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“TOWARDS A BETTER FUTURE: THE RULE OF LAW,
DEMOCRACY AND POLYCENTRIC DEVELOPMENT”

Volume II

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“Towards a Better Future: The Rule of Law, Democracy and Polycentric Development”

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PREFACE

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

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

Namely, the rule of law is perceived by common people as existence of laws, their implementation and whether the government respects them. These rules have been and still are important tools for limitation of the absolutistic comportment of public authorities, i.e. confining the acting of the state in general. However, the concept of the rule of law is much broader and is associated with good governance, functional democratic institutions, security and human rights. The link between the concepts and realization of democracy and rule of law is indubitable.

That is to say, building a society with strong rule of law does not represent just a technical activity, but a process that includes radical reforms of the laws, strengthening of the central and local government’s institutions, establishment of balance between the political and economic elites on one hand and the common people on the other. That means creating ambient of trust between the governing elite and the citizens, which implies substantial realization of the principles of democracy in general.

Hence, it is easy to reveal the operational components of democracy and of a certain current aspect – the polycentric model of organization, government and development. For both concepts, citizens’ participation in central and local decision making processes is enhanced by the inter-communication among all societal, governmental, non-governmental or business actors. In that sense, polycentrism basically means existence of a decision making system that stems from multiple centers, which acting
formally and independently, aspires to deal with common challenges, thus diminishing the gap between the traditionally predominant metropoles or important business centers and the rest of the cities-regional centers. The polycentric development should ensure institutional possibilities for citizens’ involvement in the governing system for the purpose of realization of their preferences and the common good.

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

Let this conference be the beginning of the path that we started to trace together with a single purpose – Towards a better future!

