia. The organization of such a gathering represents a direct threat and an operation of influence in order to put pressure on the state not to make decisions in its best interest. It is interesting that the gathering was organized preventively before it was announced yet what kind of sanctions are in question and who will introduce them.

The next mass demonstrations\(^3\) followed on April 15, 2022, and after April 7, when a vote was held in the UN General Assembly, where Serbia joined the condemnation of Russian aggression and joined 141 countries in calling on Russia to withdraw its troops in Ukraine. The specific reason for these demonstrations was Serbia's vote to expel Russia from the UN Human Rights Council. The demonstration demanded that such decisions must be voted on by a two-thirds majority in the Serbian Parliament, and that Serbia violated its neutrality with these actions. Messages of support for Russia were expressed again. Protesters dropped several smoke bombs and hung a Russian flag on the building of the Presidency of the Republic of Serbia.

Analyzing the content of messages from the gatherings we found that it is an emotional manipulation with strong anti-European slogans. It is interesting that the slogan from the period of destructive riots from 10 years ago has returned to right-wing rallies, and

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\(^3\) https://www.slobodnaevropa.org/a/desnicari-srbija-rusija-protest/31804896.html
that is "Serbia is Russia, we don't need (European) Union".

When it comes to organizing the rally, it was noted for the first time that the aggressor state is officially organizing it\(^{94}\). On May 9, the Embassy of the Russian Federation organized a rally called "Immortal Regiment Parade" at which the letter "Z" was carried again, Putin from cardboard and other slogans in the presence of right-wing parties and movements. It is important to note that this gathering was mixed with the official state event of laying wreaths and thus occupied the official event. Organizers from the Russian Embassy calculated that a picture of solidarity with Russia would be sent to the world from Belgrade, again abusing historical contexts. It is a completely different question that we must ask why the authorities of the Republic of Serbia did not ban the takeover of the state ceremony for the purpose of promoting Russian war goals in Ukraine. Freedom of assembly is guaranteed, but when it comes to state ceremonies, it is unfortunate that there was no reaction from the authorities who had to react in such a way that the mentioned mass gathered by Russian embassy did not mix with their banners when laying wreaths.

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\(^{94}\) [Link](https://www.danas.rs/vesti/politika/ambasada-rusije-povorka-besmrtni-puk-u-beogradu-za-dan-pobede/)
The whole series of high-profile activities since the beginning of the aggression has been held with only one goal, to intensify propaganda activities in order to present Russia as a victim who is defending itself. So, the Russian House in Belgrade is organizing a manifestation of a humanitarian character entitled "Peaceful skies for children’s smiles" and adds "let’s be together when it’s hard". The organizer is again applying tactics of emotional manipulation, evoking memories of the bombing of Yugoslavia, calling for an alliance with the abuse of the memory of the citizens of Serbia.

The choreography at the rallies in support of the Russian Federation is very diverse. As unfounded as the story of the denazification of Ukraine is, so many various right-wing organizations of Nazi inclinations gather at manifestations of support for Russia in Serbia. Thus, a group of bikers who gathered in the Temple of St. Sava to express their support and fraternal ties with Russia on their jackets wear insignia with the Nazi symbol of the SS division "Tottenkopf". This shows the very close ideological closeness of the extreme ideas of the people and the soil only this time in the function of Russian foreign policy interests.

5. IDEOLOGICAL SUBVERSION IN SERBIAN SOCIETY – KEY RESEARCH FINDINGS

Ideological subversion is a term first defined by KGB in 1970. In KGB they invented “ideological subversion” as a tool of special warfare against civilians and administrative employee, and it is a part of doctrinaire approach and a propaganda tool. As a special warfare tool, their intention was to use it dominantly against Yugoslavia in the period after 1958. In that time, we had fifth colon in secret service, military, universities, among journalists. In that period, it was also defined as ideological propaganda and subversive activities with a goal to overthrow Tito and Yugoslavian regime, and integrate it to USSR and the eastern lager.

Today, situation is not so much different, but in this moment ideological subversion gets its full potential. In general, we can define it as a group of activities, measures and actions, which are led by individuals, groups and organizations with the purpose to create high social polarization and to bring to top opinions to large population that there is only one right direction of social development, international cooperation, a choice of allies and a way of life.

In the Republic of Serbia after dismantling of Yugoslavia and USSR, there is still proxies which act according to the strategy of ideological subversion. In the period after the Yugoslavian dismantling, the security system also collapsed, which was successfully
controlling attacks made by ideological subversion on Yugoslavia. In 1990 the Russian federation made a huge network according to the ideological subversion doctrine.

The main characteristic of the ideological subversion activity is that they are not coordinated from one source and they do not have monolith organization structure and coordination.

In Serbia, after the change of the regime in 2000 until 2016, we can identify the next proxies:
1. hooligan and team support groups;
2. low census political parties;
3. minor political movements;
4. cultural movements;
5. individuals as intellectuals, journalist and artists;

**Hooligans and team support groups**
In Serbia they are always attractive for young males. Their control on big crowd gives them monopoly of physical resources with priorities for organization of huge riots (i.e., Kosovo is Serbia in 2008), to organize transmitting of messages on stadiums, to influence young people as examples and families. Today, in Serbia operate less hooligan groups then in 1990 or 2000-2012 but major hooligan groups still have influence. Why we consider them as a part in the puzzle of “ideological subversion” is that they have “friendly connections” with parts of secret service and parts of police. Without them they cannot control the drug traffic market, and other criminal activities. This will be simple corruption, but in case where they act with ideological and political margins, they are actors of ideological subversion. And it is significant that all those groups are very strong for the “Russian-Serbian brotherhood”.

**Low Census political parties**
Serbian society is well known by the fact that in Serbia more then 200 political parties exist. In our analysis it is very important to identify those which are part of the ideological subversion network. Those minor political parties have a great reach of pro-Russian narratives, which is not connected with the basic support of voters. Their main characteristics are right-wing.

For all of them it is characteristic that they are supporting the Euro-Asian integration, the alliance with Russia, then goes China, Venezuela, Brazil (BRIKS) and similar. But what identifies them as an ideological subversion actor is above all the radar support by some parts of the institutions of the state.

**Minor political movements**
In this moment more than 5000 CSOs, movements and associations exist. In our analysis, we are focused on pro-Russian political movements. Russians are similar with the Serbian mentality and in Serbia a huge number of pro-Russian movements are created (to satisfy every Serbian who wants to be a leader) and on different levels they are maintaining contacts, depending on the strength of the movement. In the example of Balkan Cossack army, there is a connection with Cossack army from Russia, which gives promotions, establishes stations among Serbia, exchanges members for different courses and scholarships. Other organizations, which have different level of cooperation, not with official Kremlin, but they have contacts with Organizations from Russia which have the
official Kremlin support. The network of connection in case of NGOs is the next: NGO-Russian Embassy Belgrade - Fond of Strategic Culture (led in one moment by GRU Official Leonid Reshetnikov) - Gorchakov Fond - Primakov Fond - Domestic system subjects (from Serbia) - influence to youth and population. By this network of connection, we see that the structure is very well supported from Russia, but also from wild parts of the state institutions and we find elements of ideological subversion on field.

**Cultural movements**

Various cultural movements are established for promoting orthodox cultural ties. But behind that mask we have agitprop activities behind surface, i.e., Pan Slavic orthodox organizations had organized orthodox education travel to Bulgaria and Russia as well as indoctrination of members. Again, they have support from institutions mostly through cultural grants and local municipal grants.

**Individuals as intellectuals, journalists and artists**

The role of those individuals is to spread fake facts, fake news, fake history interpretation and to be a confident “source” from Kremlin and its structure, a kind of message transmitters.

The main strategy is that they possess some kind of authority among the general population, and people do not check their statements. This is a mechanism where people like to believe in facts which they like regardless of whether they are true or false.

**News portals and Media**

In hunt for better reach, the media use sensational headlines and emotional manipulations. Media literacy is a very big challenge. There is an urgent need for building media resilience towards the authoritarian influence.

**Modus operandi**

First of all, proxies of ideological subversion must have the support of agents of interest which are in public institutions. Support of proxies is on border between the official and non-official support. The first role of all proxies is to straighten antagonisms in the society of Serbia and then to create and spread rumors, fake news and fake facts. The third role is to maintain network for group for pressures in various parts of the social structure of the Serbian society. The fourth is to always be an “alternative” to the present government.

6. **CONCLUSION**

In times of global confrontation, active measures are widely deployed by the Russian Federation. In regions where Russia has, as they declare, strategic interests, the intensity of the active measures increased. By content analysis disinformation its nature did not change. Volume is increased with the presence of agents of influence which did not cover their positions any more. One day they are on Russian rallies, another day they are strongly advocating for Russia. The main narrative is that if Serbia imposes sanctions to Russia, their citizens will feel economical damage. Besides, all mainstream media have a strong pro-Russian narrative, often supported with the already dismantled disinformation. Newspapers also spread already dismantled Russian disinformation.

The key problem is the media literacy. The need for education of journalists to understand the impact of foreign policy motivated information operations. Source checking
is one of the key priorities. Another important thing when we analyze media is media independence and literacy towards authoritarian regimes. To build resilience against Arthurian influence is one of the key priorities of democracy states. Those activities must be a strategical task of the security institutions.

7. **BIBLIOGRAPHY**

13. NYE JR. JOSEPH S. *Soft Power and American Foreign Policy*, Volume 119, Issue 2 Summer 2004
21. Mikael Weissmann, Niklas Nilsson, and Bjorn Palmertz, Hybrid Threats and Hybrid Warfare: Time for a Comprehensive Approach?, RSIS Commentary, No. 094-14 June 2021, Singapore
22. The spillover of global misinformation into Serbia - the case of biological weapons, Center for Strategic Analysis, Serbia, 2022
23. Ilija Životić, Darko Obradović, In search of a conceptual definition of hybrid activities, Društveni odgovor, Centar za stratešku analizu, 2022, Beograd
IDEOLOGY OF MODERN WAHHABISM

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Abstract

Wahhabism represents an ideological and religious movement. It is the dominant Islamic movement in Saudi Arabia. The founder of this ideology is Muhammad Ibn Abd Al-Wahhab (1703-1792).

In the introductory part of this paper, the authors give an explanation of the historical paths of Wahhabism as a general Islamic doctrine. The main focus of the paper is on the basis of the ideology of wahhabism. This ideology starts with the Muslim brotherhood of Hassan el-Banna in 1928, through the Islamic ideological movements of Abul ala Maududi and Sayid Qutb and ends with the extremist Deobandi faith in South Asia. All of these Islamist movements established a strong presence in the Muslim world during the second half of the 20th century.

In the second part of the paper, the authors give a review on wahhabism ideology, as in its basis, wahhabism is not an officially recognized and approved Islamic religious direction. Having in mind that the main role of wahhabism is unification of Saudi Arabia, this religious direction has always been a broader subject of public attacks and criticism. However, the interest in wahhabism increased at the beginning of the 21st century, especially with the terrorist attacks in the USA on 11.09.2001. One of the first Islamic movements based on wahhabism was founded in Saudi Arabia, known as “Ikhwan”. This Islamic movement was represented by Bedouin tribes that were formed by Ibn Saud. Finally, having in mind the full spectrum of ideological and doctrinal steps of wahhabism in general, we must mention the influence of wahhabism towards the other Islamic movements, and also gave a clear vision of its widespread vision in global frames.

The ideology of wahhabism, according to the world views on radical Islam movements, represents a prototype ideology of some extreme and terrorist groups. The aim of this paper is to analyze the historical development and social role of the modern ideology of wahhabism towards other Islamic movements. All of the above mentioned will be analyzed through the comprehensive social changes that have taken place in the world over the last century.

Keywords: ideology, modern wahhabism, islamic movements, influence, terrorist groups
1. INTRODUCTION

Wahhabism can be characterized as a religious ideology and movement. Its ideologist was Muhammad Ibn Abd Al-Wahhab (1703-1792), who proposed the purification of Islam from what he considered to be novelty. Wahhabism is the dominant form of Islam in Saudi Arabia. Wahhabism is considered to adhere to the correct interpretation of the general Islamic doctrine (the concept of monotheism in Islam), the oneness and harmony of God, just like the majority of Muslims, but all of which are uniquely interpreted by al-Wahhab\(^95\). Wahhabism is a very specific phenomenon, which seeks to be recognized as a separate school\(^96\). Wahhabis are sometimes defined, especially by non-Muslims, as "extreme" or "conservative" Sunnis. In the literature, the terms Wahhabi and Salafi are often used interchangeably as synonyms, but Wahhabis are also considered a "special orientation within Salafism", an orientation that some consider ultraconservative and heretical\(^97\). For the Wahhabism followers, the term "Wahhabism" is a misnomer, even an offensive name for their efforts to revive fundamental Islamic beliefs and practices. Instead, they prefer either the term "Salafism" (someone who follows the path of the first Muslims, Salafis) or "muwahhid" (muwahhid is literally a monotheist, someone who believes and acknowledges the oneness of God)\(^98\).

According to many authors, the basic feature of Wahhabi ideology is normative consistency, which emphasizes the expansion and unity in the name of Islam as a reaction to the disunity that was characteristic of the Arabian Peninsula. Moreover, because of the right to rule and the rules by which al-Wahhab interprets Islam, opposition to Wahhabi rule is illegitimate, thus enabling the Al Saud dynasty, as the pinnacle of the Wahhabi movement in its time, to have the exclusive right to rule\(^99\).

However, focusing purely on the ideology of the Wahhabi movement, even in the context of the wider tribal political system, seems inadequate. "It is not enough to set up ideology alone ... it is also necessary to link it to the key context of social action, in which the elite actually persuades or forces to accept authority by manipulating effective political symbols"\(^100\). According to Muhammad ibn Abd al-Wahhab, in order to become a Muslim, one needs to acknowledge the oneness of God, fully accept the message of the Prophet Muhammad and act in accordance with it. Al-Wahhab therefore sees three aspects of Islam: submission, belief and proper behaviour\(^101\).

According to Al-Wahhab's vision of the relationship between religion and the state, Derek Hopwood\(^102\) believes that "In a state without power, religion is in danger and without the law and discipline, the state is a tyrannical organization." Therefore, the state exists to

reflect the unity of God and to obey his rules. There is an interesting parallel between Al-Wahhab's understanding of the state and his emphasis on religious beliefs, which forms the basis of behavior in the sense that the state becomes the primary means by which human actions can be dedicated to God\textsuperscript{103}.

Therefore, the authority of the ruler is legitimate only insofar as it implements Wahhabi beliefs and norms. In this regard, this is a fundamental reorientation of the conceptualization of authority, away from tribal norms and standards to those defined by Wahhabi beliefs. As long as the ruling group rules in the name of Islam (according to Al-Wahhab) and follows its rules, it is the duty of Muslims to obey the orders and prohibitions of the ruler\textsuperscript{104}. One should not oppose the ruler unless he transgresses the laws of God. According to al-Wahhab (Machiavellian) understanding, the means and the way in which power is acquired are largely irrelevant\textsuperscript{105}, as long as the ruler follows the normative order, according to his idea. The ulema (the educated class of Muslims, connoisseurs of Sharia) are the ones who define Orthodoxy in this scenario, and the Al-Saud dynasty has been associated with the ulama through the alliance of Muhammad ibn Abd al-Wahhab and Muhammad Ibn Saud since 1744, thus gaining legitimacy for the ruling dynasty, and opposition to the ruler becomes impossible\textsuperscript{106}.

In other words, because the right to rule is based on the implementation of Wahhabi thought and because the Al-Saud dynasty has committed itself to such a role, the opposition to them undermines the norms and values constructed by the Wahhabis and is therefore illegitimate. Moreover, in this context, the expansionist element of Wahhabism is becoming increasingly prominent, to the extent that the legitimacy of power is determined by the implementation of Wahhabism, and not by the means by which it is implemented. The goal of Wahhabism, simply put, is to create more followers\textsuperscript{107}. As such, the focus is on the final result, not the means. Therefore, it can be said that Al-Wahhab's conception of the state is nothing more than a spread of its interpretation of Islam and it is in complete harmony with his critique of the social and political context of the Arabian Peninsula.

2. HISTORY OF THE IDEOLOGY OF WAHHABISM

Starting from the agreement of 1744 between Al-Wahhab and the House of Saud, Wahhabism seems to have weakened in its influence in Saudi Arabia. The Al Saud dynasty seems to be somehow distancing from the Wahhabi establishment, pressed between the rigidity of Wahhabism, the state of the modern world and the presence of non-Muslim citizens in the country, especially the United States. Additionally, the emergence and strengthening of the "Islamic Liberals" group, made up of former Islamists and liberals, Sunnis and Shiites, who call for democratic change within Islam through the revision of the official Wahhabi religious doctrine as a great importance\textsuperscript{108}.

\textsuperscript{103} Beatty, A. The wahhabi tribe: an analysis of authority in the unification of the Arabian Peninsula, 1902-1932, Institute of Islamic Studies, McGill University, Montreal, 2003, 8-10.

\textsuperscript{104} Al-Azmeh, A., Wahhabite Polity in Arabia and the Gulf: From Traditional Society To Modern States, ed. Ian Netton, London, Croom Helm, 1986, 78-81.


\textsuperscript{106} Al-Azmeh, 1986, 87-90.


\textsuperscript{108} Lacroix, S., Between Islamists and Liberals: Saudi Arabia’s new Islamo-Liberal reformist trends, Middle East Journal 58, No.3, Summer 2004, 5-7.
In fact, there are more people who pay attention to political criticism than to criticism of Wahhabism (its political, social, and religious aspects). Although, looking back, some doctrinal aspects of Wahhabism have been attacked from time to time, it can be said that Wahhabism has long been a taboo subject in Saudi Arabia. Today's situation is a little different, so the criticism of Wahhabism comes from within, from the very ideological Wahhabi core.

Given the fact that Wahhabis are strongly opposed to the worship of anything other than Allah, it is not surprising that throughout the history of Wahhabism, its followers, in imitation of the Prophet Muhammad, have destroyed monuments and tombs that could become potential shrines. For example, in 1801 and 1802, they attacked the Shiite holy cities of Iraq, Karbala and Najaf, destroying the tomb of the Prophet Muhammad's grandson, Ali's son Hussein. This is one of the reasons why Shiites are so critical of Wahhabism. Additionally, in 1803 and 1804, the Wahhabis occupied the two holiest cities for Muslims, Mecca and Medina, and destroyed a number of various monuments, shrines and tombs. Among other things, the Wahhabis destroyed the shrine that was built around the grave of Muhammad's daughter, Fatima. In 1998, the Wahhabis ransacked the tomb of Muhammad's mother, and all of their actions were met with harsh criticism, outcry and opposition throughout the Muslim world.

There are many authors who believe that Wahhabi ideology greatly contributes to the creation of militant and political Islam, but the impact of Wahhabism on other Islamic movements will be discussed in one of the following chapters. Suffice it to mention here the attitude and thinking of Feldman, who distinguishes between "deeply conservative" Wahhabis and the so-called "Followers of political Islam in the 1980s and 1990s" (including other Islamic movements) considered Wahhabis to oppose resistance to Muslim governments and the assassination of Muslim rulers, believing that "the decision to start jihad should brought by the ruler, not the individual believer."

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109 Muhyidin, Triyono, and Mira Novana Ardani. Pioneer Manuscript in Refuting Wahhabism: The Perspective of Kiai Dimyati bin Abdul Karim as-Surakarta as a Basis for Islamic Moderation, JMSNI (Journal of Maritime Studies and National Integration), Faculty of Law, Universitas Diponegoro – Indonesia DOI: 6 (1) 2022: 70-71. https://doi.org/10.14710/jmsni.v6i1.14425  
110 Muhyidin, Triyono, and Mira Novana Ardani. Pioneer Manuscript in Refuting Wahhabism: The Perspective of Kiai Dimyati bin Abdul Karim as-Surakarta as a Basis for Islamic Moderation, JMSNI (Journal of Maritime Studies and National Integration), Faculty of Law, Universitas Diponegoro – Indonesia DOI: 6 (1) 2022: 72-74. https://doi.org/10.14710/jmsni.v6i1.14425  
Figure 1. Wahhabism against colonialism in the Gulf in the XIX-th century

According to many, the gap between the House of Saud and the Wahhabi establishment dates back to before the end of the 20th century. After the Iraqi invasion on Kuwait in 1990, the Saudi ruler allowed the presence of American forces on the territory of Saudi Arabia, ostensibly to defend the country from a possible invasion by Iraq. Their presence in the "cradle of Islam" is in stark contrast to the entire Wahhabi ideology, yet the Wahhabi establishment has been forced by the Al Saud dynasty to issue a fatwa legalizing the presence of foreign troops in Saudi Arabia. This move by the Wahhabi ulama was met with sharp criticism by the public and especially by other Islamic movements (Muslim Brotherhood and Jamaat-e-Islami), who believe that the Wahhabi establishment abandons the basic principles of the ideology they share, only to satisfy it.

"The House of Saud." Although factions have emerged in modern Wahhabism lately, here lies the fundamental difference between radical Islamic movements and the Wahhabi ideology: Wahhabis believe that as long as the ruler rules according to Sharia, opposition is illegitimate. This is the period of the appearance of the first dissidents or the so-called "Sheikhs of the awakening", who call for reforms to return to the "righteous path". According to them, the biggest threat to Islam comes from traitors to culture from within, that is, Muslims who are supporters of liberal and secular ideas. According to them, believers must fight these agents of cultural imperialism.

Dissidents are attacking the Wahhabi leadership in Saudi Arabia, their insistence on ritual accuracy, while Muslims are suffering under foreign occupation in Palestine, Iraq, Kashmir and Chechnya. According to Commins, this is in fact the main difference between Wahhabism and modern Islamic movements.

In the 1990s, the religious ideas offered more than one product: dissidents advocated for efficiency, equality, broader political participation, and greater rulers' concern for the people; these demands reflected modern political demands and concerns of Islamic

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revivalists. This became apparent after the events of 1990-1991 (Iraq's invasion of Kuwait), when the ruling dynasty approved the presence of foreign forces on the territory of Saudi Arabia. Part of the Wahhabi apparatus opposes the presence of foreigners (infidels according to their vocabulary) in the cradle of Islam. Given the fact that the official Wahhabi establishment stood up for the dynasty, they were also branded as corrupt.

However, in an attempt to summarize, it can be said that there are various opinions about the ideology of Wahhabism, but many of them are critical. Algar considers the Wahhabis, in the context of Islamic thought, to be "intellectually marginalized." According to him, if they were not close to Mecca and Medina and if they did not have the money from Saudi oil, "Wahhabism could go down in history as a marginal and short-lived sectarian movement." The author states that the Wahhabis call themselves muwahhidun, "declarators / supporters / defenders of the unity of God." He therefore concludes: the basis of Islam implies dismissing other Muslims, staining them for not performing their duties.

Having in mind this, it seems that the hegemony and authority of Wahhabism in Saudi Arabia is not at the highest level. Criticism coming from within, from Saudi Arabia, refers to the social manifestation of Wahhabism (religious police, ban on women driving), pointing to the link between Wahhabism and violence in the country, criticism at the expense of the doctrinal rigidity of Wahhabism, i.e., tendency to imitate Al-Wahhab and Ibn Taimiya and perhaps the most important criticism is that of the intolerance of Wahhabi ideology. The Saudi government has been driven by much criticism in the recent years, embarked on concrete social and religious reforms. An obvious move in that direction was the organization of the First Conference on National Dialogue in June 2003, which was attended by thirty ulama of different faiths represented in the country (not only Wahhabis but also non-Wahhabi Sunnis, Sufis, Ismailis, Shiites). Several conclusions emerge from this conference, some of which represent a real blow to Wahhabism, such as the recognition of individual and confessional diversity within the Saudi nation, which is at odds with traditional Wahhabi exclusivism. In addition, none of the officials of the Wahhabi establishment was invited to attend the conference, which obviously speaks of the possible readiness of the Saudi government to marginalize them.

The situation outside the borders of Saudi Arabia is very different. The Saudi government is allocating huge sums of money to spread the Wahhabi message. It is an indisputable fact that the Saudis had a special opportunity to influence and spread the Wahhabi message in the 1970s, with the drastic increase in oil prices. The Saudi government has begun spending tens of billions of dollars across the Islamic world to promote Wahhabism, or "petro-Islam."

Al-Fadl believes that the message of Wahhabism to other Muslims, that is, the possibility of propagating Wahhabi ideology, comes from, among other things:

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117 Hitman, Gadi. Saudi Arabia's Wahhabism and Nationalism: The Evolution of Wataniyya into Qawmiyya. JO - Digest of Middle East Studies, Ariel University, 2018, 9-12.
119 Lacroix, S., Between Islamists and Liberals: Saudi Arabia’s new Islamo-Liberal reformist trends, Middle East Journal 58, No.3, Summer 2004, 3-5.
Arab nationalism, which intensified after the Wahhabi invasion of the Ottoman Empire;
The control of Mecca and Medina, which gives the Wahhabis the opportunity to exert great influence on Muslim culture and thinking;\textsuperscript{121}
The Oil production which after 1975 provided them with billions of dollars in revenue and allowed them to spread the Wahhabi interpretation of Islam\textsuperscript{122}.

According to Schwartz, Wahhabism is very influential in Qatar, Kuwait and the United Arab Emirates, and has many supporters in Yemen (Stephen Schwartz on Wahhabism on National Review Online). In the above interview, Schwartz thinks that outside the Peninsula, Wahhabism is generally unpopular, but whenever there are problems somewhere, Wahhabism appears. According to him, Hamas in Israel is pure Wahhabism, and forms of neo-Wahhabism or Wahhabi ideology are powerful in Egypt (Muslim Brotherhood) and Pakistan (Jamaat-e-Islami). In these countries, neo-Wahhabis are the initiators of attacks on other Muslims as well as non-Muslims. Wahhabi infiltration continues in Chechnya and Kashmir, and although the number of supporters is small, Wahhabism manages to influence Nigeria, Uzbekistan, Indonesia and the Philippines. Schwartz believes that the Wahhabi infiltration in Bosnia has failed (this is debatable and will be discussed in more detail in the next chapter), and the same goes for Kosovo. According to him, Albanian Muslims in Macedonia and Albania do not like Wahhabism, which goes in the direction of confirming some of the research questions (they consider it too distant and different from their way of practicing Islam).

The Deobandi movement, which has a very similar ideology to the Wahhabi movement, is the basis of the Taliban movement in Afghanistan. As for the immigrant Muslim communities, Wahhabism is present in France, but is weakened by the Muslims of Algeria, who did not allow the penetration of the ideology in their home country. According to Schwartz, Britain has aggressive Wahhabi and neo-Wahhabi elements, but in reality has little support from local Muslims. However, a 2007 study in Britain found Wahhabi literature in at least a quarter of Britain's mosques during the two years of the study.\textsuperscript{123} All of this literature was published and distributed by agencies affiliated with the Government of Saudi Arabia. Recommendations have been found in the literature that homosexuals should be burned, stoned, or thrown from mountains or tall buildings and then re-stoned to make sure they are dead. Almost half of the literature was in English, aimed at young British Muslims. The same article states that in 2007, reporters managed to find literature in British mosques, where women were portrayed as intelligently inferior and that they needed to be beaten if they did not follow the Islamic dress code, and children over 10 should be scolded if they do not pray (characteristic of other Islamic radical orthodox concepts, ideologies, organizations and groups). The author of the article states that "the Saudis spend between two and three billion dollars for religious purposes outside the country, money that is spent on 1,500 mosques, 210 Islamic centers, but also on a dozen Muslim academies and schools."

Another tactics used by Wahhabis in Britain is to flood the market with cheap Wahhabi literature, 5 to 10 times cheaper, for English-speaking Muslims. The article states that the

\textsuperscript{121} Блажевски Иван, Грижев Александар. Морал, Религија, Фундаментализам, Битола, 2018, 137-139. ISBN 978-619-7246-08-7
Saudis have reserved for foreigners 85% of the seats at the Islamic University in Medina, where there are more than 5,000 students from 139 different countries. All of these students, after embracing the Wahhabi ideology, return to their home countries and continue to spread the same ideology.\footnote{Algar, H., Wahhabism: A Critical Essay, Oneonta, NY, Islamic Publications International, 2002, 12-15.}

Freedom House report from 2005 also found that a large number of mosques in the United States had found literature from agencies affiliated with the Saudi government, which also called for violence against infidels.\footnote{Freedom House, Saudi publications on hate ideology invade American mosques, Center for religious freedom, 2005, 3-5.} Similar findings were made in a report on Saudi funding for radical Islamic groups in Australia.\footnote{Bendle, F.M., Secret Saudi funding of radical Islamic groups in Australia. National observer: Council for the national interest, Melbourne, No.72, Autumn 2007, available on: \url{http://www.nationalobserver.net/pdf/2007_secret_saudi_funding_of_radical_islamic_groups_in_australia.pdf}} In this direction, the Wahhabis and their sponsors use tactics, which also speaks to the fact that even in US federal prisons, “it is difficult to find authentic Islamic books because Wahhabism does not dominate in the prisons.”\footnote{Foundation for defense of democracies, Islamic religious groups jockey for prison access as concerns over inmate terrorism grow, доступно на \url{http://www.defenddemocracy.org/media-hit/islamic-religious-groups-jockey-for-prison-access-as-concerns-over-inmate-t/} (30.10.2017)}

The Saudis and most of the major Saudi foundations are directly sponsors of terrorist activities in places such as: Pakistan, Afghanistan, Philippines, Indonesia, Chechnya and Bosnia.\footnote{Alexiev, A., Wahhabism: State-sponsored extremism worldwide, Testimony in front of the U.S. Senate subcommittee on terrorism, technology and homeland security, June 26, 2003, available on: \url{http://www.au.af.mil/au/awc/awcgate/congress/sc062603_alexiev.pdf}, 5-7.} One of the priorities of the ideology of Wahhabi is the spread of the Muslim community in Western non-Muslim societies. Efforts are being made to secure Wahhabi dominance in the existing Muslim establishment, mainly by taking over old ones or building new Wahhabi mosques, Islamic centers and educational institutions. Usually, according to Aleksiev, the template for taking over mosques or other institutions is as follows: a Saudi representative offers the community sponsorship of the construction of a new mosque, which usually includes an Islamic school. Upon completion of the project, financial assistance is offered to the community, which would supposedly be used for maintenance, thus making the community dependent on Saudi generosity. The Saudis install their own board members, bring Wahhabi imams and free Wahhabi literature, and change the program and adapt it to the Wahhabi principles. Furthermore, guest lecturers are regularly brought in, who have extremist views and usually lead Friday prayers, thus further radicalizing the members. The most promising candidates are selected for further religious education and indoctrination in Saudi Arabia, and then they return as Wahhabi missionaries, thus completing the cycle.\footnote{Alexiev, A., Wahhabism: State-sponsored extremism worldwide, Testimony in front of the U.S. Senate subcommittee on terrorism, technology and homeland security, June 26, 2003, available on: \url{http://www.au.af.mil/au/awc/awcgate/congress/sc062603_alexiev.pdf}, 5-8.}

The seizure of the mosque offers other benefits besides propagating the Wahhabi version of Islam. Among other things, it gives the imam and the other members of the boards the opportunity to raise money and then with their discretion to dispose this funds to various extremist organizations and groups.
CONCLUSION

The Wahhabi movement and ideology today is perceived by many academics authors as too aggressive and expansionist ideology, which calls for a return to the fundamentals of Islam, which in many aspects differs from traditional Islam practiced in many parts of the world. Wahhabi ideology is considered by many authors as a kind of threat to traditional Islam and therefore explanation will be given below.

As mentioned earlier, interest in Wahhabism increased dramatically in the late 20th and early 21st centuries, especially after the terrorist attacks of 11th September 2001. Although Islamic extremism as an ideology is not a new phenomenon, it was not institutionalized until the mid-18th century, when al-Wahhab’s teachings were accepted by Al Saud as the state religion.130

Today, the Wahhabi ideology, with its doctrinal beliefs and practices, is characterized as overly hostile to the values and interests of the majority of Muslims (especially Sufism and Shi‘ism), and even more so to non-Muslims. Wahhabis continue to believe in and propagate violence and jihad as a pillar of the Islamic values, rigid conformism to religious practice, institutional repression of women, and a complete rejection of modernity, secularism, and democracy. According to them, it is not an exaggeration to say that Wahhabism has become a prototype of the ideology of many extremist and terrorist groups, even for those who despise the Al Saud dynasty.

Stephen Schwartz, one of the world Wahhabism experts, agrees and believes that Wahhabism and Pakistani Islamists, the so-called Islamic Society or Jamaat-e-Islami, is the main source of Islamic extremist violence in the world today. Speaking of contemporary Islamic renewal movements, Commins, distinguishes between modern Salafists / Wahhabis and those from the time of the Ottoman Empire.131

According to him, the early Salafis / Wahhabis saw the original sources of Islam as a way to combat ritual innovation, while modern Salafists / Wahhabis share common aspirations to establish correct types of ritual practice, but not with modern dimensions: their imperative is the rejection of secular regimes and replacing them with Sharia-based Islamic states. However, modern Wahhabism seems to be in a paradoxical situation: while the spread of Wahhabi ideology beyond the borders of Saudi Arabia is on a huge scale, the situation in the country does not seem to be in favor of the Wahhabi establishment.

From all of the above mentioned, it can be summarized that Wahhabism is the ideology of the socio-political movement that first conquered the Arabian Peninsula. Three aspects are particularly important in order to explain the influence that Wahhabism has on the construction of authority by the dynasty. First, Wahhabism is by nature an expansionist ideology, to the extent that its goal is the elimination or conversion of all perceptual enemies, including non-Muslim non-Wahhabis (mentioned above for their view of the goal). Because of their desire to implement their doctrines, Wahhabism ‘targeted’ the population it came in contact with, imposing its normative principles. Second, by regulating public behavior according to its principles, that is, by disciplining social space, the imposition of Wahhabi ideology produced an increase in the authority of the dynasty in Saudi Arabia (Ibn Saud). Moreover, by making the implementation of Wahhabism a declared goal of unification efforts, Ibn Saud’s cultural authority, in the form of leading the Wahhabi movement, became politicized. The third aspect of Wahhabism is the monopoly of positions of authority that it

bestows on the Ibn Saud family. According to Wahhabi beliefs, the legitimacy of political authority was directly proportional to the extent to which Wahhabism was practiced and followed. As long as the Al Saud family remained authorities and defenders of the Wahhabi faith, no one could legitimately oppose them. Therefore, as an ideology and in terms of the construction of political authority, Wahhabism can be identified as expansive, normative and exclusive ideological movement and religious direction\textsuperscript{132}. It is an indisputable fact that the ideology of Wahhabism fits into the framework and derives from Sunni Islam, however, the same ideology differs in many ways from any of the four officially recognized Islamic schools and directions. Wahhabism is a conservative branch within Islam. As mentioned, Wahhabism is not really a separate recognized school, but can be best described as "a religious movement among fundamentalist believers, with an aspiration to return to the primordial fundamental sources\textsuperscript{133}.

Muslim critics have seen Wahhabism as a deviant sectarian movement started by an ambitious but misguided religious leader from Arabia who spread a heretical movement. Muslims strongly oppose this teaching, because the basic idea of Al-Wahhab's teaching is to determine whether a person is a Muslim or an infidel. As a controversial figure in the history of Islamic thought, Al-Wahhab's theology and personality have been attacked from many positions\textsuperscript{134}.

In the history of Islam, the term infidel was seldom used for Muslims, but was reserved for those who did not accept the Qur'an and the Prophet Muhammad as a holy authority. Muslims believe in one God and this belief is the basic pillar of Islam. The statement of faith or shahada, says, "There is no god but Allah and Muhammad is the Messenger of Allah." Throughout history, most Muslims have agreed that a shahada statement makes someone a Muslim. One may not perform the other obligatory rituals regularly (the pillars of Islam - the five daily prayers, fasting, giving alms, pilgrimage), which does not strictly adhere to Islamic ethnic and moral standards, but as long as one believes that Allah is one and that Muhammad is his messenger, he is only a sinner, not an unbeliever.

Al-Wahhab's position on the issue was different. He considered that the criterion for declaring oneself a Muslim or an infidel was proper worship, as an expression of belief in one God. However, disapproval and opposition to Al-Wahhab's teachings were present from the very beginning. Among the first to oppose were his brother and his father, well-versed in Islam. Although it played an important role in the unification of Saudi Arabia, Wahhabism has been the target of constant attacks and criticism\textsuperscript{135}.

In recent years, criticism and attacks on Wahhabis have grown louder from within the cradle of Wahhabism - Saudi Arabia. Young people, influenced by the teachings of members and followers of the Muslim Brotherhood, are beginning to lose faith and loyalty to the foundations of Wahhabi ideology. Wahhabism loses exclusive control of public religious discourse\textsuperscript{136}, where "Wahhabis are trying to turn the Prophet away from Islam". Stephen Schwartz is actually one of the biggest critics of the Wahhabi ideology, although he

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\textsuperscript{134} Beatty, A. The Wahhabi tribe: an analysis of authority in the unification of the Arabian Peninsula, 1902-1932, Institute of Islamic Studies, McGill University, Montreal, 2003, 35-37.


himself is a Muslim, has accepted Islam and is a follower of Sufism. According to him, Wahhabism is an extremist, puritanical and violent movement. Wahhabism has always viewed Shia Muslims genocidally, as non-Muslims to be exterminated. Also, Wahhabism has always attacked traditional Islam, but also Sufism; Wahhabism and neo-wahhabism, according to him, are the main source of Islamic extremism and violence in the world today: Wahhabism is an extreme, ultra-radical form of Islamism, which is completely subsidized by the Saudi regime, through oil revenues.

References:

15. Foundation for defense of democracies, Islamic religious groups jockey for prison access as concerns over inmate terrorism grow, avaible on: http://www.defenddemocracy.org/media-hit/islamic-religious-groups-jockey-for-prison-access-as-concerns-over-inmate-t/ (30.10.2017)


THE INFLUENCE OF THE PROTOCOL THROUGH THE PRISM OF POLICY

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Abstract

The protocol is a combination of good behavior and logical reasoning, with one basic goal – efficient and effective communication between the stakeholders in diplomacy and politics. Considering that the protocol is both a science and an art, even the smallest deviations from the established rules and procedures can be perceived as sending a non-verbal message that has a political connotation and can seriously affect the reputation of the state in the international relations. The protocol is the hidden “conductor” which enables the “concert” to go smoothly, which, on the other hand, indicates that every mistake, every shortcoming or every intentional deviation is public and visible. But even after determining the deviation from what is considered an established practice, the question of whether it is an unintentional omission or an intentional transmission of a political message remains, and it is very difficult to find an adequate and true answer to this question. In this paper, apart from the communication aspect of conveying messages, the subject of analysis are also more practical examples that burdened international politics in the past period.

Key words: protocol, (un)intentional protocol errors, politics, international relations

1. THE PROTOCOL AND ETIQUETTE: BASICS

The Protocol is a set of rules which mandate good behavior in official life and at ceremonies involving entire governments and nations, as well as their representatives. It is a recognized system of international politeness (Thompson, 2001). It is, in fact, the simplest definition of protocol, which is basically a set of rules that should be applied in state and diplomatic ceremonies and official relations. The basis of the manners which are an integral part of the protocol is the etiquette, which derives from the customs, from the practice and from the authorities. Etiquette enables the preservation of respect for others and is accepted as correct behavior in the process of interpersonal interaction.

If viewed from a historical perspective, the protocol has indeed played a significant role in the development of the international relations. The protocol took its first form in ancient Egypt, through the “Instructions of Ptahhotep” (Donaldson, 1990), while as a science it experienced its renaissance in the 19th century. Its influence is particularly clear today, when, given technological progress and the development of communications, protocol and protocol practice are more visible and amenable to analysis than at any time before in the human history.