Dean of the Faculty of Law – Kicevo
Prof. Dr. Sc. Goran Ilik

Bitola, 2018
<table>
<thead>
<tr>
<th>Title</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Svetlana Nikoloska, PhD, Ljupco Todorovski, PhD, Jovche Angjeleski, MA Student</td>
<td>12</td>
</tr>
<tr>
<td>THE ECONOMIC CRIMINALITY IN THE REPUBLIC OF MACEDONIA</td>
<td></td>
</tr>
<tr>
<td>Rossana Martingo Cruz, PhD</td>
<td>24</td>
</tr>
<tr>
<td>FAMILY MEDIATION: PORTUGUESE EXPERIENCE</td>
<td></td>
</tr>
<tr>
<td>Dejan Vitanski, PhD</td>
<td>32</td>
</tr>
<tr>
<td>INSTITUTE POLITICAL CONTROL THROUGH THE PRISM OF PRACTICAL ISSUES AND INTERPELLATION AS THE LIMITS OF PARLIAMENTARY CONTROL OVER THE GOVERNMENT</td>
<td></td>
</tr>
<tr>
<td>Marjan Gjurovski, PhD</td>
<td>44</td>
</tr>
<tr>
<td>STRATEGY FOR DEFENSE DIPLOMACY OF THE REPUBLIC OF MACEDONIA</td>
<td></td>
</tr>
<tr>
<td>Marjan Tanushevski, PhD</td>
<td>55</td>
</tr>
<tr>
<td>INTERNATIONAL NORMATIVES MEASURES AND INITIATIVES FOR PROTECTION FROM “FAKE NEWS” IN THE MEDIUMS</td>
<td></td>
</tr>
<tr>
<td>Bashkim Rrahmani, PhD, Granit Curri, PhD Candidate</td>
<td>62</td>
</tr>
<tr>
<td>OMBUDSPERSON AND HIS ROLE IN KOSOVO</td>
<td></td>
</tr>
<tr>
<td>Majlinda Belegu, PhD</td>
<td>71</td>
</tr>
<tr>
<td>THE WOMEN RIGHTS ON HERITAGE ACCORDING TO THE LAW AND PRACTICE IN KOSOVO</td>
<td></td>
</tr>
<tr>
<td>Madhumita Das, PhD</td>
<td>80</td>
</tr>
<tr>
<td>INDIGENOUS PEOPLE’S DISCOURSE IN MODERN DEMOCRACIES: THE NAGA NATIONAL MOVEMENT IN NORTHEAST INDIA</td>
<td></td>
</tr>
<tr>
<td>Arse Petreski, PhD</td>
<td>92</td>
</tr>
<tr>
<td>IMPACT OF GLOBALIZATION WORLD ON THE WESTERN BALKANS</td>
<td></td>
</tr>
<tr>
<td>Darian Rakitovan, PhD</td>
<td>98</td>
</tr>
<tr>
<td>NOTARY PUBLIC – GUARANTEES OF LEGAL CERTAINTY AND EFFICIENCY</td>
<td></td>
</tr>
<tr>
<td>Danijela Miloshoska, PhD, Risto Reckoski, PhD</td>
<td>110</td>
</tr>
<tr>
<td>CUSTOMS AND CORRUPTION: THE CASE OF THE REPUBLIC OF MACEDONIA</td>
<td></td>
</tr>
<tr>
<td>Ioana - Celina Pasca, PhD</td>
<td>122</td>
</tr>
<tr>
<td>MENS REA IN THE CASE-LAW OF INTERNATIONAL CRIMINAL COURTS</td>
<td></td>
</tr>
<tr>
<td>Risto Reckoski, PhD, Danijela Miloshoska, PhD</td>
<td>133</td>
</tr>
<tr>
<td>LAW REGULATION FOR ELECTRONIC TRADE IN THE REPUBLIC OF MACEDONIA AS AN INSTRUMENT FOR FUTURE ECONOMIC DEVELOPMENT</td>
<td></td>
</tr>
<tr>
<td>Sasha Dukoski, PhD, Marija Dukoska, MA</td>
<td>145</td>
</tr>
<tr>
<td>PRINCIPLES OF THE INTERNATIONAL AGREEMENTS ON INVESTMENTS</td>
<td></td>
</tr>
</tbody>
</table>
Jelena Milovanovic, PhD, Sanja Djurdjevic, PhD, Ana Djurdjevic, MSc Student
CONDITIONS FOR THE IMPLEMENTATION OF THE GENDER EQUALITY POLICY IN SERBIA - CASE STUDY ................................................................. 152
Tatjana Gerginova, PhD
SECURITY POLICY OF THE REPUBLIC OF MACEDONIA AND ITS CONTRIBUTION TO THE NATIONAL, REGIONAL AND GLOBAL SECURITY ............................................................................................................ 164
Laze Jakimoski, PhD, Goce Veleski, MA
AN INHERITANCE AGREEMENT IN HEREDITARY - LEGAL SCIENCE... 176
Hatidza Berisa, PhD, Milenko Dzeletovic, PhD, Katarina Jonev, PhD Candidate
SECURITY RISKS OF GLOBALIZATION ........................................................ 187
Safet Music, PhD
THE PRINCIPLE OF LEGALITY ACCORDING TO THE EUROPEAN CONVENTION ON HUMAN RIGHTS .................................................................................. 200
Biljana Bogdanova - Smilevska, PhD, Vase Rusumanov
PRACTICAL PROBLEMS AND SOLUTIONS FOR DRUG ABUSE IN THE REPUBLIC OF MACEDONIA............................................................................. 210
Blerim Ramadani, PhD Candidate
PARTICIPATION OF THE LOCAL COMMUNITY IN PREVENTING VIOLENCE ON SPORTS GROUNDS - THE POSSIBILITIES IN THE REPUBLIC OF MACEDONIA ............................................................................. 220
Pakiza Tufekdji, PhD Candidate
PROTECTED WITNESS IN MACEDONIAN CRIMINAL LEGISLATION .... 242
Shpresa Kaciku Baljija, PhD Candidate
CIVIL SERVICE OF REPUBLIC OF KOSOVO: CHALLENGES IN THE CONTEXT OF EUROPEAN INTEGRATION ............................................................................. 250
Nikola Gjorhoski, PhD Candidate, Argtim Saliu, PhD
POLITICAL AND SOCIAL NEO-PATRIMONIALISM AS A CAUSE AND CONSEQUENCE FOR DEMOCRATIC DEFICIT AND PARTY CLIENTISM IN THE REPUBLIC OF MACEDONIA .............................................................. 261
Stojan Troshanski, PhD Candidate, Velimir Abramovic, PhD, Nikola Dujovski, PhD
TUNGUSKA EXPERIMENT Security aspects ..................................................... 274
Mitjana Profiri, MSc
A REFLECTION ON SOME OF THE POSTMODERN FEMINIST FEATURES IN JULIA KRISTEVA THEORY ............................................................................. 290
Emilija Stefanovski, MA
ETHNIC CONFLICTS IN THE WESTERN BALKANS AND THE ROLE OF EU, USA AND NATO IN THEIR MANAGEMENT ................................................................. 301
Ilze Sokolovska, MA, Valters Brigmanis, MA
ENSURING OF CIVIL RIGHTS IN THE CRIMINAL PROCEDURE LAW .... 315
Liljana Markoska, MA
THE DIFFERENCE BETWEEN LEGAL ENGLISH AND PLAIN ENGLISH .. 325
Mojca Rep, PhD Candidate
AN OVERVIEW OF THE PROTECTION OF HUMAN RIGHTS IN SLOVENIA - NOT EVEN A SINGLE VIOLATION IS ACCEPTABLE! .................................................. 332

Ana Funa, MA
WOMEN’S BODY: CONTROLLING IT IN THE NAME OF THE NATION ... 345

Katerina Vasilevska, MA
THE DIFFERENCE BETWEEN THE DEED CONTRACT AND THE EMPLOYMENT CONTRACT IN THE MACEDONIAN LEGAL SYSTEM AND ANALYSIS ON EU LAW ................................................................. 355

Andon Damovski, MSc
DECENTRALIZATION AND DEVELOPMENT OF SOCIAL PROTECTION AT THE LOCAL LEVEL ...................................................................................... 367

Blerim Murtezi, MPA
PUBLIC-PRIVATE PARTNERSHIPS AND ACCOUNTABILITY A CASE FROM THE AIRPORT INDUSTRY ............................................................... 378