After all, it also requires a clear organization and implementation of the activities related to the protocol, with which the state will be presented as a modern, contemporary, organized society that lives Western values. That is why investing in protocol capacities and capabilities, the constant upgrading of protocol specialists, as well as creating conditions for
the work of organizational units dedicated to protocol at the highest state institutions, must be the first priority for every management.

2. PUBLIC COMMUNICATION AND PROTOCOL

The importance of public communication of every single elected official, today, if we take into account the speed of communications and advanced technologies, we can summarize it through one sentence of Warren Buffet – “It takes 20 years to build a reputation and only five minutes to ruin it. If you think about that, you would do things differently.”

And, indeed, today, the communication component of political life is more important than ever before, and this, in turn, is a reason for a closer look at the components which are an integral part of communication between people.

De facto, communication is composed of two basic components: verbal communication (Gilbert, 2002) with all its accompanying elements, and non-verbal communication, i.e., metacommunication (Paise, 2004). The accompanying elements of verbal communication - the tonality and pace of verbal transmission, can be singled out as a third pillar of communication, which is also called paraverbal communication.

Public figures and politicians, according to communication theory, are the sender of the message, political information (sent verbally and non-verbally) is the message, while the key audience (which varies in relation to the defined goal) is the recipient of the message. The fulfillment of the goal is also the main reason why public figures should (not) adhere to the established rules and procedures of the protocol, of course depending on the desired outcome.

Basically, the political structure should always convey its message in a credible way, encouraging the belief of others and building trust with key audiences – which is the basis for achieving political goals, especially in periods of election or re-election of political functions.

This can be very easily mirrored in the international relations where verbal and non-verbal communication go hand in hand and where they do not always move in the same direction. On the contrary, especially in international politics, words say one thing, but non-verbal gestures show a completely different behavior. In fact, it is even stronger if you consider that non-verbal communication represents 60-70 percent of communication, including eye movement, posture, gestures, kinesia (body movement), facial expression, touch, distance, etc. (Kurblija, Slavik, 2001).

The percentages of which type of communication dominates in the communication process vary, and can range as high as 93 percent of non-verbal communication and only seven percent of verbal communication, which clearly indicates that regardless of research, the common conclusion is that non-verbal communication shapes the communication process, and the verbal only complements it. In the international relations, it is also an important segment, because non-verbal communication can be significantly strengthened if the verbal segment, namely the words expressed by a certain official person, are in the same direction as the non-verbal components which are part of his or her communication package.

Taking into account that non-verbal communication takes the lead in the communication process, the first priority for public figures is the rules of good behavior, i.e., good manners, which are also part of the protocol. It is important to note that the protocol is apolitical, which means that the same rules apply regardless of whether a politician has a left or right orientation, belongs to the structure that manages the state or is in the opposition. Regardless of it, politicians must build an image as credible, competent, rational, calm and
clear-headed individuals with whom people can identify and trust to represent their interests at home and in the international environment in a certain period of time. (Deutsch, 1958).

The elements of non-verbal communication include:

- **Eye contact**: it is the primary non-verbal element that leaves a strong emotional impression. The absence of this element in the communication process usually leads to a termination of the communication.

- **Mimicry and facial expression**: these are non-verbal elements which are deeply connected to our personal feelings and can only be partially controlled. A strong emotional impact automates facial expressions, i.e., turns them into a reflex that takes place without personal intention (such as blushing).

- **Gestures and hand movements**: Hand movements are associated with multiple states of mind and must therefore be taken in the context of other segments of non-verbal and verbal communication. On its own, for example, the touch of the palms during communication can mean both stress and boredom.

### 3. THE INFLUENCE OF THE PROTOCOL IN POLITICS

The security and stability in and of a country does not depend only on the evident, so-called “hard power”, but also on a more subtle form of power, i.e., defensive diplomacy, which, in turn, is connected to the rules and procedures of the protocol, as an integral part of diplomatic practice. Therefore, it is of great importance to make some analysis of the deviations from the protocol rules and procedures and to make a proper classification of any inconsistency whether it is intentional or accidental. Mistakes in protocol, although (perhaps) subject to insufficient knowledge of practices on the part of persons in charge of protocol activities, can cause political scandals and even impatience at state level.

The line between sending a political message versus a genuine error in protocol is a thin one indeed. After all, each of the potential mistakes, persons who are not skilled in the field of defense relations or protocol, can perceive them in one way or another, and this can lead to unwanted consequences, at each and even international level. The interrelationship between the protocol, defense diplomacy and security tells us that if just one detail of these three components is misperformed or misperceived, it affects the rest of the components as well. A poorly organized protocol, regardless of whether it is intentional or not, can mean ineffective defense diplomacy and even a reduction in security.

#### 3.1. Protocol mistakes in diplomacy

Protocol mistakes can be found at any event, even at what are considered high-profile events staffed by a large number of professionals.

The past few years have been extremely hectic from a protocol point of view: a large number of visits, important events, large and complex organizations. In terms of protocol shortcomings, we remember the visit of the then Austrian Chancellor, Sebastian Kurz, on September 7, 2018, when the wrong Austrian flag was flown on the plateau in front of the Government, during the welcome and singing of the Macedonian and Austrian national anthems. That mistake can very easily send several messages – the Austrian state is not of great importance for North Macedonia, or, on the other hand, North Macedonia is a country without professional staff in such an important area as protocol.

The same happens in other countries and other protocol services. On April 14, 2014, the President and Minister of Foreign Affairs of Switzerland, Didier Burkhalter, visited Ukraine, when during his first meeting with the acting Prime Minister of Ukraine, Arseniy
Yatsenyuk, i.e., during their handshake, in the background, instead of the Swiss flag, stood the flag of Norway.

Another mistake of the Macedonian diplomatic protocol, again in connection between the protocol of the Ministry of Foreign Affairs and that of the Ministry of Defense, is the mistake during the arrival of the Secretary of Defense of the United States at Skopje International Airport on September 18, 2018. During the preparation of the short military ceremony, which is intended to show respect to the distinguished guest from the United States of America, several professional soldiers of the Army of the Republic of North Macedonia blocked the path of the Secretary of Defense, Mattis, by sweeping the red carpet. The sensational images of this important event had the potential to be reinterpreted as an example of the dysfunctionality of the state and, accordingly, the ineffectiveness of the Army.

The facts from the internal procedures for determining the real picture say that it is not a question of deliberate disregard of the protocol rules, which are especially strict in the second case with the high-ranking American guest (primarily the entry of the leader of the protocol team into the plane, followed by the exit of the distinguished guest), but for a classic and plastic example of non-coordination and insufficient cooperation of protocol persons from different institutions. That is, in the first case we are talking about an inadequate check during the purchase of the flag (which was registered as an Austrian flag and kept as an Austrian flag), and in the second case it is partly the fault of the guest who did not sufficiently take into account the relevant protocol rules and procedures.

There are such examples in the nearest neighborhood. An example of how much a protocol mistake can stir up spirits in world politics is the gaffe with the seating of Kosovo President Hashim Thaci at the celebration on the occasion of the 100th anniversary of the First World War. The wrong place to sit for the Kosovo president has so strongly affected interstate relations that the ambassador of France in Belgrade, Frédéric Mondoloni, issued a formal apology to the president of Serbia, Aleksandar Vučić, and to the Serbian people. The apology which says: “...we are very close to Serbia. In the First World War, Serbia lost almost a third of its population, 62 percent of the male population, and France will not forget that” indicates that this protocol mistake still left a mark on the relationship between Serbia and France. The French ambassador goes so far as to say “...I am sad because we should have celebrated our common victory, and that in view of the announced visit of President Macron to Serbia. This action in some way spoiled it all.” This is the most evident example of the stain that a seemingly benign event can cause.

After the scandal with the seating arrangement of the ceremony in Paris on the occasion of the Day of Exemplary in the First World War, the President of Kosovo, Hashim Thaci, was in the foreground at the Peace Forum, where the same protocol mistake was repeated. Namely, Thaci is sitting right behind the leaders of the countries which were the main players in the First World War – France, Germany and Russia.

Worth noting is the comment of the Serbian President Aleksandar Vučić, which most plastically shows how much such a protocol gaffe (or not!) can stir up geopolitical spirits: “You can imagine what someone thought when they put Thaci next to Putin. Thaci came behind Putin’s back and offered him a hand. When Putin realized who he was, he turned to others,” Vučić told reporters at the event.

The protocols of major sporting events can also have an impact on the way politics are perceived. Vladimir Putin, Emmanuel Macron and Kolinda Grabar - Kitarović, in one place – the final of the World Cup in football, organized by Russia, played by the national teams of France and Croatia. The World Cup is a global event taking place every four years
and always receives a lot of attention around the world. The significance of this event can be seen through the explosion of media attention for Croatian President Grabar-Kitarović who, as an experienced former diplomat, used it by all means in the presentation of her country. What was really interesting to see was not only the match, but also the minutes after the match when in really heavy rain, the security and protocol people had only one umbrella, and that only for the Russian president, Putin. From a protocol point of view, this shows a serious flaw in the organization, but from another point of view, this event is perhaps the best moment to show strength and power, to humiliate the “enemy” and to show the opinion of the leader of the “other side”. This is an example of how one likely protocol gaffe, one bad judgment and lack of reaction, can leave open questions about the relationship between the two European powers France and Russia.

The list of diplomatic gaffes and mistakes, which are assumed not to be related to the intentional transmission of a certain political message, is really long. Practitioners in the field of defense diplomacy and protocol understand that every element of the protocol, every detail can have repercussions on political developments and therefore, simply put, mistakes and shortcomings in the implementation of the protocol are not allowed. As a part of these, presumably, unintentional mistakes can be listed – the Montenegrin Prime Minister Igor Luksic’s greeting to Sweden, on the occasion of the Day of Swedish Statehood, in which success and prosperity of Denmark are wished; the hug of the former first lady of the United States, Michelle Obama, with the Queen of England Elizabeth II (with which, according to the protocol, any touch is prohibited); the inappropriate place for the presidents of Albania, Serbia, Croatia and Montenegro to sit in the Plenary Hall of our Assembly during the inauguration of the former president, Gjorge Ivanov; the white suit of a Macedonian VIP-representative at the commemoration for the Polish President Lech Kaczynski... (Smiljanov, 2021).

3.2. When a protocol "gaffe" is a way to convey a political message

In 2010, Israel humiliated the Turkish ambassador. January 12 is the day when an Israeli official, through a protocol mistake, let the whole world, especially the Arab world, know what his opinion is about Turkey. Namely, at a meeting in the Israeli Ministry of Foreign Affairs between the Deputy Minister of Foreign Affairs, Daniel Ayalon, and the Turkish Ambassador to Israel, Ahmet Oguz Çelikol, the interlocutors were placed in seats with an evident height difference. The reason is that Turkish TV series continue to portray Israeli agents as brutal. After all, it was the reason why Deputy Minister Ayalon called the Turkish ambassador to express a protest about the TV program in which Israeli agents kidnap children and shoot adults. Just one day later, on January 13, there was an express apology from the Israeli side, because the ambassador was placed on a lower chair. The Turkish ambassador and Turkish authorities expressed open outrage for the humiliation of their special envoy. Namely, in a short ultimatum to Israel sent a day after the incident, Ankara asked for an apology for what it described as “Ayalon's humiliating behavior towards their ambassador on Monday.” Headlines in Turkish newspapers reflected that fury: Insolence, Vatan newspaper reported, while Cumhuriyet reported: “Ties with Israel are deteriorating.” Sabah distanced itself with “evil conspiracy”, while, on the other hand, the pro-Islamic newspaper Yeni Safak reacted furiously: “Vile and immoral.” Prime Minister Benjamin Netanyahu's media relations office later issued a statement saying, in part, “the protest delivered to the Turkish ambassador was essentially correct, but should have been conveyed in a conventional diplomatic manner.” Ayalon himself issued a statement, saying “it is not
my style to show disrespect to ambassadors and in the future I will explain my position in a diplomatically acceptable way” (Smiljanov, 2021).

3.3. The recent “gaffes” in international relations

In recent history, the so-called “couch scandal” when, during a visit to the Republic of Turkey, the President of the European Commission, Ursula von der Leyen, was “surprised” that, unlike the President of the European Council, Charles Michel, she was not given a chair next to the Turkish President Erdogan and had to sit on a couch, especially considering that von der Leyen and Michel have the same protocol rank and must be treated in the same way.

This case gained additional weight if you take into account the fact that Von der Leyen is a woman and that the attitude of the Turkish president was considered a disrespectful attitude that is “absolutely unacceptable” in the European Union.

On the other side of the Atlantic, things were not perfect either. Namely, an already world-famous case is the refusal to shake hands by the former US President Donald Trump, during the official visit of the now former German Chancellor Angela Merkel to the White House. On March 17, 2017, the two leaders had their first official meeting at the White House, and after the welcoming ceremony, Trump and Merkel had a brief conversation with reporters. The US president, Donald Trump, refused to shake hands with the German Chancellor Angela Merkel after a private conversation. Although he had previously warmly welcomed Chancellor Merkel in front of the White House, when they shook hands, Trump in the Oval Office did not respond to the request of photojournalists and videographers to shake hands with his guest. The conversation, which lasted 15 minutes, was evaluated by the two as “good”, and then journalists and cameramen were called. When the cameramen started chanting, “Handshake, handshake please,” Trump did not react. Then Merkel tried to snap out a handshake, but Trump did not even react to that. “Shall we offer a hand to each other,” Merkel asked in English. But Trump just smiled at the cameras and looked straight ahead as if he was not listening to Merkel.

Just two weeks before the Russian invasion of Ukraine, during the visit of the British Foreign Secretary Liz Truss to Moscow, another protocol “gaffe” can be seen, indicating strong impatience and sending a harsh political message from one country to another. Namely, after arriving at the Moscow airport, Truss was not greeted by any Russian diplomat, and later, when the procession with Minister Truss arrived at the Russian Ministry of Foreign Affairs, she was not allowed to get out of the car, i.e., they were told to park down the street and turn back. Additionally, at a press conference after the meeting, Russian Foreign Minister Sergey Lavrov said that the British Foreign Secretary and her diplomats came to the meeting “unprepared” and that it was “like talking to a deaf person.” For her part, the British foreign minister emphasized that “Lavrov told me that Russia has no plans to attack Ukraine. But we must see the words followed by deeds and the soldiers to move to another place,” to which Lavrov reacted sharply by saying openly that “what Russia does on its territory is not your business,” after which he left the press-conference and left the guest alone on the podium.

Lavrov, in fact, is not immune to conveying political messages in a non-protocol manner, using both verbal and non-verbal communication. Namely, at a press conference with the Minister of Foreign Affairs of Saudi Arabia in August 2015, the cameras recorded Lavrov listening to his guest, and then suddenly saying “fools”, and during the official visit to Japan, when he was on the plane celebrated his 67th birthday, his celebratory T-shirt had the inscription: “Who does not want to talk to Lavrov, will talk to Shoigu.”
On July 22, 2022, during the official visit of the Finnish Prime Minister Sanna Marin to Croatia, a deviation from the protocol caused a gaffe that was interpreted by the public as transmission of a political message, although there are no open issues publicly between Croatia and Finland. Namely, during Marin's visit to Zagreb, immediately before the meeting with Croatian President Zoran Milovanovic, Finnish Prime Minister Marin was left alone in the lobby, waiting for the Croatian President for almost two minutes. Marin walked through the reception hall, looking at the art paintings in the hall, her body language showing boredom and anticipation. Although critics can describe this event as an inappropriate protocol mistake, if we take into account the statement of the Croatian president regarding Finland's application for membership in NATO - the Alliance, in which it is said that “the request of Finland and Sweden for membership in NATO is a very dangerous adventure” and that “it should be discussed”, supplemented by the opinion that the Croatian parliament should condition this membership on the fulfillment of the Croatian conditions for amending the Election Law in Bosnia and Herzegovina, the whole event acquires a political connotation and conveys a political message.

4. CONCLUSION

Protocol rules are the foundation of good manners in international relations and are accepted by political and diplomatic officials regardless of their political background. And, while the protocol should bring order to international relations and enable them to be carried out efficiently and effectively, in an acceptable and predictable manner, but also in a dignified and civilized manner, individuals keeping in mind their own (or state's) agenda and goal, with deliberate deviations from what is considered acceptable from a protocol point of view, they convey a message that can affect relations between high-ranking officials, and also relations between two or more states. Simply put, using the tools of a process that should be the basis of good behavior and generally accepted manners in international relations, individuals express their opinion in a non-diplomatic manner on a given topic or about a particular person or country. In analyzing whether or not a particular concession conveys a message, many factors need to be taken into account because not every concession is intended to “say” something, and not every communication (especially non-verbal) has a connotation that is commonly accepted as certain message. Therefore, when performing analyses of behavior or a specific event of an international nature, this issue should be dealt with by persons with high expertise and significant experience. However, the state policy also depends on the results of the analysis.
5. **BIBLIOGRAPHY**

Smiljanov, Sande (2021). The role of the protocol and defense diplomacy in achieving the security of the Republic of Macedonia, Faculty of Philosophy, Doctoral Dissertation. page. 106-111.
EFFECT OF FINANCIAL INCLUSION ON ECONOMIC EMPOWERMENT OF WOMEN, ECONOMIC GROWTH, AND SMES, A CASE STUDY IN JORDAN

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Abstract

Financial inclusion implies the possibility for individuals to easily access financial services; this has a major role in supporting small and medium enterprises, economic empowerment of women, supporting economic growth and it is the basis of sustainable development.

The purpose of research is to identify the determinants of financial inclusion, the reality of women in Jordan and Arab countries in the labor market, access to financial services, the problems experienced by the economy of Jordan and small and medium enterprises; the qualitative approach is used to investigate the problem of the study.

The study concluded that determinates of financial inclusion are: economic variables, physical infrastructure variables and banking variables. Increasing female access to financial services enhances women's financial independence and achievement of economic opportunities. In Jordan the percentage of women’s participation in the labor force is 18.1%, and the percentage of financial inclusion is 26.6%; compared to the global average it is 64.8% and there is a reciprocal relationship between financial inclusion and women’s economic empowerment.

The most important recommendations of the study are: it is necessary to eliminate the obstacles of financial inclusion (economic variables, physical infrastructure variables and banking variables), and the Central Bank urges banks to ease the conditions for opening an account and obtaining loans, especially for women and small projects, which contributes to increasing the domestic product and economic growth.

Keywords: financial inclusion, economic empowerment of women, SMEs, economic growth, financial inclusion index

1. INTRODUCTION

Financial inclusion is the easy access of adults to financial assets as financial services play an important role in the economy. It can contribute to poverty reduction, economic and social development, empowering women economically and supporting small and medium enterprises and financial stability (United Nations conference on trade and development, 2014).
Financial inclusion becomes the most important phenomenon for planning a strong policy in achieving sustainable growth, and also encourages innovation, efficiency and investment (Baker, Sulong, 2018).

The problem of the public debt of the country is one of the most important obstacles faced by the developing countries because of its negative impact on the economic and social development of these countries. As a result of the need for these countries to finance economic growth, these countries must resort to internal and external borrowing, which increases the public debt of the countries.

Jordan suffered economic difficulties, especially in the 1980s. In 1988, Jordan was unable to pay its debts to the creditors. This led to the escape of capital loans, the low purchasing power of the Jordanian dinar by 50% and the resort of Jordan to borrow from various international institutions (Al-adayla, Al-amro, Al-Gralla, 2015). Public debt is expected to reach more than 43 billion dollars. The debt-to-GDP ratio is more than 105% at the end of 2022, and Jordan suffers from the political unrest and security instability in the neighboring countries, Syria and Iraq, which are Jordan's largest trading partner (http://www.gbd.gov.jo/).

Small and medium enterprises (SMEs) are an important pillar in building the economy, and they play an integral role in contributing to building government projects. Some successful economic development experiences have proven that small enterprises mainly focus on expanding the productive base, increasing exports, and creating new job opportunities, especially in the rural world and remote areas, as well as transforming rural areas into industrial areas and reducing the imbalance between the different regions in the country. Also, achieving a fair distribution of the national income and state wealth.

A country like Japan has more than 3.8 million small and medium companies, which constitute 99.7% of the total Japanese companies, and it employs about 70% of the workforce, these companies account for 43% of the sales of the commercial sectors and achieves 50% of the total profits (Althewani, 2013).

Empowerment of women is a basic pillar and goal of the sustainable development goals and it is linked to financial inclusion, which is the ease of access of individuals to financial services; it is important to achieve gender equality, which is also linked to seven of the sustainable development goals. Based on a World Bank study on 18 countries: men own 65% of bank accounts and 75% of the total current of deposits, while women are facing global challenges to access financial services (Arab Monetary Fund, 2021).

The overall objective of this study is to develop knowledge and understanding of previous research findings regarding this topic, and the research is based on findings from previous researches.

2. LITERATURE REVIEW
2.1. Concept of financial inclusion
The access of individuals and firms to financial services is through open accounts, demanding of loans and any financial transaction. (Goldstein, 2015) The main obstacles to financial inclusion which prevent access to financial services is the lack of money, and its effect usually on the poor, women, youth (people between 15 and 24), rural populations, and informal workers.

The options to improve access to financial services is usage of new technology such as credit cards, debit cards, prepaid cards, micro finance, mobile banking and ATMs (United nations conference on trade and development, 2014).
2.2. Determinates of financial inclusion

- socio-economic variables: there is a significant impact of the income level on financial inclusion; the unemployed people or people with insecure jobs will be less willing to use financial services and there is a relationship between the level of income, inequality, literacy, urbanization, physical infrastructure and financial development.
- physical infrastructure variables: it is required to access to financial system as paved roads, telephone, internet, cable radio, computers and communication technology.
- Banking variables: the small firms and low-income individuals cannot borrow from the banks due to low information and high interest rate (Yones, 2019).

2.3. Financial inclusion indicators

The G20 countries agreed on a basic set of indicators for measuring financial inclusion which deal with measuring 3 main dimensions:

- Access to financial services, which implies the ability to use financial services from financial institutions.
- Use of financial services, which implies the extent to which customers use financial services provided by financial institutions.
- The quality of financial services.

In the following table No.1, the percentage of adults who have accounts in financial institutions is presented:

<table>
<thead>
<tr>
<th>Year</th>
<th>worldwide</th>
<th>Arab countries</th>
<th>developing countries</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>Authors Names</td>
<td></td>
</tr>
<tr>
<td>2011</td>
<td>51%</td>
<td>22%</td>
<td>42%</td>
</tr>
<tr>
<td>2004</td>
<td>61%</td>
<td>29%</td>
<td>54%</td>
</tr>
<tr>
<td>2017</td>
<td>67%</td>
<td>37%</td>
<td>61%</td>
</tr>
</tbody>
</table>

(bin mousa, gaman, 2019).

2.4. Economic empowerment of women

Arab countries such as the UAE, Kuwait and Bahrain have the highest rate of financial inclusion of women and women's participation in the labor market.

According to World Bank statistics, 1.1 billion women out of 2 billion do not have access to financial services worldwide.

There is a reciprocal relationship between financial inclusion and women’s economic empowerment. Financial inclusion allows women to access economic opportunities of all kinds, and this allows improving income and making the right financial decision regarding saving and borrowing. Increasing women’s access to financial services enhances women’s financial independence and achieving economic opportunities; the percentage of women’s participation in the labor force in Arab countries is 20.8% compared to the global average of 39%, while financial inclusion in Arab countries for women is 25.6% in Arab countries compared to the global average of 64.8%, and in Jordan, the percentage of women’s participation in the labor force is 18.1%, and the percentage of financial inclusion is 26.6%.
The Arab countries should adopt a comprehensive strategy for financial inclusion based on the effective empowerment of women and small enterprises, and the expansion of digital financial services. In the following table No.2 the percentage of women in the workforce and the percentage of financial inclusion in some Arab countries and the world is shown:

<table>
<thead>
<tr>
<th>region</th>
<th>Labor force participation rate for 2019</th>
<th>Percentage of women who have accounts in financial institutions for 2017</th>
</tr>
</thead>
<tbody>
<tr>
<td>Jordan</td>
<td>18.1%</td>
<td>26.6%</td>
</tr>
<tr>
<td>Arab Emirates</td>
<td>52.4%</td>
<td>76.4%</td>
</tr>
<tr>
<td>worldwide</td>
<td>47.1%</td>
<td>64.8%</td>
</tr>
<tr>
<td>high income countries</td>
<td>53%</td>
<td>92.9%</td>
</tr>
</tbody>
</table>

( Abedalmanem, Maglol, 2021).

2.5. Public debt

There are several definitions of public debt, including: a monetary amount of money borrowed by the state or one of the people of public law from individuals or public or private institutions or countries or international institutions.

**External loans**: are the loans obtained by the State from natural or legal persons outside the country. Examples include borrowing from the World Bank and the International Monetary Fund.

**Domestic loans**: The loans obtained by the State from natural or legal persons within the State, such as: the issuance by the Central Bank of government bonds and their sale to banks (Shamia, Al-Katib, 2005, p. 239-240).

The expansion of borrowing and its use in non-productive activities has negative effects, including:

- Increase of the budget deficit due to increased spending to serve the public debt.
- Negative impact on imports as a result of reduced consumption and production, and weak state import capacity.
- Increasing the tax burden due to the need of the State to increase the volume of public revenues.
- Lack of foreign assets of the state where the state uses foreign currencies that have to pay the installments of loans and their benefits.
- High inflation rates where it is possible to resort to the state to increase the monetary issue, which leads to the deterioration of the purchasing power of the currency (Al-adayla, Al-amro, Al-Gralla, 2015).
As a result of economic and social developments, especially the global financial crisis which emerged in 1929, State intervention in the economy has increased to make full use of available economic resources, as well as economic and social welfare, so the State must make public expenditure (Shamia, Al-Katib, 2005, p. 35-36). Countries have resorted to borrowing when they cannot afford their financial resources such as taxes, fees, cash issues, etc., from covering its current or investment expenses, and it is possible to borrow from within through the issuance of bonds through the central bank or borrowing from abroad, whether organizations or countries or banks (Al-Ali, 2011, p. 269).

The Jordanian government amended the Income Tax Law to increase revenues by increasing the tax on individuals and companies, despite the negative impact on economic activities (http://www.istd.gov.jo/).

Al-Qadi (2018) pointed to the existence of double taxation, for example tax on the profits distributed and capital to banks, and the existence of tax evasion exceeding 650 million dinars annually, and the high tax on the income of banks, which is 35% higher at the regional level and reflected on the profits of banks and increase the volume of interest on loans granted (www.abj.org.jo).

2.6. SME

The SMEs play an important role in the economy by creating about 50% of the jobs of the economy, increase the gross domestic product and the basis for the development of creator and innovations (Al-abdallat, Aburuman, al-hiyasat, Shammout, 2017).

Businesses and small and medium enterprises are among the most responsible institutions for creating job opportunities and generating income around the world, and their role has been recognized as a major driver to alleviate poverty and support the progress of the development wheel. Micro, small and medium enterprises tend to employ a larger share of the vulnerable groups of the workforce, such as women, youth, and children of poor families. Small businesses can also be more flexible in responding to repercussions and changes in the world. We have seen an enormous number of examples during the wave of the Corona pandemic, and despite this, the small size of each of these projects and businesses in the wheel of the economy makes them vulnerable as well. Access to sources of support and financing remains the main obstacle for small businesses, and opportunities to enter the international market, transfer products, and other trade-related measures are more difficult for small companies than their larger competitors (al-abdallat, Jaffara, 2021).

2.7. Previous Studies

The most important studies that evaluated the problem study are:

Hamdan and Abodaia (2018), aimed to study the effect of financial inclusion on economic development in Palestine during the period 1995-2015. The findings of the study show that the existence of a positive impact of direct credit facilities, the number of workers in the private sector, the number of branches of banks on economic development, etc., recommended the need for innovation banking services without bank branches (online services) to improve access of the poor to financial services.

Al-adayla, Al-amro&Al-Gralla (2015), aimed to study the structure of public debt in Jordan for the period 1980-2012 and its impact on the economic growth. The findings of
the study show that there is a relationship between the independent variable and dependent variable, and it suggested that the external debt in productive projects should be used.

Another study, done by Ngdat (2012), evaluated the evolution of Jordan’s external debt for the period (1990-2010) and dealt with the strategies which were used by the Jordanian governments and its impact on the Jordanian national security. The study concluded that there is an effect of the external debt on national security and it recommended seeking a new alternative for borrowing through the investment projects.

Abedalgafar (2017) conducted a study also aimed at activating policies aimed at transforming Egypt's external debt into investments in a manner aimed at achieving real development goals through the establishment of productive projects. This is in the interest of the Egyptian citizen. The study found that the external debts of Egypt reached at the beginning of 2016 were 53 billion dollars, and it was not invested to accelerate growth or stimulate investment, in return it had a negative impact on the Egyptian economy. It recommended reducing foreign borrowing by encouraging foreign investments and expanding the transfer of foreign debts to development investments.

Al-Khawaldeh (2018) carried out a study aimed at measuring the impact of government subsidy on wheat on increasing the budget deficit, where wheat is one of the most important agricultural crops subsidized. But there is a shortage of production so the Kingdom imported at high prices and as a basic commodity, the government is supporting the budget deficit when it increases. The results of the study have a positive impact on government support for wheat commodity and budget deficit, to reconsider government subsidy policy for wheat to achieve social justice and to target low-income people.

Al-shurafa (2019). The aim of this study is to investigate the contribution of financial inclusion dimensions (access to financial services, usage of financial services & quality of financial services) in the achievement of social responsibility to clients of Islamic banks in the Gaza Strip. The findings of the study point out that a strong positive correlation between the financial inclusion dimensions and achieving social responsibility; thus, the study recommends working on the spread of the culture of social responsibility.

3. RESEARCH METHODOLOGY

This paper has adopted a literature review methodology; the qualitative approach designed to investigate the problem of the study through journals, articles, books, and agency reports that were used as secondary sources for the study.

This paper critically reviews the literature on financial inclusion and several concepts related to the study have been studied: SMEs, economic growth, economic empowerment of women and learning and recommendations.

4. CONCLUSION

The study attempted to identify the effect of financial inclusion on SMEs, economic growth, and economic empowerment of women. The study brought to the following results:

- Determinates of financial inclusion are: economic variables, physical infrastructure variables and banking variables.
- Increasing women’s access to financial services enhances women's financial independence, achieving economic opportunities and there is a reciprocal relationship between financial inclusion and women’s economic empowerment.
• Financial inclusion helps small and medium-sized enterprises in the access of individuals and firms to financial services, through open accounts, demand loans and any financial transaction.
• Financial inclusion contributes to economic growth.

The study concluded with the following recommendations:
• The need for governments to adopt a comprehensive policy of financial inclusion that helps in accessing financial services, and empowering women.
• Urging universities to encourage students to innovate and create through developing capabilities and skills to reduce the gap between universities and the labor market, though, for example, business incubator.
• it is necessary to eliminate the obstacles to financial inclusion (economic variables, physical infrastructure variables and banking variables).
• The Central Bank urges banks to ease the conditions for opening an account and obtaining loans, especially for women and small projects, and this contributes to increasing domestic product and economic growth.
• There is a need for further quantitative and qualitative studies with in-depth analysis to identify the barriers of financial inclusion.

5. REFERENCES
Awan, (2021). ESMs in Corona Pandemic
Abedalmaenam, H., Maglol,S., (2021).The role of financial inclusion in empowering women: lessons learned from the most prominent regional and international businesses, Arab Monetary Fund,18(5).
Al-Qadi,H. (2018).In the tax law, do we need a policy of contraction or expansion ?,The banks in Jordan, the Association of Banks in Jordan, 37(8), p. 4-6.


THE ROLE AND IMPACT OF CULTURAL DIPLOMACY IN CULTURAL GLOBALIZATION

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Abstract

Globalization and the growing dynamics in international relations require a focus on culture and its opportunities to enrich and expand the content of foreign policy programs. The use of the capacities of culture and its transformation into an element of foreign policy does not mean simplification of the specific and unique character of culture but it is more an approach for more complete distribution and accumulation of additional resources in its development. The link between culture and government is strengthened by the competence of cultural diplomacy.

In the age of globalization, the challenges have become much greater, especially when it comes to countries where prejudices against another culture are part of the social order. How can culture and cultural diplomacy shape domestic and international politics and credibly impose their national identity on the rest of the world?

Hence, the main goal of this research is to define the role of cultural diplomacy in globalization and its contribution to resolving potential cultural conflicts that arise as a product of globalization. Several issues will be explored. Are there any positive or negative effects of globalization on cultural diplomacy? Can the melting of cultures and the cultural identity of the individual be a potential indicator of conflict? And what can cultural diplomacy do about it?

The methods of analysis, follow-up and interpretation will be used in the preparation of the content of the paper.

Keyterms: that will be used in the preparation of this scientific research paper are: globalization, cultural diplomacy, security, culture, and international relations.

1. INTRODUCTION

Globalization is an economic, political and cultural process that is enabled by the rapid development of communications and transport, and which is often driven by the desire of large corporations to conquer new markets. Globalization as a social, cultural and economic phenomenon has been current in recent decades, but its beginnings are long gone. In the 1960s and 1970s, globalization became a reality. It is a period of increased political and economic interdependence. Events outside began to have an impact at home and vice versa. As a result, relations between nations and states have become interdependent (Haegel, 2005: 301). Globalization is, to some extent, acting at a distance. What happens is a rapid compression of space and time. It is a particularly topical topic in the last twenty years, given that the growth of international trade networks is happening very fast and is radically changing the world. Globalization is often thought of as connecting people and goods from one end of the earth to the other. Hence McLuhan's idea of "the world as a global village", 217
where one action in one part of the world provokes a reaction in another part of the set. In such a world different cultures come into contact and a process of their mixing takes place (McLuhan, 1996: 19).

2. CULTURAL GLOBALIZATION

What is particularly important for this research is the cultural aspect of globalization. Cultural globalization is a mix of different world cultures and customs. With the flow of goods, capital and people across state borders, customs, beliefs, artifacts, or simply the culture of one community or people, come into contact with other cultures. These processes provoke different reactions: some see it as a positive development because it enriches the existing culture, and some see the new culture as a threat to established values.

Globalization is a positive process that gives a lot, but at the same time opens new questions for the world we live in, for our immediate environment, for our daily life and for ourselves (Vuletic, 2006: 192). The cultural aspect of the globalization process contributes to the opening of the borders of local cultures and political communities, and by transforming individual experiences into information spread around the world, contributes to the development of global culture, linking different cultural achievements and making them visible to all nations. No less important is that in this way ethnonationalism and nationalism can be overcome, which produces closed and isolated cultures, fostering xenophobia towards diversity, of course, providing real cultural exchange, in the form of intercultural communication, and avoidance of assimilation by the dominant culture. (Golubović, 2006: 194).

One of the threats that come with globalization is the emergence of hybrid cultures that are being created through accelerated transnational and media flows, aided by communication technologies and globalization. It should not be forgotten that cultures are constantly evolving and are related to the "symbolic dimension of life where people show their true identity" (LeBaron, 2003: 77). Globalization has significant effects on core values and beliefs. As a result of the economic and cultural effects of globalization, along with the influence of the media, modern society faces a mix of identities. (Georgievksa, 2015: 61)

One should also take into account the fact that at the international level, the defense of cultural identity, which is considered endangered, is an occasion for certain groups to be ready to use weapons to defend their way of life and their beliefs, even to impose them on others. Cultural conflicts should be managed so that all people in the world will be given the right to nurture their own cultural identity, but at the same time, it means removing the danger of someone's cultural identity being a threat to peace and security. (Georgievksa, 2015: 69)

3. THE IMPACT OF GLOBALIZATION ON GLOBAL SECURITY

Globalization is becoming an increasingly influential "architect" of the new international security agenda. Its impact on the evolution of relations between states in this key area is contradictory. On the one hand, globalization contributes to the accelerated development of productive forces, scientific and technological progress and increasingly intensive communication between states and nations (Fitzpatrick, 2013: 77). So, it objectively helps humanity to build the resource base and intellectual potential for ensuring international security to a qualitatively new level. The growing interdependence of countries and peoples in every sphere helps to generate new policy approaches aimed at creating
democratic multilateral mechanisms for governing the international system and hence a secure solution to security problems. At the same time, the processes of globalization, which develop mainly spontaneously, without collectively directing the influence of the world community, exacerbate a number of old problems of international security and cause new risks and challenges (Georgievska, 2016: 56).

The role of external factors in the development of countries is increasing dramatically. Due to differences in financial and economic power, interdependence between countries is becoming increasingly asymmetric. While a small group of leading industrialized nations plays a major role in the globalization of the economy, the vast majority of other countries are turning to its facilities, which are sailing on the waves of financial and economic developments. As a result, the inequalities in the social and economic development of the world are increasing.

Security concerns exist in almost all cultures and in a wide variety of social areas, such as politics, healthcare, information technology, ecology, sports, psychology, economics, finance, and architecture. At the same time, it always occupies a central place on the political scene. Security can be simply defined as a universal human aspiration for security that is present in all times and in all cultures (Kostadionova, 2011: 84). This definition has a universal character that arises from the importance of security for the existence of any person, regardless of his/her age, gender, professional, ethnic, national, or racial background. Basically, all people want to live safely in a peaceful society in areas where all its potential can be developed, as well as in an environmentally healthy environment. At the same time, it means that every person, no matter how much it costs, strives to avoid all threats and risks that threaten him/her (Georgievska, 2015: 40).

It should be emphasized that humans are not miniature reproductions of their societies or communities. The experience of the relationship that is established between members and their communities generates their own, individual conceptions that can be absorbed and influence the community. The socio-cultural factor is an existential condition for their development (Schwartz, 2006: 90). Living culture is the culture that allows members of a community to decide and take responsibility for the social process, to conceptualize and create their own future and at the same time generate a sense of community and respect for others. It is extremely important to achieve that respect for other communities, because, in the global context, respect for others is a prerequisite for the ability to freely build one's own history and nurture one's beliefs (Singh, 2008: 100).

4. THE EFFECTS OF CULTURAL DIPLOMACY IN THE GLOBALIZED WORLD

Today more than ever, leaders and policymakers need to have the vision to assess the great intangible forces of culture (Penninx, 2000:121). In the new context of the global challenge facing those responsible for securing peace and stability, what they can do is create a possible solution and recognize the values and contributions of different cultures, which in themselves are a great treasure (Nye, 2005: 199). Because, according to many, in today's complex and dynamic international environment, different cultures may have different interpretations of the problems presented before them. The application of different interpretations can potentially lead to different, mutually incompatible solutions, which in turn can cause misunderstandings, and thus create a basis for violence and conflict.

With the help of localization, the massiveness of communication and technology increases, which ensures that we all have greater access to each other more than ever before.
Cultural diplomacy is crucial to fostering peace and stability throughout the world because cultural diplomacy has a unique ability to influence global public opinion and the ideology of individuals, communities, cultures, or nations, which can contribute to the realization of the following principles: respect and recognition of cultural diversity and heritage, global peace and stability, global intercultural dialogue, protection of human rights, justice, equality and interdependence, and cultural diplomacy and the public sector (Okyay, 2017: 90).

Conducting successful cultural diplomacy in the direction of conflict prevention does not only mean building a positive image of the country but also building dialogues between groups of all aspects, getting to know the cultures of all countries through promoting art, values, traditions, customs, student exchanges, tourism, sports, creating opportunities for better understanding of the others and successful conflict prevention (Jakimovski: 2014: 128). Without quality and well-thought-out cultural diplomacy between countries, cultural generalizations and differences can lead to cultural misunderstandings and cultural conflicts (Hong, 2011:98).

What is needed is rich and broad cultural diplomacy, and it will be aware of the integral aspect of culture. Cultural diplomacy can never be used in an abstract field, respectively, it should be propagated in a dialogical way. Culture is not just a consequence of politics, but an element that defines it. Only if politicians realize that there is no political supremacy over culture will there be room for meaningful and effective cultural diplomacy (Reeves, 2004: 67).

5. ELASTICITY OF CULTURE AND CULTURAL DIPLOMACY AS A RESPONSE TO GLOBALIZATION

In the resilience of culture and cultural diplomacy, we can find the answer to dealing with globalization, openness to transnational institutions and dealing with environmental pressures. Through their resilience, one can better understand their values and their resilience or variability as well as the interests that are established with a strategy in a particular culture and policy. Globalization is the greatest test of the influence of great external powers on cultures. Although globalization is a term most commonly associated with economics and the development of information technology, it broadly includes economic, social, technological, political, informational, and ideological factors. (Georgievska: 2015: 66)

The main idea is to consider the interdependence and dynamics of these factors. Thus there is a sense that globalization is a force that can not be controlled but can only be properly positioned or mitigated. One view of globalization is that it undermines the nation. On the one hand, there is a lot of evidence for that, but on the other hand, it seems that it is an instrument for mutual acquaintance of different nations and their better mutual understanding. (Https://www.futurelearn.com/courses/cultural-diplomacy/2/ steps / 439207)

Used as a powerful "tool", globalization can open up prospects for the development of peoples' cultural identities, rather than threatening to "erase" their cultural diversity. The world is "thickening" faster in space and time, as a consequence of globalization (Cull.2010: 177). Dictated by the world centers of power and global industrial and other corporations, it can be understood as a real threat to the cultural identities of individual peoples and ethnic groups, to uniformly "melt" and "erase" their cultural differences. At the same time, it is a "vast ocean" with opportunities for the development of national and cultural identities, especially of "small" nations. How do theorists view the globalization of dilemmas: Is it a friend or an adversary of cultural diversity and intercultural dialogue in the world? Is
globalization an acceleration of the tendency towards uniformity, or at the same time does it enrich its existing cultural identities through mutual interaction? (https://onlinelibrary.wiley.com/doi/full/10.1111/eulj.12179)

Professor Gjorge Mladenovski, a Professor of Cultural Anthropology and Theory of Ethnicity and Identity, believes that globalization causes fear due to the loss of identity of society, it integrates societies and homogenizes ideas, beliefs, and lifestyles. But on the other hand, it encourages diversity and diversifies society. Globalization causes fear due to the loss of the identity of society, provokes cultural resistance, and stimulates the rediscovery of endogenous traditions, in order to support the demands for a sense of difference. Globalization is a friend of cultural diversity because it fosters those differences and leads to new diversity.

But, on the other hand, it unites the world and makes it a unique place to live according to Professor Viktorija Kafedziska, a professor of politics and new media, who believes that precisely from the aspect of culture the concept of globalization is significantly controversial because it is increasingly perceived as 'Americanization', as an attempt by the United States to impose its dominance and its value norms and attitudes. This is especially alarming for so-called 'small cultures'. Thanks to the global economy and global communications, it is becoming a collective model of life and it is not difficult to see the foundation of the new modern form of colonialism - cultural imperialism. According to Mladenovski, "nations are most afraid that globalization will jeopardize their identity, their sense of difference from others." That fear is sustained by globalization that global restructuring leads to a new configuration of identities. Identity is not static, but dynamic, constructed through the daily interaction of members of one culture with other cultures. Globalization is closely related to hybridization, i.e. the creation of new cultural patterns, new cultural practices through contacts between cultures and their mixing. We live in a world of 'cultural conversations'. Additionally, Kafedziska believes that the cultural gatherings of nations create new and productive types of cultural fusion and cultural hybrids, that is, that revived nations seek their place in the new global world. In this era, we can respect other people's cultural values, but also nurture our own values. If we forget our roots and accept only the imposed values, then there is subtle assimilation. Cultural encounters of nations create new and productive types of cultural fusion and cultural hybrids. Some see such processes as the development of a cosmopolitan culture. For others, it is a cultural homogenization, which undermines national specificities, and thus national identities (www.mkrevolucija.com).

6. CONCLUSION

The impact of cultural diplomacy could be assessed as a catalyst for global developments and the maintenance of world security. With the processes of globalization, the world is becoming hyper-connected, multipolar. Against all these challenges in today's global environment, cultural diplomacy can play a constructive, even crucial role, if culture and cultural identity issues are not always used as a political tool. In conflict situations what matters is a creative non-dogmatic approach that is a basic rule of diplomacy. This is precisely the advantage of the culture, as it refers to the universal nature of the human being as opposed to politics where the management of group egoism is inevitably conventionally described as a national interest.

From the above, we can conclude that in terms of strategy and policy formulation, the way they are implemented, and the expected outcome, the cultural dimensions play an important role. If we look at cultural diplomacy in an integrative and comprehensive sense,
it can serve as a constructive role in building peaceful coexistence between nations. To be credible and effective at the same time, one must accept the idea of dialogic relations between cultures and civilizations based on equality. Only this procedure will enable the implementation of diplomatic relations on the basis of reciprocity.

Cultural diplomacy initiatives can help create a climate conducive to resolving conflicts and disputes through negotiation. In ensuring global peace, one must also take into account the fact that at the international level, the defense of cultural identity that is considered endangered, the way of life and one's own beliefs. Cultural conflicts should be managed so that all people in the world are given the right to nurture their own cultural identity, but at the same time, it means removing the danger of one's cultural identity being a threat to peace and security (Colleen, 2001: 90).

If there is a real chance that cultural diplomacy will have an impact on international developments and the many conflicts that exist today, it must be promoted and be more than just the decency of the regular diplomatic business.

The purpose of cultural diplomacy, as part of the foreign policy of the state, must be sincere and to share the way of life of its people, which constitutes its system of values with all forms of art, with other peoples on a multilateral level. Only this way is in line with UNESCO's philosophical vision of overcoming ignorance of the way of life of others. Thus, the approach must be inclusive and not based only on national self-confidence and pride, but on "cultural curiosity" at the same time. In its true, inclusive sense, culture is always a common project of humanity, i.e. the realization of our common life based on the universality of the mind.

REFERENCES

Domestic literature
1. Георгиевска, Наталија. Културата како фактор во креирање на безбедносната политика и стратегија. Универзитет „Св.Кирил и Методиј” - Скопје, Институт за македонска литература, 2015.
2. Јакимовски, Тони. Дипломатијата во функција на афирмација на културата и културното наследство. Универзитет „Св. Кирил и Методиј” - Скопје, Институт за македонска литература, 2014.

Foreign literature

Internet

2. https://www.futurelearn.com/courses/cultural-diplomacy/2/steps/439207
5. www.mkrevolucija.com
RESPECTING THE PRACTICE OF THE COURT
CASE: SELMANI AND OTHERS V. THE FORMER
YUGOSLAV REPUBLIC OF MACEDONIA, (APPLICATION
NO. 67259/14), AS A PREREQUISITE TO SAFE JOURNALISTS
IN PARLIAMENTS

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Abstract
Journalism is a public good from which citizens should benefit. For journalism to accomplish its mission as a public good, journalists and media must be independent and economically sustainable. Most importantly, they must be safe in performing their professional duty to professionally inform the public. Nevertheless, how can journalists report in a situation when they are forcibly expelled from the national parliament? What are the implications of such a case, and what are the lessons learned?

This paper provides an overview of the court case of “SELMANI AND OTHERS V. “THE FORMER YUGOSLAV REPUBLIC OF MACEDONIA” by the European Court of Human Rights in which violation of the right to freedom of expression under Article 10 of the European Convention on Human Rights is proclaimed for the forcible removal of journalists from the gallery of the Parliament of Macedonia on 24 December 2012.

The methodology in preparing this paper is based on an assessment of the stated court case, other cases relevant to Article 10 of the ECHR, follow-up documents by competent authorities and credible media reports. The importance of this case can be seen from the fact that it represents the first court case of ECtHR for breaching Article 10 of the Convention in Macedonia and second that this case represents an essential practice that gives knowledge to all members of the Council of Europe how to assure that the freedom of speech and freedom of information should be secured within the national parliaments.

Keywords: freedom of expression, freedom of speech, fair trial, safety of journalists

1. INTRODUCTION

This paper briefly elaborates on the case of Selmani and Others v. Macedonia (CASE OF SELMANI AND OTHERS v. THE FORMER YUGOSLAV REPUBLIC OF MACEDONIA, 2017). It makes an overview of the action plans and measures derived from this court judgment later implemented in the Republic of North Macedonia. The follow-up measures give an important knowledge of how to develop preventive mechanisms in keeping journalists safe not only in parliaments but also in other public events and equally important how courts and judges to be more sensitized and aware of the importance of protecting the fundamental rights of journalists in a society.
The case of Selmani and Others v. Macedonia represents the first judgment by the European Court of Human Rights (ECtHR) for violation of the right to freedom of expression under Article 10 of the European Convention on Human Rights (ECHR, 1950) in the Republic of North Macedonia. This case was brought in front of the ECtHR by a group of six Macedonian journalists and later confirmed that their right to freedom of expression was breached on account of their forcible removal by members of the parliament security from where the journalists were informing about the adoption of the national budget act for the year of 2013. This incident took place during the parliamentary session on 24 December 2012. In addition, the peculiarity of this judgment is that the case concerns violation of the journalists’ right to a fair trial (Article 6 of the Convention) as well, having in mind that the Macedonian Constitutional Court failed to hold an oral hearing in the domestic legal procedure initiated by the six journalists and facilitated by the national Association of Journalists of Macedonia (AJM).

The judgment contributes to the hypothesis that when political tension is present in the country, the rights of the journalists are more likely to be breached; hence the freedom of information to the public is limited, and in addition, it gives reinforcement of the role of the press during public events (Köksal, 2017). It also stresses the necessity of having journalists on the spot of public events. At the same time, demonstrations or political disputes occur, and the significance of not interfering in their work by the members of the security forces is also emphasized.

The court case is not only crucial in local context in the Republic of North Macedonia, given that it represents the first case by ECtHR for violation of Article 10; it is also a practical example since later in the domestic procedure in front of the competent Court the right of journalists to a fair trial was not respected. This means that two important institutions in the country, the Parliament and the Constitutional Court failed to protect the rights of the journalists for an incident that was of the highest public importance, e.g., the adoption of the national budget in a parliamentary procedure.

2. METHODOLOGY

The methodology of this research is based on the following instruments: 1. legal overview of Selmani and Others v. Macedonia and other related cases; 2. Comment of the Action reports by the Directorate General for Human Rights and Rule of Law of the Council of Europe - Communication from Macedonia concerning the case of Selmani and Others v. Macedonia; and 3. Review of relevant reports that assess the overall context of the case by political and civil organizations and include credible media reports.

3. CONTEXT AND REACTIONS

The events of 24 December 2012 would be remembered for the confrontation of citizens in front of the national Parliament in Skopje and the incident of expelling members of the opposition party, including journalists, with the assistance of the police inside the Parliament. This incident left a political burden that kept the tension in the society afterward because the national budget was adopted by 65 votes from the ruling majority, with the limited debate not being presented to the public. "The decision followed after a 24-hour long drama in front of the Parliament and inside the parliament hallways. On Monday, before the Parliament, opposition and government party members and supporters were locked in a
stand-off separated by a thick cordon of police who prevented an all-out street fight”, would report one of the most credible national newspapers at that time (BIRN Skopje report, 2012).

The ECtHR brought the judgment on 9 February 2017; it confirmed that the forcible removal of the applicant, in this case, six journalists, was indeed violation of their right to freedom of expression. The incident occurred while a debate was held in the Macedonian Parliament. During this time, members of the opposition party began with disruptive actions within the main parliamentary chamber where the session was held, after which members of the parliamentary security were removed. After this took place, other members of the security of the Parliament reached the journalists who were located above the parliamentary chamber caller parliamentary gallery – a designated spot for media that is physically separated from the room where the primary incident occurred. Within the gallery, a group of journalists, accredited by the Parliamentary, peacefully monitored the events below. Suddenly, security members entered this spot and asked the journalists to leave. Most of the journalists did leave the gallery; however, the six applicants refused to do so, claiming that they had the right to observe the events, so members of security forcibly removed them; interesting to be noted is that based on the judgment, it was claimed that one of the security officers was allegedly pushed in the chest and his badge was removed and also he suffered injuries on his leg however for this accusation the state failed to provide evidence nor brought to attention the identity of the individual. Later, the journalists initiated procedure at the Constitutional Court appealing this act; however, this Court later failed to hold an oral hearing with journalists as applicants, which later ECtHR confirmed that this was a violation of Article 6. The Constitutional Court dismissed the claim that the journalists were dislocated to a safer place and that the freedom of speech was not breached, given that the event was broadcasted on the public broadcaster. The complaints argued that the camera of the parliamentary channel that was indeed broadcasting at the time of the incident was zoomed in a way that did not give a realistic image of the incident.

It is essential to mention that the ECtHR agreed with the government that the removal of the journalists was “prescribed by law” and pursued the “legitimate aim” of ensuring public safety and the prevention of disorder. The ECtHR, however, believed the government had failed to establish that the removal of the journalists was "necessary in a democratic society". There was no indication that there had been any danger from the protests which had taken place outside the parliamentary building on the day of the incident, either from the journalists themselves (who had neither contributed to nor participated in the disturbance in the chamber) or from the MPs who had been at the origin of the disorder. Nor was the ECtHR convinced that the journalists had effectively been able to view the ongoing removal of the MPs, a matter which had been of legitimate public concern (Voorhoof, IRIS – 2017 – 4, The legal database IRIS Merlin has covered all audiovisual media, key areas, key players, and legal developments since 1995, 2017).

The incident was reported widely not only by local but also by global media (Report, 2012). It also provoked a series of reprehensions and reactions by political and civil organizations that monitor journalists’ freedom of expression and safety. The International Federation of Journalists condemned the media ban in Macedonia: "The decision is more about attempting to control information than addressing any security consideration,” said President Arne König. "Our colleagues deserve an apology and assurances that such a measure must never be repeated. (IFJ, 2012”).

This incident was also noted by several European political organizations, including the Parliamentary Assembly of the Council of Europe, in a report in which the designated Rapporteur stressed, “I criticized this latest development and expressed my concerns about
both the forced eviction of parliamentarians and journalists from the Parliament as well as
the subsequent boycott launched by the opposition. I urge all political parties to pursue
dialogue and contribute, in a constructive way, to the work of the Parliament. (Report. &
13227, 2013)".

Local journalists and media organizations including the Association of Journalists of Macedonia issued the following statement: “AJM condemns today’s incident in the Parliament, where journalists were forcefully expelled from the “gallery room” from which they were following the plenary session. With this act, the Constitution, which guarantees the freedom of expression and media freedom, was grossly violated. The authorities who gave the orders for this shameful act have formalized censorship and decided what must and what must not be reported by the journalists. The forcibly evicted journalists did nothing to cause a security reaction, nor was there a legal basis for their removal. AJM will use all the legal mechanisms to protect the freedom of expression and media freedom. Also, we will alert the domestic and foreign public about these events in the Parliament (GlobalVoices, 2012).”

The incident was brought up in the spotlight by the media and different important political and civil organizations in joint condemnation for violating the right of journalists to report from the parliamentary session on 24 December 2024, and this reaction should have been an indicator for the violation of Article 10 of the ECHR.

4. THE IMPORTANCE AND THE RESULTS OF THE JUDGMENT

Consequently, to this judgment by the ECtHR, three more followed for violation of Article 10 in the context of the Republic of North Macedonia, and these are the (CASE OF MAKRADULI v. THE FORMER YUGOSLAV REPUBLIC OF MACEDONIA, 2018), the (CASE OF GELEVSKI v. NORTH MACEDONIA, 2021), the (CASE OF COSTOVA AND APOSTOLOV v. NORTH MACEDONIA, 2022). Valuable to be said is that two of these four judgments only refer to journalists; the first one is the one about Selmani, and the second one, approximately five years after, in the case of Kostova and Apostol v. Macedonia.

The local significance of the judgment is evident; however, important aspect arises from the impact that this case in the practice of ECtHR confirms the importance of securing the presence of media workers at public events and argues with other prior judgments of the Court that were subject of public criticism.

Before this judgment, the importance of the role of journalists in covering public events in a critical context is the judgment in the case of Pentikäinen v. Finland. In this case, it is concluded that the interference with a press photographer’s right to freedom of expression and the right of journalists to gather because of disobeying a police order to leave the scene of a demonstration that had turned into a riot can be said to have been "necessary in a democratic society” within the meaning of Article 10 of the Convention (Voorhoof, JOURNALIST MUST COMPLY WITH POLICE ORDER TO DISPERSE WHILE COVERING DEMONSTRATION, 2015).

In this case, dating as of 20 October 2015, the ECtHR concludes that the domestic authorities based their decisions on relevant and sufficient reasons and struck a fair balance between the competing interests at stake. It transpires from the case file that the authorities did not deliberately prevent or hinder the media from covering the demonstration in an attempt to conceal from the public gaze the actions of the police concerning the rally in general or to individual protesters. Accordingly, there has been no violation of Article 10 of the Convention. (CASE OF PENTIKÄINEN v. FINLAND, 2015).
To conclude, the ECtHR, in the case of Pentikäinen v. Finland did not find a violation of Article 10. In the case of Selmani and Others v. Macedonia, there is a conclusion for breach of Article 10. Why does this practice matter, and what is the importance of the comparison?

In both cases, there is a legitimate presence of journalists at critical events in which public interest actions were taking place. In both cases, journalists were accredited and performed their duty professionally (there is a contra argument in this regard that is evidence-based on both sides towards the journalists). The sole difference between the cases is that in the first one (Pentikäinen case), the actions took place in an open space where demonstrations were taking place. In the second case (Selmani case), the activities took place within the Macedonian Parliament at the gallery (designated spot for journalists reporting). However, the essential common element is that in both cases, journalists disobeyed orders by members of the police because they had the right to be on the spot to report on the events, especially since, in both cases, they did not jeopardize the safety of other individuals, nor they presented a risk in the ongoing incidents.

The link between Selmani vs. Pentikäinen judgment demonstrates double standards by the ECtHR regarding the respect of Article 10. The case of Selmani sets new standards in respecting the freedom of expression and gives a lesson to the member states of the Council of Europe on how the law enforcement bodies should be treating journalists at events in which a potential crisis is taking place where the public interest is prevailing. In this regard, the credible blog Strasbourg Observer in the context of the Selmani case points out: “The judgment also distances itself from the Grand Chamber of the European Court’s judgment in Pentikäinen v. Finland, a decision that has been criticized by commentators, by analyzing closely whether the threat to public safety posed by the journalists had a solid basis in fact and by placing less weight on whether the journalists still reported on the events that took place. Instead, the Court placed greater emphasis on whether the journalists could “effectively view” what was going on in the Parliament. This is a welcome approach for safeguarding newsgathering practices in Europe and beyond (The International Forum for Responsible Media Blog).”

5. MEASURES ARISING FROM THE JUDGMENT

The Committee of Ministers, under the terms of Article 46, paragraph 2, of the ECHR, which provides that the Committee supervises the execution of final judgments of the ECtHR having regard to the final decision transmitted by the Court to the Committee in this case and the violations established from North Macedonia required two sets of measures. The first measures were individual measures to end violations established and erase their consequences to achieve as far as possible, and the second ones were general measures preventing similar breaches.

In chapter II of the Revised action plan by the Secretariat General of the Council of Europe (Resolution CM/ResDH(2018)216, 2018) the European Court considered that the applicants must have sustained non-pecuniary damage, which cannot be compensated for solely by finding violations of the Convention. Ruling on an equitable basis, it awarded each applicant (six in total) the sum of EUR 5,000 in respect of non-pecuniary damage. Furthermore, it is added that there is no possibility of taking any measures to place the applicants in the same position they had before the violations; no other individual actions are possible to execute this judgment.
The general measures are several and are divided per violations of the Articles, or in this case, measures refer to Article 6 and Article 10.

Considering the violation of Article 6, coming from the first results of the failure of the Constitutional Court to hold an oral hearing in the proceedings concerning their forcible removal from the Parliament gallery, the ECtHR stresses that the Macedonian Constitutional Court should make efforts to align its internal rules with the European Court's findings in the present case in a way to provide the presence of applicants at the public hearings of the Court. Following this, in December 2017, consultations took place with the President of the Constitutional Court to facilitate the measures so that the judgment could be executed. Based on this and as emphasized in the mentioned Revised Action Plan as of February 2017, the Constitutional Court's judges have concluded that this Court will tend to hold an oral hearing in situations when it decides as a court of first and only instance unless there are exceptional circumstances that justify dispensing with such a hearing (for example, where the applicants expressly agreed that no oral hearing should be necessary).

Regarding the violation of Article 10, the ECtHR assesses actions already implemented by concerned parties in the state, and the action is divided into two sections: 1. Training and awareness-raising measures, and 2. Memorandum of cooperation between the Associations of Journalists of Macedonia (AJM) and the Ministry of the Interior (MoI) (RsF Report, 2017).

Since 2015, continuous activities have been held for the judges and the court administration of the Constitutional Court with the support of OSCE Mission in Skopje with the requirements of Article 6 and Article 10 of the Convention and the European Court’s case-law. In addition, other workshops and capacity-building events with the support of the Technical Assistance and Information Exchange (TAIEX) instrument and Horizontal Facility Program of the Council of Europe and the European Union took place with the engagement of judges and members of the administration of the Constitutional Court.

As for the Memorandum for cooperation between AJM and MOI (AJM press release, 2017) by the Association of Journalists, by the President of that time who is the main applicant at ECtHR for this case it was said: “We will give great importance to our future cooperation in organizing joint training. Members of the police will be trained on the importance and role of the media in a democratic society that cannot function without them being independent. A precondition for this is journalists to feel safe in their mission, which is to accurately and timely inform the citizens.”

In this regard, at the Revised Action plan from the 1318 meeting (June 2018) of the Committee of Ministers is noted that in a public statement, the Minister of the Interior Spasovski said: “In the past, we witnessed attacks on journalists, something that must not happen in a democratic country. The Ministry of the Interior will do everything for media workers to be able to do their job freely and safely. The media is the backbone of every democratic society and must have the conditions to work freely and safely”.

To conclude, as stressed in the Revised Action Plan in Chapter IV about individual measures, the authorities consider that due to the nature of the violations, no individual measures that might place the applicants in positions they had been in before the violations are possible. Furthermore, about the possibility of providing redress, the authorities recall that the ECtHR awarded the applicants just satisfaction in respect of non-pecuniary damage. In addition, the authorities furthermore consider that the general measures taken can prevent similar violations; therefore, consider that Macedonia has thus complied with its obligations under Article 46 paragraph 1 of the ECHR.
6. CONCLUSION

The judgment of Selmani and Others v. Macedonia has a unique significance in the local and global context.

Within the local context, it represents the first case in which the freedom of expression is violated, and this gives a lesson to the national institutions that the safety of journalists must be secured for media workers to fulfill their professional duty to report events which are of public interest. The measures which the authorities need to complete later are in law enforcement and judiciary with the goal of guaranteeing the safety of journalists by members of the police and judges. In relatively young democracies such as the Macedonian, journalists must be persistent for justice when this incident occurs. Later, the institutions take corrective measures that stipulate systematic solutions.

In a broader context, with this judgment, ECtHR sets international and European standards that safeguard journalists’ right to access areas in fulfilling their duties to inform the public. Any attempt to remove journalists from the scene of demonstrations must therefore be subject to strict scrutiny, especially “when journalists exercise their right to impart information to the public about the behavior of elected representatives in the Parliament and how authorities handle disorder that occurs during Parliamentary sessions”.

The proper implementation of the measures that derive from this judgment by any member of the Council of Europe will guarantee the "watchdog" role of the media and the journalists by not only allowing their presence but also ensuring public interest events.

7. REFERENCES

AJM press release. (2017, December 29). AJM signed a Memorandum of cooperation with MoI for the safety of journalists. Retrieved from https://star.znm.org.mk/%D0%BF%D0%BE%D1%82%D0%BF%D0%B8%D1%88%D0%B0%D0%BD-%D0%BC%D0%B5%D0%BC%D0%BE%D1%80%D0%B0%D0%BD%D0%B4-%D1%83%D0%BC-%D1%81%D0%BE-%D0%BC%D0%B2%D1%80-%D0%B7%D0%B0-%D0%B1%D0%B5%D0%B7%D0%B1%D0%B5%D0%B4%D0%BD/?lang=en


CASE OF GELEVSKI v. NORTH MACEDONIA, 28032/12 (ECtHR January 08, 2021). Retrieved from https://hudoc.echr.coe.int/fre/#{%22itemid%22:%22001-204818%22}]

CASE OF KOSTOVA AND APOSTOLOV v. NORTH MACEDONIA, 38549/16 (ECtHR April 05, 2022). Retrieved from https://hudoc.echr.coe.int/eng#{%22itemid%22:%22001-216639%22}]

CASE OF MAKRADULI v. THE FORMER YUGOSLAV REPUBLIC OF MACEDONIA, 64659/11 (ECtHR October 19, 2018). Retrieved from https://hudoc.echr.coe.int/eng#{%22itemid%22:%22001-184654%22}]

CASE OF PENTIKÄINEN v. FINLAND, 11882/10 (ECtHR October 25, 2015). Retrieved from https://hudoc.echr.coe.int/eng#{%22itemid%22:%22001-158279%22}]

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THE ELECTORAL THRESHOLD IN THE ELECTORAL LEGISLATION IN THE COUNTRIES OF THE FORMER SFRY – ONE COMPARATIVE ANALYSIS AFTER THREE DECADES OF POLITICAL PLURALISM

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Abstract

The topic of the exploration is the electoral thresholds in the electoral systems in the states created in the territory of the former Yugoslavia. The paper does a comparative analysis of one of the most significant components and characteristics of the electoral systems in the South Slavic states. It should be noted that the proportional model without exception dominates in all countries of the former SFRY. The main idea in the application of the proportional electoral system is that the distribution of mandates should be in proportion to the election results. However, when applying this model in the countries of the former Yugoslavia, there are numerous variations. The differences are referred to the electoral formula, district magnitude, the types of ballots, and what this paper will be abstracted on – the electoral threshold. In the selected cases, it will be noted that there are differences between the electoral thresholds. Some of them are imposed for the single nationwide constituency, but there are also thresholds imposed at the district level, but also examples where there is no formal, but effective electoral threshold. As all the countries of the former Yugoslavia went through a process of democratic transition, the existence of an electoral threshold in most of them was intended to set a barrier to the entry of populist parties into the parliament and to test whether political parties are rooted in society and whether they reflect the interests of a certain layer of citizens.

Keywords: electoral threshold, formal thresholds, effective or natural thresholds, proportional electoral model, the six states of the former Yugoslavia

1 INTRODUCTION

Elections are fundamental for understanding and functioning of liberal pluralist democracies and play a central role in building a democratic order in almost all modern countries in the world (Deren-Antoljak, 1992: 217). Today in the science of elections and electoral systems there is a whole range of definitions that refer to elections. In this sense we are talking about elections as a) a necessary basis for the identification of holders of political power (Goati, 1991: 21); b) a source and foundation for the legitimacy of state authorities within the system of representative democracy (Sokol & Čala, 1990); c) the most important institution of the democratic representative order (Kasapović, 2003: 129) and d) elections are understood as a polyarchy (Dahl, 1998: 126).

The issue of the electoral system is a matter of political power. When the creators of the electoral system decide to model it to meet their assumed expectations, the creators of the electoral model have several important structural elements at their disposal that directly
affect the election result. These are primarily the constituencies (size of constituencies), the rules for the election contest, the voting procedure, the rules for deciding, i.e. the different methods for calculating and converting the votes into mandates, and what is the special focus of this paper – the electoral threshold (Deren-Antoljak, 1992: 221-222).

"Electoral rules in most countries that apply the principle of proportionality prescribe an electoral threshold that allows participation in the distribution of seats and, therefore, access to parliament only by those political parties that win a predetermined minimum number of votes" (Ibid., 227). The fact that the electoral threshold is associated with the proportional electoral system (PR), as one of the electoral models, in addition to the majority, mixed and others, is not at all surprising. This model dominates, without exception, in all countries of the former SFRY. ” The main idea in the application of proportional electoral systems is that the distribution of mandates should be in proportion to the election results“ (Dimitrievski, 2017: 5). However, when applying this model in the countries of the former Yugoslavia, there are numerous variations. The differences are referred to the electoral formula, district magnitude, the types of ballots, as well as what this paper will be abstracted on – the electoral threshold.

2 THE ELECTORAL THRESHOLD IN THE THEORETICAL LITERATURE

All electoral systems have thresholds of representation: that is, the minimum level of support that a party needs to gain representation. Thresholds can be legally imposed (formal thresholds) or exist as a mathematical property of the electoral system (effective or natural thresholds). Formal thresholds are written into the constitutional or legal provisions which define the PR system. An effective, hidden, or natural threshold is created as a mathematical by-product of features of electoral systems, of which district magnitude is the most important (Reynolds et al., 2008: 83-84). In addition to the threshold of representation, there is also a threshold of exclusion that can be defined as a minimum number of votes that even under the most favorable conditions may be insufficient for the party to receive a seat. If the party passes the lowest threshold, it becomes possible to win a mandate, while if it passes the highest threshold, the party is guaranteed a mandate (Klimovski & Karakamiševa, 2006: 276).

The main goal of the electoral threshold in systems of proportional representation is to block the entry of small parties into the legislature and thereby reduce partisan fragmentation within the legislature and enhance coalition stability—what is also known as “enhancing governability”. At the same time, however, the electoral threshold is liable to infringe upon the principle of representation—a fundamental principle of democracy—and especially on the right of minority groups to be represented in parliament (Troen, 2019: 1). Hence, according to the same author, a key challenge in any electoral design is ”how high should the electoral threshold be set in order to balance the need for governability on the one hand and the democratic principle of safeguarding minority group representation on the other hand?“ (Ibid.,).

The purpose of this paper is to consider the nature of the electoral thresholds used in the countries of the former Yugoslavia. It should be noted that in all selected cases the proportional model with an electoral list dominates, but still, they all, in one way or another, differ in several features, including in terms of the electoral threshold. In the selected cases, it will be noted that there are differences between the national electoral threshold, which is imposed for the single nationwide constituency, thresholds imposed at the district level, and also examples where there is no formal, but an effective electoral threshold.
3 THE ELECTORAL THRESHOLD IN THE ELECTORAL LEGISLATION OF THE COUNTRIES OF THE FORMER SFRY – A COMPARATIVE REVIEW

To analyze this issue, the selected countries will be elaborated through the above-mentioned parameters – the size of the representative body, the district magnitude (the number of seats in the electoral district), the electoral formula, and the electoral threshold. These structural elements for studying the effects on the electoral system were introduced by the doyen of political science, Arend Lijphart, in his work “Electoral Systems and Party Systems: A Study of Twenty-Seven Democracies, 1945-1990”.

Slovenia. This country is a unique example of the former SFRY that has a bicameral structure of its representative body. The Parliament is composed of the National Assembly (Slovene: Državni zbor), consisting of 90 MPs, and the National Council (Slovene: Državni svet) which has 40 members. Unlike the Council, where indirect elections are provided, the MPs for the National Assembly are elected directly in eight electoral constituencies138 (Slovene: volilni enoti). Eighty-eight (88) seats in the National Assembly are distributed according to proportion, and the 2 minority seats for the Hungarian and Italian communities are elected according to the winner-takes-all system in two additional single-member constituencies (Đukanović, 2006: 519). In Slovenia, two formulas are used for the redistribution of seats. First, at the level of the eight constituencies, the Droop quota is applied, which raises the divisor by the number of seats plus one (Jovanović, 2004: 392-393). However, in this distribution of the parliamentary mandates, as a rule, not all 88 seats in the National Assembly are filled.139 The seats that in the first phase will remain undivided will be allocated among the parties at the national level, where the D’Hondt formula is used, i.e. the highest averages method, by applying a series of divisors 1,2,3,4,5, etc.

The electoral threshold, which we analyze in this paper, in Slovenia is 4%. It should be emphasized that this is a national electoral threshold, i.e. it is not applied at the level of the eight constituencies. In Slovenia, there has been an evolution of the electoral threshold in the past two decades of political pluralism. In the first two election cycles for the National Assembly, held in 1992 and 1996, a threshold of 3.2% was applied, which was passed by 8 and 7 political formations, respectively. The current 4% electoral threshold was first applied in 2000. With this, Slovenia joined the group of countries analyzed by Troen (2019: 21), which followed the general trend to increase the electoral threshold, in contrast to a smaller part where it decreased. It is indicative that even the threshold of 3.2% or 4% for the National Assembly, was traditionally passed from 7 (in 2004, 2008, 2011, 2014) to 8 (2000) political formations. The exception is the penultimate parliamentary elections where the hurdle of 4% was “skipped” by 9 political entities in 2018, as well as the last elections in 2022 when only one political movement and 4 political parties entered the Parliament. The electoral thresholds that have been applied in Slovenia for the past three decades (of 3.2%, and 4%), on the one hand, contributed to the democratization of Slovenian society in a sensitive period of transition and at the same time prevented excessive polarization of the political space. On the other hand, the excessively low thresholds allowed parties with a very small share of votes to enter, thus causing considerable unpredictability in the entry of new parties and difficulties in forming coalitions as well as in the functioning of the National Assembly (Zajc, 2004: 135).

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138 Each constituency consists of eleven electoral districts (Slovene: volilnih okrajev) and 11 MPs are elected from each constituency, although not necessarily one in each of the electoral districts.
139 For example, in 2014, 21 of the 88 seats in the electoral districts remained unfilled, thus being redistributed at the national level (Časnik Večer d.o.o. Pridobljeno dne 2018-03-18).
Croatia. Croatia’s electoral system, especially in the first decade of Croatian independence, had undergone dramatic changes. The first plural elections for the Parliament of the Socialist Republic of Croatia, in 1990, were held according to the two-round system. A certain proportional component has been introduced for the 2nd and 3rd elections for the Croatian Parliament (Croatian: Hrvatski sabor). The ratio of proportional vs. mandates gained in single-member constituencies in the 1992 elections was (60:64), and in 1995 (80:28) (Nohlen & Kasapović, 1997: 51). The current electoral model by which the whole country is divided into ten electoral districts140 in which 14 MPs are elected, whose mandates are redistributed according to the D’Hondt formula was introduced in anticipation of the 4th elections for the Croatian Parliament in 2000. There are also two additional electoral districts for the diaspora (3 seats) and minorities (8 guaranteed seats) (Palić, 2012: 51). The Constitution of Croatia stipulates that „the Croatian Parliament shall have no less than 100 and no more than 160 deputies“ („The Constitution of the Republic of Croatia”, Art. 72).141

As the electoral model in Croatia evolved, so did the electoral threshold, beginning in 1992, when proportional elements were introduced, and also a single national electoral threshold of 3% was envisaged, passed by 6 political parties and 1 coalition. When, in the next elections in 1995, the proportional mandates in the mixed electoral model were increased from 60 to 80, the national electoral threshold was changed. Then, for the first time, but also for the last time, a differential electoral threshold of 5% for one party, 8% for two parties, and 11% for three or more parties was applied (Palić, 2012: 50). Four political parties passed the 5% electoral threshold and of 11% one coalition list with five political formations in it. A single electoral threshold of 5% was introduced with the establishment of the current electoral model in 1999. In the 2000 elections, 3 coalitions and 1 party achieved the 5% electoral threshold. It should be emphasized that in the legal solution in the Law on Election of Members of the Croatian Parliament in Art. 41 it is clearly stated that “the right to participate in the distribution of seats in the electoral districts is exercised by the lists that received at least 5% of the valid votes of the voters“. Hence, it can be concluded that the 5% electoral threshold in Croatia is applied at the district level, and not at the national level, as is the case with the previous example from Slovenia. Thus, in the 2003 elections, 8 political parties and coalitions entered the Parliament, of which 3 at the national level did not win more than 5% of the votes, but they had achieved this percentage in the districts. An equal number of political formations were elected to the Parliament in the 2007 parliamentary elections. Four of them at the national level had won less than 5%. But because these parties were with good regional strongholds, especially in Istria (electoral district VIII), and Slavonia and Baranja (electoral districts IV and V), they won seats because they passed the 5% electoral threshold of votes in these electoral districts. Except for the elections in 2011 (when 7 political parties and coalitions entered the Parliament), in all the remaining elections of 2015, 2016, and 2018, the number of political entities that have won seats in the Croatian Parliament was continuously 8. Parties with less than 5% support at the national level, but with more than 5% in the districts took part in the work of Parliament in 2011 and 2016 (4), in 2015 (5), and 3 in 2018.

140 „The electoral districts are formed in such a way that they largely coincide with the existing administrative division of the Republic of Croatia into municipalities, cities and counties“ (Đukanović, 2006: 520).

Such experience with the application of the electoral threshold in Croatia, on the one hand, shows us that if it is applied at the national level it would be fundamentally contrary to the purpose of the proportional electoral model because it would prevent participation in the distribution of seats for smaller political actors. They, on the other hand, according to the current electoral threshold of 5% applied at the district level, have a good chance of entering the Parliament, especially those political formations with strong regional strongholds. As an example, we can point out the Croatian Democratic Alliance of Slavonia and Baranja (Croatian: Hrvatski demokratski savez Slavonije i Baranje), or Istrian Democratic Assembly (Croatian: Istarski demokratski sabor).

**Bosnia and Herzegovina.** The complex state structure created by the Dayton Peace Accords (DPA) in the American city of the same name is reflected in BiH’s complex electoral system, which went through two stages in its development. It is about the temporary electoral system which was based on Annex III of the DPA (Elections in Bosnia and Herzegovina), with an especially emphasized role in Art. II (1) of the OSCE Election Mission, as well as the permanent electoral system adopted by the Parliamentary Assembly of BiH in 2001 (Sahadžić, 2009: 65, 67). According to Mirjana Kasapović (2003: 196-197), the legislator in 2001, opted for a proportional electoral system, and the existence of a large number of multi-member constituencies, which is conditioned by the complex composition of this country. Moreover, thanks to the two federal entities142 in this country, it was necessary to establish the existence of a proportional and compensatory component in the electoral model. Forty-two members of the House of Representatives of the Parliamentary Assembly143 of Bosnia and Herzegovina (HR PA BiH), are selected in a way that 28 come from FBiH, and 14 from RS. 21/28 MPs from FBiH are elected in five, and 9/14 seats in RS are redistributed in three multi-member constituencies. The remaining 7 respectively 5 mandates are distributed from the compensatory lists, where the same proportional formula is applied (Research Center of the Parliamentary Institute of the Parliament of Montenegro, /RC PI PM/, 2016: 11). Both direct and compensatory mandates are distributed according to the Sainte-Laguë formula.

BiH, like Montenegro and Serbia (see below), has the lowest electoral threshold in the region at 3% (Arnaut, 2021: 35-36). In the initial development of the permanent electoral system in BiH, a double threshold was applied, of 3% for the direct and 5% for the mandates from the compensatory lists. The re-actualized Electoral Law states that "only political parties and coalitions, which won more than 3% of the total number of valid ballots for the territory of the entity for which the compensatory list is made, may take part in the distribution of compensatory mandates“ (Art. 9.6. a), Electoral Law of BiH).

The effects of applying the 3% electoral threshold in BiH so far are quite ambiguous. One of the most problematic aspects is that this electoral threshold produces an oversized representative body. Thus, after a total of five General Elections in BiH, according to the current Electoral Law, the number of parties represented in the HR PA BiH varied from 12 (in 2006, 2010, 2014) to 13 (in 2002) to 14 in the current composition from 2018. All this

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142 BiH is made up of two entities – the unitary Republika Srpska (RS), and the Federation of BiH, which is divided into 10 cantons (5 with Bosniak, 3 with Croat, and 2 with mixed ethnicity). The two entities have shared sovereignty over the Brčko District.

143 The Parliamentary Assembly has a bicameral structure. The second chamber is the House of Peoples. It consists 15 delegates. 5 delegates are delegated from the RS National Assembly, and 10 from the Bosniak (5) and Croatian (5) caucus in the House of Peoples of the Parliament of the FBiH (Đukanović, 2006: 522).
creates preconditions for a more difficult formation of a government majority or an unstable parliamentary majority because different political parties are constantly proliferating. These smaller political entities disproportionately influence the entire government in a way that insists on their lucrative positions in government to further support it. For these reasons, the mainstream political parties, which, as a rule, constitute the government at the central level (Bosniak SDA, Serbian SNSD, and Croatian HDZ BiH) prefer to increase the electoral threshold. With that, in the future, they would not be forced to relinquish a significant and disproportionate number of important positions to smaller parties (Arnaut, 2021: 35-37). Therefore, "to consolidate democracy and the party system, the electoral threshold should be raised from 3% to 5% party participation in the electorate. It would help the party system not be so atomized“ (Pejanović, 2021: 234). It should be noted that the atomization of HR PA BiH is not only due to the relatively low threshold of 3%, but also its combination with the method of redistribution of seats – Sainte-Laguë, which according to Liphart’s opinion „leads to an approximate proportionality very close to that expressed in practice, because it treats in an ideally impartial way both small and large parties“ (quoted by Klimovski & Karakamiševa, 2006: 263-264).

**Montenegro.** With the proclamation of Montenegrin independence and the adoption of the new Constitution in 2007, it was established in Art. 83 that "the Parliament shall consist of the Members of the Parliament elected directly on the basis of the general and equal electoral right and by secret ballot. The Parliament shall have 81 Members“. This is important to emphasize because the number of members of the Montenegrin Parliament during the period when the country was part of the Federal Republic of Yugoslavia, and the State Union of Serbia and Montenegro varied: 1990 (125), 1992 (85), 1996 (71144), 1998 (73), 2001 (77), 2002 (75). The size of the electoral districts also varied – 20 in 1990, 14 in 1996, and the state as a single national constituency in all other election cycles (Vujović, 2012: 13). But, unlike some other countries of the former SFRY, what was permanently present in the Montenegrin electoral legislation was the application of the proportional model and the D’Hondt formula for the distribution of mandates.

The evolution of the electoral threshold in Montenegro proceeded as follows. In the first three election cycles in pluralism (1990, 1992, 1996) was used a legal threshold of 4% of the total number of votes cast in the electoral districts. It should be noted that with the amendments to the Electoral Law of 1992, the effective threshold affected the structure of the Montenegrin Parliament, leaving two electoral lists that won more than 4% of the vote without seats (Pavićević, 1997). From the national elections in 1998, through those in 2001, 2002, 2006, to 2009, an electoral threshold of 3% was applied. The change of the Electoral Law from 2011 introduced a differential electoral threshold so that in addition to the threshold of 3%, there is also a threshold for minority parties of 0.7%, i.e. 0.35% for the parties representing the Croatian national community. This differential threshold for minority parties can be said to be a kind of reserved seat, because passing the threshold guarantees winning the first mandate for each of the minorities, regardless of the size of the D’Hondt quotient and its effect. According to the current Electoral Law, in the 2012 elections, it is interesting to note that besides the 4 parties and coalitions that passed the 3% threshold, the same was achieved by the Bosniak minority party, and the threshold of 0.7% was passed by 2 Albanian formations, and that of 0.35% by the Croatian minority party. Seven parties passed the threshold in 2016, including the party of the Bosniak community. This time the Albanian minority parties won 1 mandate, the same as the Croatian ones. An

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144 7 seats in these elections were elected in a special constituency for minorities.
identical number of political options have won seats at the last parliamentary elections in 2020, passing the 3\% threshold. But unlike the previous elections, the Croatian minority parties did not win a mandate for the first time since the introduction of the differential threshold for this community of 0.35\%, while the Albanian parties won 2 seats (Dedović & Vujović, 93-96). According to the same authors, the effects of the application of such electoral thresholds in Montenegro enable political parties to often resort to forming pre-electoral coalitions to avoid the “spoilage” of the votes. On the other hand, this has resulted for smaller parties without more serious voter support to have a disproportionately large share in the composition of the Parliament (Ibid., 96).

Serbia. "The Parliament of the Republic of Serbia is unicameral and has 250 MPs who are elected in four years" (RC PI PM, 2016: 24). The evolution of the electoral model so far has taken place in three phases: 1) a two-round system in the 1990 elections; 2) a proportional electoral model in multi-member electoral districts (9 in 1992, 1993, and 29 in 1997)\textsuperscript{145}; 3) a proportional electoral model with one nationwide constituency from 2000 onwards, using the D'Hondt sequence of divisors (Đukanović, 2006: 524-525). With the 2000 Electoral Law, a 5\% threshold was introduced. The relatively high threshold resulted in the expulsion from the Parliament of several political parties belonging to national minorities, as well as smaller parties. In the 2000 and 2003 elections, 4 and 6 electoral lists passed this threshold, respectively. This was one of the reasons why the lowering of the electoral threshold was demanded. However, this addressed problem for the minority lists was exceeded after the amendments to the Law on the Election of MPs from 2004. The new legal solution, introduced a determinant according to which minority parties and lists will be elected to parliament even if they win less than 5\% of the vote (Ibid.). Practically since then, a de facto natural electoral threshold of 0.4\% has been applied to minority lists. Thus, in the elections in 2007, 6 political entities and 5 minority lists passed the threshold of 5\% and 0.4\%, respectively; in 2008, that ratio was 5 parties and coalitions and 3 minority lists; in 2012 6 parties and coalitions and 5 minority parties; in 2014 4 coalitions and 3 minority parties, and in 2016 7 political options and 5 minority parties entered the National Assembly.

The idea of lowering the electoral threshold from 5\% to 3\%, which was advocated in Serbia two decades ago by smaller political parties, was realized in 2020. In anticipation of the parliamentary elections the same year, all relevant polls showed that almost no opposition party would be able to pass the 5\% threshold. During this period, the ruling Serbian Progressive Party (Serbian: SNS) led by President Vučić, faced accusations of regime action. To show that it had nothing against the opposition, SNS agreed to lower the electoral threshold. But to make the paradox even bigger, in the 2020 parliamentary elections, only 2 coalitions and 1 party passed the 3\% threshold (Arnaut, 2021: 36). Four minority lists also won mandates. This outcome was partly due to the boycott of the opposition. The opposition still took part in the last elections in 2022 when five opposition coalitions (three right-wing, one “big tent”, and one “green”), and two coalitions led by the current ruling parties SNS and SPS passed the 3\% threshold. Again, 4 minority lists have been able to gain seats in the National Assembly, but not a single Albanian one for the first time.

\textsuperscript{145}At the time, Milošević’s ruling party, the SPS, wanted to question the true proportional effect of the system by introducing several multi-member electoral districts, 9 and 29, respectively (Đukanović, 2006: 524).
N. Macedonia. Just like in Serbia, in N. Macedonia we had an evolution of the electoral rules in three phases, and key turning points were the election cycles in the early nineties, 1998, and 2002. In these three electoral stages "the Macedonian electoral model moved from a pure two-round system, with 120 single-member constituencies, to a mixed model with 85 single-member constituencies and a proportional component, with 35 MPs elected in a single national constituency and a 5% electoral threshold, to a purely proportional model in six electoral units, where 20 MPs are elected“ (Bocevski, 2021). In both cases, when the proportional component was introduced in the mixed system in 1998, but also in the current one, parliamentary seats are allocated according to the D'Hondt formula.

As for the electoral threshold, except for the 1998 elections, when a national electoral threshold of 5% was applied to the 35 seats elected in the country as one constituency, after 2002, the seats were distributed proportionally, without formal, but according to an effective electoral threshold. Hence, N. Macedonia is the only country from the former SFRY that "does not provide for the existence of an electoral threshold, so all political parties can win mandates, by the achieved election results“ (Đukanović, 2006: 529). So far, 7 parties and coalitions have succeeded in 2002, 8 in 2006, 5 in 2008 and 2011, and 6 in 2014, 2016, and 2020 to enter the Parliament. The effects of the current application of this model are that it encourages moderate multipartism, which is dominated by two parties/coalitions in both the Macedonian and the second largest ethnic community in the country – the Albanian (Daskalovski, 2019: 460). This electoral model has also given a serious impetus to the stability of the governing coalition, as its effects are almost the same as the majority system (Deskoska, 2012: 2). In the past two decades since its application, it has been difficult for small parties to enter the Parliament. Hence, the debate over the need to set an electoral threshold is still very heated, because the introduction of such a measure could still exclude someone from entering the Parliament (Bocevski, 2021). One possible solution suggested is to keep the six multi-member electoral districts, where there is no formal threshold, but to replace the D’Hondt sequence of divisors with that of Sainte-Laguë, which is applied for example in BiH. According to Dasakalovski’s simulation (2019: 464-465), indeed, in the Parliament, we would have a greater “flow” of several smaller parties: 3 in 2006, 2 in 2002, 2008, 2011, and 1 in 2014, and 2016.

4. CONCLUSION

Electoral experts agree that there is no single best electoral system, as ”each electoral environment has different factors to take into account and that each electoral system has particular general advantages and disadvantages“ (Wall & Salih, 2007). One of those factors that were taken into account in this comparative analysis is the electoral threshold. As all the countries of the former Yugoslavia went through a process of democratic transition, the existence of an electoral threshold in most of them, when the proportional electoral model was introduced, was intended to set ”a barrier to the entry of populist parties into the parliament and to test whether political parties are rooted in society and whether they reflect the interests of a certain layer of citizens“ (Bocevski, 2021). That is why, in the recommendation of the Parliamentary Assembly of the Council of Europe so far, it has been suggested that the electoral threshold should not exceed 3% in “well-established democracies” (Arnaut, 2021: 36). However, in most countries on European ground it “gravitates” around 5%, as is the case with here analyzed Croatia, Serbia until 2020, and the
Republic of Macedonia in 1998. Although countries such as BiH, Montenegro, and Serbia, due to the more modest three decades of pluralistic experience, cannot be included in the group of well-established democracies, however, in their legislation, they have abstracted on the 3% threshold. In Slovenia, in the first two election cycles, where the threshold was 3.2%, it was still decided to increase it to 4%. N. Macedonia remains a supporter of the concept of an effective electoral threshold.

The effects and experiences from the application of different electoral thresholds so far in the here selected cases are also different. In Slovenia, the current electoral rules, which include the national electoral threshold of 4%, enabled successful democratization of the political space and prevented its excessive polarization. Five percent electoral threshold in Croatia, which is applied at the level of electoral districts, in a measured and functional way provides “passability” in the Croatian Parliament of mainstream political parties (primarily HDZ, SDP), but also of parties with a strong regional identity and good strongholds in the ten electoral districts. Despite the relatively low electoral threshold of 3% in Montenegro, with the aim to avoid “spoilage” of the votes, political parties often resort to forming pre-electoral coalitions, the goal of which was to dethrone Đukanović’s party DPS, which finally happened at the 2020 elections. In BiH, the unfortunate combination of a low 3% electoral threshold with the Sainte-Laguë formula (which is more party-neutral, as opposed to D’Hondt, which favors larger parties and coalitions) has resulted in the atomization of the HR PA BiH, more difficult government formation, and instability of the parliamentary majority. Hence the call for the introduction of a higher threshold of 5% seems justified. The 5% threshold that was nurtured in Serbia until the 2020 elections encouraged more moderate multipartyism and the formation of relatively stable coalition governments. Moderate multipartyism and stability of the parliamentary majority and the government are the effects produced by the Macedonian electoral model, that is the only one of the countries of the former SFRY where there is no formal threshold. But the smaller political parties are most dissatisfied with this model because it deprivileges them. Hence, they are the most vocal about changing the existing model, by introducing a single nationwide constituency, without a formal electoral threshold, and open lists. Leading Albanian parties (explicitly) and Macedonian (implicitly) are against it because the existing model favors them.

5 REFERENCES


Dedović, V., i Vujović, Z. Izborni sistem u Crnoj Gori. U V. Goati i S. Darmanović (Urd.), Izborni i partijski sistem u Crnoj Gori, Perspektive razvoja unutarpartijske demokratije (str. 87-135). Podgorica: Centar za monitoring i istraživanje CeMI.


Izborni zakon Bosne i Hercegovine (Tehnički prečišćeni tekst), www.izbori.ba


Ustav Crne Gore - Paragraf Lex MNE

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Ustav Republike Hrvatske, pročišćeni tekst, NN 56/90, 135/97, 08/98, 113/00, 124/00, 28/01, 41/01, 55/01, 76/10, 85/10, 05/14


Zakon o izborima zastupnika u Hrvatski sabor, pročišćeni tekst zakona NN 116/99, 109/00, 53/03, 69/03, 167/03, 44/06, 19/07, 20/09, 145/10, 24/11, 93/11, 120/11, 19/15, 104/15, 98/19 na snazi od 01.01.2020
BUREAUCRATIC FORMS OF BEHAVIOR OF THE STATE WILL PROTAGONISTS IN THE SYSTEM OF ADMINISTRATIVE DECISION-MAKING IN BOSNIA AND HERZEGOVINA

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Abstract
In the theory and legal practice of administrative law there are two very special and, in many ways, contradictory forms of behavior expressed by the bearers and protagonists of the legitimate state will. The first form manifests itself as a managerial culture, and the second appears as the authoritarian culture of the authorities (Pusić, 1989). It is indisputable that both forms have a negative impact on the rule of law and are immanent to bureaucratic culture, but there are certain differences compared to it. Thus, bureaucratic culture in public administration signifies the inert support of established, traditional forms of behavior with an emphasis on the interest of one's own career and one's own profit, i.e., a successful struggle for power and influence in the organization. In its essence, bureaucracy is conservative and very committed to traditions that stop innovation, constantly insisting on firm discipline and obedience, which strengthens the power-based authority structure. Such created atmosphere radiates distrust, apathy, and alienation, especially among the bearers of lesser positions.

Keywords: legal practice, public administration, bureaucratic culture, decision-making, organization, government

1. Introduction
In bureaucratized organizations with such a culture, secrecy is affirmed as the main communication strategy because the disposal of information and its distribution is directly related to actions and events. It is therefore not surprising that civil servants are considered to be informed persons, while their proximity to information, which is jealously kept secret, is seen as the essential component of their position in the administration. Over time, information becomes the monopoly of all who possess it. Of course, in the hierarchy of power, various pieces of information exist on different levels. It should be kept in mind that knowledge of the law is quite important. Those who do not have such legal knowledge are not in the same position as those who do. When the knowledge of something is hidden or is selectively used by those who are in the position of state power, such legal behavior has to do with morality. Law should be a sphere of external freedom. It is a freedom that restricts the freedom of everyone at the same time in order for freedom to exist at all. Restricting the freedom of one in relation to the other is a true denial of freedom. This is what a bureaucratic government does in a non-democracy. In its nature, the bureaucratic government is such that, as a rule, excludes the public. It rests on a very small number of established communication channels, where the frequency of information dissemination tends to be minimal. This
applies equally to internal and external channels of communication between state bodies, as well as between the civil servants in the administration and the citizens. Such bodies are closed administrative systems that promote secrecy and mistrust, which leads to ethically questionable activities over time. The fact must be kept in mind that the retention and manipulation of information in the field of administration always requires strict control over the said information, as well as the channels via which information is transmitted. In order to achieve such control, obedient members of the administrative organization are needed, both in internal relations and in relations with political bodies, citizens, and the public.

Leaders of bureaucratized bodies constantly insist on the use of formal channels in order to maintain a firm thread of leadership. There is a noticeable tendency for communication channels to be vertical and directive-reporting, i.e., indirect and formal. On the other hand, the directiveness is emphasized, not only within the administration but also in relation to political bodies and citizens, while the administration, figuratively speaking, bows to the government and tramples its own citizens. Thus, certain external informal channels are established, which are connected to various centers of power through which the influence on the decision-making process is exercised. These occurrences do not contribute to the desired transformation of the state government into one that serves the citizens and one in which the performance of public administration is evaluated in an effort to enable its citizens to achieve a successful social and societal regulatory function. External influence on the administrative function of the government derives its fundamental and most general meaning from the influence of “something on something”, which is a process in which, for example, an official person through their behavior (either consciously or unconsciously) changes the behavior of others. At the same time, this influence must be subject to some sort of responsibility, i.e., that it is achieved in such a way as to prevent the abuse of power through legal forms of control. After all, the task of the rule of law is to establish the proper functioning of public services and thus enable the protection of individuals from the arbitrariness of administrative and other public bodies. The motives of those who abuse power are always set and justified as the goal of the body itself, or as a higher interest. These motives can be different and range from those that are politically motivated to those in which personal interest is dominant. This interest can be a material benefit, personal revenge, obtaining benefits for a third party, etc. It is characteristic that the authority of the body is always placed in the service of achieving a higher goal that is very transparent, while the real goal is always sought to be concealed. This is achieved with the help of the broad powers which the public authorities have in carrying out their activities as well as the resources used to conduct them. The competencies of state bodies are based on objective law, which has its source in the constitution, and therefore the administration is a specific legal category which represents certain functions of state power (Walter & Hanz, 1987).

2. MANAGERIAL CULTURE IN PUBLIC ADMINISTRATION

Traditional authoritarian forms of management in administration are today juxtaposed to a modern concept – “managerial management”. This term encompasses multiple tasks arising from management, leadership, control and execution, vocational training, and “producing” success. The task of the “managerial management” is to set a milestone and “break it down” into several sub-goals and direct and manage the complete realization of the mentioned milestone. Thus, the administrative-organizational, technical, and methodological ways and means of administration can be used to the maximum, while also controlling the setting and execution of optimal goals and tasks in accordance with the
law. Issues of constitutionality and legality come to the fore only when the position of “protected authority” needs to be protected or, in other words, “when the law is suitable”. This is what administrative science, i.e., the science of administration deals with, so the application of management in work assumes that authorizations and tasks are issued to groups and individuals who have the best real professional qualifications (Đelmo, 2007).

Governing people in the sphere of state activity should have a specific cultural milieu from which there should always be a milestone and specific tasks to be performed. Afterward, the achieved success and potential mistakes are usually critically and self-critically considered. In this way, a style of people management is created, which is related to the sphere of management, and which requires a high degree of expertise and personal responsibility of the people in state bodies. These are employees in the judiciary, administration, and representative bodies who come to positions of power in various ways, such as appointment, election, and nomination. In a non-democracy, this is usually done through friendships, and very often through one's political suitability and loyalty to a political party. Politics, instead of dealing with the issue of what the law should be in a particular country, or in what sense the existing law should be changed (studying the law from the de lege ferenda point of view, and not de lege lata), directs its demands towards people by dealing with the content of law as a means of achieving certain goals, using the causal-expli icative method, in countries (Šarčević, 1990) which are qualified as non-legal. Obviously, the content of the law is largely determined by a layman’s assessment based on everyday experience and is very insufficiently scientifically confirmed. Politics has a tendency to make such assessments. It often determines the goals that the law should achieve, and these are, again, the goals that are set and the values of which are usually subjective in nature and differ depending on social relations and the persons associated with them.

Managerial culture does not necessarily have to be negative; it can go hand in hand with de-bureaucratization, which considers the management of people successful if people are not given “bare” orders in a general manner. Therefore, the managerial culture in public administration is very similar to the techno-managerial culture, which is focused on the effort to primarily achieve economic goals (Šarčević, 1990).

It should always be kept in mind that the key goal of the so-called “manager” (“techno-manager”) is to preserve and improve their own position, full comfort, financial position and stability, or career within any form of state organization. Techno-managers believe that this emphasizes the very position of the body in relation to the entire administrative system, i.e., the political-administrative mechanism of government and decision-making (Adižes, 2001).

Within the state oligarchy of power, it is relevant that the immediate environment of a state organization is constantly perceived as a source of danger for it and/or the position of its employees. Due to heavy pressure, the managers tend to transfer the personal responsibility they have towards political bodies, in whole or in part, to various other decision-makers, especially those at lower levels or from the outside, so as not to jeopardize or risk their own position. Here the instrumental understanding of the role of all the other participants comes to full expression. The techno-managerial and managerial culture in public administration is thus strongly marked by a certain duality of communication processes and their consequences. They are not only determined by guidelines in the form of signposts that lays a set path that should be followed in order to achieve a certain goal. They come to the fore, whether they are relations that arise ex officio or at the request of stakeholders, or whether they are official initiatives. Both imply the establishment of
external influences, primarily in an effort to show that the finishing of as many administrative tasks as possible is in the public interest. In addition, the managerial culture is characterized by formal, i.e., directive-reporting channels with a pronounced tendency towards manipulation of information and reports, especially towards political bodies related to the line of responsibility, and towards citizens as end users. The so-called “informal channels” are established in order to create “contact systems”, with the aim of maximizing the self-interest of civil servants, very often at the expense of performing public functions.

Modern management systems in public administration should be a negation of the traditional office management system in which there was a dominant arbitrary role of stakeholders in public authorities and the performance of administrative functions. A modern “managerial manager” should also take action in order to get to know and maintain current knowledge of the complex mechanism of the administrative activity through such “training”. The subjective factor (people) manifests itself as a decisive factor in the system and must have precisely defined competencies at each hierarchical level and know what it is individually responsible for. Its position within the administrative organization must be marked by three characteristics:

- job tasks,
- powers held when executing the tasks, and
- the degree of accountability arising from the tasks and responsibilities.

3. DECADENT FORMS OF BEHAVIOR OF PEOPLE IN STATE AUTHORITIES

Authoritarian culture emerged simultaneously with the emergence and development of the administration in the work of police bodies. In public administration, it was marked by a rigid bureaucratic understanding that political officials and public authorities are more important than citizens. The fact that has completely been ignored is that the citizens are, both truly and formally, the source of legitimacy of the state power (Lilić, 1999).

Administrative authoritarian culture is marked by hierarchical characteristics that produce a climate of directiveness and obedience. The communication channels that are established in the administrative state organization are vertical and directive-reporting, and they do not leave room for any self-government. They are firmly focused on conveying top-down orders, as well as on conveying mere reports from the bottom up only in case of a request from the superior. Orders are often given only to show hierarchical order, even if there is no real need for them, and sometimes even at the expense of the normal business. Such state power is not open to citizens as bearers of certain legitimate interests and demands but is closed even to their opinion on the administration and political system. Communication with the citizens tends to be kept to a minimum and limited to cases in which the administration appears as an initiator. Politics and corruption play a crucial role in informal communication.

4. COMMUNICATION RELATIONS IN PUBLIC ADMINISTRATION

Communication can generally be defined as the process of sending and receiving messages. Communication in the administration is the sum of means and methods via which information is transmitted in order to influence the behavior of people in their organizational roles. The communication system consists of relatively permanent structures of connection of people and resources in the process of information exchange in the administrative organization and between the organization and the environment (Pusić, 2002). The elements of a communication system are:
sender – the person or body providing the information (notice, data, etc.),
receiver – the person who receives the information (in the administrative organization and administrative relationship it is the person whose behavior is influenced),
content of the information – the meaning communicated by the sender to the recipient,
means of communication – the physical medium through which information is transmitted,
stream of communication – all subjects involved in the process, starting from sending until the reception of the information.

The way this communication system is organized is, in fact, the way the whole organization is organized because its structure is reflected in the mutual relations of employees and relations with other “external” entities. The quality of the communication system could be determined by the following characteristics: selectivity (a system that can effectively provide what information is needed while avoiding overload), the ability not to distort information, the speed required to correct distorted information as well as the cost-effectiveness, i.e., the lowest possible costs required for the transfer of the information.

Communication has its two main manifestations; namely, it can be either verbal or nonverbal. What is important for this paper is verbal communication, i.e., the manner and level of culture in the communication of the employees working in administrative organizations.

Attitude is what either attracts or repels, and it is manifested in both speech and body movements, i.e., non-verbal communication. Unfortunately, the number of people who have been in direct contact with public officials and have experienced rude, insolent, or careless behavior is quite high. The first thing we see on the interlocutor is their facial expression because the face is the most exposed part of the body. It can be “read” as it clearly shows what the person feels. Effective people, regardless of their culture or profession, often smile or have a pleasant facial expression to show friendly understanding and animate the other person in a similar fashion. Calmness, moderation, security, and reliability are empathetic-sympathetic qualities, very desirable in every profession, especially for people who work in public administration directly with citizens.

On the other hand, when it comes to the means of standardizing expression, one of the most pronounced problems that parties come into contact with are various forms. Forms, necessary means of communication in administrative organizations, i.e., their filling and processing, are often a source of dissatisfaction of parties, as well as the cause of overburdening of the employees because they often cause too much work. This leads to inefficient processing and obsolescence of data, which, on the other hand, creates a vicious cycle of poor communication. Therefore, it is crucial to pay attention to the process of creating and using forms in terms of their purpose, as well as to clear, accurate, and accessible instructions for their use.
5. THE IMPACT OF CORRUPTION ON THE WORK OF ADMINISTRATIVE BODIES IN BOSNIA AND HERZEGOVINA

There is no doubt that corruption as a phenomenon is not only a phenomenon in Bosnia and Herzegovina, but a scourge of modern society. Also, historically and geographically it was present throughout the development of mankind. Corruption has existed since ancient times. Over time, it penetrated deeper and deeper into the so-called corridors of the state apparatus and in modern times it is one of the most serious obstacles to the rule of law. The reasons for this are numerous: economic, political, social, psychological, and cultural. The etymological understanding of corruption is polyvalent and, precisely because of that, there are divergences which determine the different typologies that in their essence have fairly equal characteristics reflected in secrecy, as well as adaptation to different social circumstances and circumstances that society/state goes through in its development. Together with numerous weaknesses and problems in Bosnia and Herzegovina, such as a constitutional system that does not exist anywhere else in the world, an unstable political situation, poor legislation, imbalance between the competencies of higher and lower authorities, one of the biggest problems is undoubtedly corruption.

After nearly three decades of futile attempts to build a strong and stable state with the help of the international community, Bosnia and Herzegovina still fails to build stable institutions in the legislative, executive, judicial, and administrative branches. In addition to all the other weaknesses, it is widely regarded that corruption and corruptive challenges in public administration in Bosnia and Herzegovina are the biggest problems for the citizens of this country. So, widespread corruption in the public and private sectors in Bosnia and Herzegovina has long been recognized as one of the country's biggest obstacles to progress and threatens, if not suppressed or at least reduced to a minimum, to destroy any healthy initiative and investment in its progress. Therefore, a logical question arises - if corruption has long been recognized, what do the state and its bodies do to suppress it or at least bring it to tolerable limits? In order to be able to offer appropriate solutions in the fight against corruption, it is necessary to scientifically consider its most important causes, such as:

- one of the main reasons for almost all problems and troubles is undoubtedly the complex constitutional and legal system of Bosnia and Herzegovina in accordance with the Dayton Peace Agreement, with entity voting being the biggest problem due to a strong ethnic background in the institutions of Bosnia and Herzegovina,
- inconsistencies in public policies at different levels of government lead to the establishment of more identical institutions at different levels of government,
- anti-corruption reforms are not being implemented and are mostly discussed during the election campaigns,
- independence and very poor coordination and cooperation of law enforcement institutions at different levels of government, especially those related to the prevention of corruption,
- inadequate legal regulation of areas where corruption is most prevalent, namely: public procurement, financing of political parties, prevention of conflicts of interest in government institutions, adoption of the Law on Protection of Persons Reporting Corruption, the Law on Confiscation of Illegally Acquired Property, consistent implementation of the Law on Freedom of Access to Information, issues of internal and external control in public administration, promoting the integrity of public administration employees and adopting an Integrity Plan for all administrative bodies, etc.
5.1. Conceptual presentation of the state administration system in Bosnia and Herzegovina in the context of corruption incrimination of organizations and bodies

Analysis of CPI results and comparison with other surveys showed a direct link between the level of corruption and the level of democracy development of the state. Developed democracies thus have an average index of around 75, weak democratic systems have ratings of around 49, and hybrid regimes, which show elements of autocratic systems, have an index close to 35. According to the Democracy Index, Bosnia and Herzegovina is one of the hybrid regimes in which electoral irregularities, political pressures, lack of judicial independence, high levels of corruption, pressure on the media, and almost non-existent rule of law regularly occur. All these characteristics and weak democratic foundations allow corruption to flourish, especially in systems where undemocratic and populist leaders use the weaknesses of the system to their advantage.

The institutions of Bosnia and Herzegovina are almost completely paralyzed by corruption and fail to achieve their purpose, leaving citizens unable to exercise basic human rights. Epistemically, corruption in administrative bodies can be elaborated through an overview of the organization and legislative and legal framework of administrative bodies in Bosnia and Herzegovina in the context of the adoption of numerous new laws which would regulate the organization and functioning of administrative bodies in the transition processes. Corruption infests certain areas such as urban planning and construction, privatization, property relations, denationalization, etc.

The state of Bosnia and Herzegovina, as a country facing many unfulfilled reform obligations on the path to European integration, is the embodiment of all opportunities that favor the emergence of various forms of corruption. Unbuilt institutional capacities, inconsistency of the laws in many areas, and the existence of as many as four levels of government in the country, an underdeveloped and non-transparent political system, inefficient judiciary and public administration, are just some indicators of the chaotic situation in an over-indebted country facing a long and uncertain path of transition that must be successfully traversed in order to reach the final goal and enter the European Union.

5.2. The necessity of establishing new institutional capacities to fight corruption in Bosnia and Herzegovina

All research conducted so far in Bosnia and Herzegovina identified corruption as the main problem in the functioning of the state of Bosnia and Herzegovina as a state governed by the rule of law, in which the rule of law is the highest postulate that is respected without exception. In Bosnia and Herzegovina, it is very difficult to establish the rule of law,

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146 According to the results of the Corruption Perception Index (CPI) in recent years, published by Transparency International (TI BiH), which ranks countries around the world in relation to the perceived level of corruption in the public sector, BiH is again as low as it was in 2017 with a score of 38 on a scale from 0 to 100, where 0 represents the highest level of perceived corruption, while a score of 100 represents the lowest level of corruption, which places BiH on the 89th place out of 180 countries included in the survey. Comparing the results in the last 7 years, in which the ratings range from 42 for 2012 and 2013, to 38 for 2017 and 2018, it is evident that BiH has not only not made any progress in the fight against corruption, but has in fact regressed (Transparency International, 2018).

147 In 2017 alone, more than 1,500 citizens reached out to the NGO Transparency International in Bosnia and Herzegovina (TIBiH) to report corruption, and TI BiH acted on more than 270 cases of complaints from citizens, journalists, activists and NGOs, as well as on cases it started itself. In this Report, almost half of the reported cases (47 percent) relate to the public administration sector, followed by reports in the field of justice and education, where a significantly higher number of reports was observed in higher education (Transparency International, 2018).
especially in the field of public administration, because “rule is on the scene”, which means that the state is ruled by people, not laws. Truthfully, laws are passed, but they are either selectively implemented or not implemented at all. State institutions are in the hands of individuals, not bodies or institutions, as it is regulated in almost every modern democracy. The Constitution of Bosnia and Herzegovina does not contain provisions on the responsibility of the state or other public bodies pertaining to illegal activities and damage that may result from such activities by the officials in the state administration bodies. These matters are completely left to the legislators, so the basis of this responsibility is determined through the regulations governing the organization of administration in Bosnia and Herzegovina. According to these provisions, in Bosnia and Herzegovina, if an administrative body harms a natural or legal person through illegal activity, that body is liable to the political-territorial entity in which it was founded. Granted, the entity has the right to demand compensation from a civil servant whose illegal, unprofessional, or negligent actions caused such damage. This legal formulation shows the essential elements of a bureaucratic approach to the overall problem of state damage liability because there are certain questions that are to be answered beforehand, such as:

- who is liable for damages,
- who can file a claim for damages, and
- under what conditions the claim of the injured party for compensation can be realized.

According to all scientific and professional papers, corruption is most present where there is unlimited decision-making power, which is almost always accompanied by the absence of legal, political, and ethical standards and other parameters that ensure publicity and transparency of public administration. The power that resides in the hands of a head or another person with political power in a state administration or administrative organization is derived from their position which enables them to influence persons through the power of the position in which they are in the hierarchy of the organization. The civil servant is aware of the fact that in the system of government they are the “weakest link” which is why they are very susceptible to influences “from above”. The very widespread mobbing in the public sector clearly confirms that the head of the administrative body answers only to their political party, and not the law. Civil servants are well aware that even lower-ranking executives have the power to reward, evaluate, punish, to be referential, that is, to provoke a desire for closeness or even friendship in their subordinates.

On the other hand, civil servants, aware of the impossibility of changing anything in such a system, “consciously forget” that the situation in state administration bodies is very bad, precisely because leaders are the cause of such a situation. Due to the fact that executives are, with honorable exceptions, politically appointed officials, their position is not a reflection of expertise and ability, but only an award for obedience, which is almost always an expression of cowardice and hypocrisy toward political leaders in the parties from which they are nominated. In its guidelines for public administration, SIGMA, a joint initiative of the European Commission and the Organization for Economic Co-operation and Development (OECD, 2007), cites the prevention of direct or indirect influence on senior civil servants and their positions in public administration as one of the main principles.

In practice, it rarely happens that the head of the administration gives prizes, commendations and recognitions to employees who work professionally and efficiently by completing all tasks within the legal deadlines, even before the deadline. On the other hand, it happens that the manager rewards and favors certain employees selectively according to
the sympathies based on suitability, not the expertise and quality of the civil servant, often resorting to threats and sanctions against other employees. In such situations, which are plenty at all levels of government, especially in the local self-government, the organization is maintained only by the authority of the position of the head of the administrative body. Numerous scientific researches, especially those conducted through the empirical method, have confirmed that an incompetent leader shows his or her power towards subordinates by creating a so-called “closed management system” which emphasizes secrecy of work and a high level of fear felt by civil servants, introduces various forms of administration, issues “entry” and “exit” cards, has very low tolerance and well-developed own intelligence system based on gathering information about the head, etc.

5.3. Implementation of anti-corruption reforms in state administration bodies in Bosnia and Herzegovina

The Anti-Corruption Agenda for Bosnia and Herzegovina must contain clearly specified elements for the fight against corruption, of which the most important are: corruption prosecution and the judiciary, monitoring public procurement systems, resolving conflicts of interest, more intensive work of audit institutions, clear legal regulation of political parties with a primary focus on the analysis of practice in Bosnia and Herzegovina. Based on available reports and monitoring made by domestic and international NGOs, as well as progress reports of the European Commission and the Group of States against Corruption (GRECO), the causes and problems limiting anti-corruption activities in the fight against corruption in Bosnia and Herzegovina can clearly be identified (Group of States against Corruption, 2022), (European Commission, 2022).

Special focus is placed on the efficiency of prosecuting corruption offenses in judicial institutions, i.e., the work of prosecutor's offices and courts in Bosnia and Herzegovina. Analyzing certain factors which can limit and even completely disable the efficiency of the work of the authorities in detecting and prosecuting corrupt and related crimes, requires a serious and studious approach that requires expertise based on scientific grounds instead of the traditional political one. In order for anti-corruption bodies to be effective in detecting and proving corruption and related crimes, the opinion of the professional and scientific public is that they should be completely free of all internal and external factors that threaten the efficiency and independence of their work.

6. CONCLUSION

In transition countries, including Bosnia and Herzegovina, a particularly strong influence on public/state administration comes from politics, which, as it can rightly be said, is the dominant and crucial factor in all areas of life and work. While it is true that everything that is good in this country gets credited to politics (even though little is good), politics distances itself from everything bad, and the bad outweighs the good by quite much. Regardless, politics is the dominant factor in Bosnia and Herzegovina in relation to everything else (economy, law, etc.). Politics has infiltrated all spheres of human activity, while in administrative bodies, as well as in the judiciary, the influence of politics is vital. This influence removes the already limited responsibility and devastates the existing capacities and traditions that could have been an advantage for the development of public administration.

According to the available relevant documents, which contain a comprehensive analysis of human resource management in the administrative bodies of Bosnia and
Herzegovina, published by SIGMA, politics has a decisive role in everything. It elects the central management of state administration bodies on the principle of “suitable, not capable”, maintains a very limited quality of managers in public administration bodies moving them from one position to another, formally applies the civil service evaluation system without any criteria, creates a lack of motivation and commitment of the civil servants, and affects the weak organizational culture of employees in state administration bodies at all levels in Bosnia and Herzegovina. In the transition and reform processes that Bosnia and Herzegovina has been going through for the last almost three decades, politicians have done the most in favor of corruption that dominates all areas and all spheres of government.

Bosnia and Herzegovina is not only not immune to the problem of corruption, but is, unfortunately, one of the most corrupt countries in Europe and the world. There are many examples which show that many countries experienced “catharsis” after bloody wars and revolutions and developed a democracy that resulted in progress and prosperity for all citizens of those countries. It suffices to recall that, at the time of the aggression and bloodshed in Bosnia and Herzegovina, an even worse and bloodier war raged in Rwanda in which 1,074,000 people were killed between April and July 1994. Today, Rwanda is the most prosperous country in Africa, and Bosnia and Herzegovina is at the back of Europe, and in the world in the company of Somalia, Zimbabwe, and other stagnant countries.

The most significant negative consequences of corruption are: the destruction of the government system, undermining of the economic base of the state, endangering the market economy, reducing the social product, reducing investment, increasing poverty, social and political consequences of poverty, endangering democratic institutions, increasing the cost of functioning of the state, causing a general feeling of insecurity and distrust of citizens in state institutions, destruction of the moral values of the society, the apathy of citizens, etc.

Although most research on the phenomenon of corruption is mostly related to the public sector, alluding to the acquisition of private at the expense of the public interest, which undoubtedly poses a greater danger because it is related to the state and the public sector, it should not be ignored that corruption exists in the private sector as well. This notion of corruption is supported by the United Nations Convention against Corruption, which calls on signatory states to criminalize bribery (active and passive) and embezzlement of property in the private sector.

Public administration reform and public financial management must be priorities that would play a crucial role in combating corruption. Of course, all this should be accompanied by full political commitment and further building of the legal system and especially all-institutional support for the development and work of the judicial institutions. Two years ago, Bosnia and Herzegovina was expecting to obtain candidate status for membership in the European Union, which in itself implies an accelerated process of implementation of the European legislation and the acquis communautaire. This implies that the goals and tasks of public administration reform in Bosnia and Herzegovina should be aimed at: strengthening the rule of law and accountability of the public administration; achieving institutional stability, flexibility, and functionality of public administration bodies; improving the business environment, raising the level of quality services and reducing administrative burdens; increasing transparency and ethics levels in public administration in order to speed up the integration of Bosnia and Herzegovina into the European administrative space. It is unequivocal that the existence of corruption threatens the rule of law and the protection of fundamental human rights and freedoms of all citizens and peoples of Bosnia and Herzegovina, and that the lawful conduct of administrative bodies at all levels
of government in Bosnia and Herzegovina is in question, which is, in fact, a confirmation of the institutional threat to all modern democratic values of the state and society.

Construction of the so-called “good governance” is a strategic goal in the commitment to Euro-Atlantic integration, and one of the key tasks in normative harmonization with European legislation is the drafting of a law preceding document called Regulatory Impact Assessment. This is a nomotechnic, nomographic, and nomodynamic approach that precedes the drafting of a legal regulation that opposes corruption in administrative bodies in Bosnia and Herzegovina. The impact assessment of the legal regulation refers to the environment, business setting, and the private and public sector. The assessment covers a whole range of social rights protection measures, poverty reduction, combating all forms of discrimination, preventing and eliminating the causes of economic and social decline of citizens and all forms of their associations, etc.

7. REFERENCES

8. Rulebook on the establishment and work of the procurement commission. The Official Gazette of Bosnia and Herzegovina, No. 103/14).
15. Law on Financing Political Parties. The Official Gazette of Bosnia and Herzegovina, No. 95/12.