Goran Dimovski, LLM
RULE OF LAW THROUGH INVESTIGATING ORIGINS OF PROPERTY-SUGGESTIONS FOR REFORM IN THE REPUBLIC OF MACEDONIA ........ 394

Hedibe Nesimi, PhD Candidate
IDEALISM VS. REALISM: CONCEPTS FOR WAR AND PEACE ............... 404

Katerina Nastovska
PROTECTION OF HUMAN RIGHTS IN POLICE PROCEDURE .............. 414

Milorad Petreski, MA
CONFLICTS IN INTERNATIONAL POLITICAL RELATIONS ............... 421

Dragana Kostevska, PhD Student, Olivera Docevska, MA
ELDER ABUSE IN THE REPUBLIC OF MACEDONIA ................................. 433

Anesa Agovic, MA
FOREIGN FIGHTERS IN UKRAINE - A CHALLENGE FOR INTERNATIONAL LAW AND SECURITY ................................................................. 442

Ilija Jovanov, MA
THE LEGAL DETERMINATION OF PRETRIAL DETENTION IN THE MACEDONIAN CRIMINAL LEGISLATION .............................................. 454

Trim Kabashi, BA
CONSENSUAL STATE-BUILDING IN KOSOVO: BETWEEN SOVEREIGNTY AND MINORITY RIGHTS ................................................................. 466

Emilija Icoska, MA
LIABILITY FOR DAMAGE, INDEMNITY FOR DAMAGE, AND DAMAGES FOR INJURY OR LOSS IN A COURT PROCEDURE IN THE REPUBLIC OF MACEDONIA ........................................................................ 478
THE ECONOMIC CRIMINALITY IN THE REPUBLIC OF MACEDONIA

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Abstract
The economic criminality in Republic of Macedonia has continuously been researched by many authors (Dimitrov, Arnaudovski, Kambovski, Nanev, Taseva, Tupancevski, Dzukleski, Nikoloska), from several aspects, from criminal, criminal-legal and criminal aspect. What is characteristic for this criminality and is challenging for the research is its invisibility, since rarely who reports a committed economic criminal act unless if he is directly damaged by certain criminal activities. The economic criminality covers a large number of criminal acts summarized in several Chapters of the Criminal Code of Republic of Macedonia. The criminal acts are envisaged by other Laws too like the Laws from the area of taxes. According to the previous researches the economic criminality refers to misuse of the public finances in performing public functions and misconduct with disrespect or partial respect for tax laws. That precisely shows the seriousness and danger of economic criminality towards the overall development of the State, at the expense of personal wealth of individuals and groups that create schemes, use methods and means not only for acquiring unlawful property gain, but also for "sheltering" treasures in countries with poor control of the origin of money, and thus disabling confiscation. If the classic criminality is a benchmark for the security situation in the Country, the economic criminality is a benchmark of the economic condition and the stability of the Country. A subject of the paper is researching of the conditions with economic criminality in Republic of Macedonia for the period between 2011 and 2016, by gathering, processing and analysis of data for the volume of the economic in the total criminality through analysis of the reported and convicted perpetrators of economic criminal acts on the basis of the Annual Reports of the State Statistical
Office of Republic of Macedonia in order to get indicators on the scope, structure and dynamics of the economic crimes, but not about all economic criminal acts. Have been collected, analyzed and processed data just for the groups of criminal acts among which all criminal acts were economic and those were Chapter 17-Criminal offenses against the labor relations, Chapter 25 Criminal offenses against the public finances, the payment operations and the economy and Chapter 30 Criminal offenses against the official duty. The criminal offenses from these chapters mainly or about 80% consist the total economic criminality. Also, have been conducted an analysis of the most common criminal offenses from every group separately by including the criminal offense with elements of money laundering and other incomes from criminal offense as actual problem related to all criminal offenses by which the perpetrators have gained criminal incomes placed, transferred or converted through the financial system of the Country or have been transferred to other country.

**Key words:** economic criminality, public finances, misuse of the public functions, perpetrators of criminal offenses, indicators.

**1. INTRODUCTION**

The economic criminality differs from the classical criminality by its criminal characteristics (time, place, area, way, means of criminal acting and the personality of the perpetrator of economic criminal offenses). It is about crimes with more serious consequences, but not visible and recognizable at first. What can be said about this types of criminal offenses is that the perpetrator is known before the offense itself. To be researched the economic criminality first it needs to be defined, especially need to be defined its forms and shapes as well as the delinquency tactic and technique of the perpetrators who often hide behind their authorizations, functions or the sphere of their legal or illegal criminal acting. Very often the public is trampled with economic crime conducted by high authorities or people who instead of legally acting, are acting illegally while adopting acts and in that way they do a criminal offense, but that is not visible for the public’s eyes (the fraud is not visible) but its criminal consequences are visible in a form of wealth which by legally performed work are elusive.

The economic criminality is a hidden, invisible phenomenon or phenomenon whose bearers do everything to make it invisible. But if one can talk about some of the individual types of criminality that is "invisible," then, above all, it refers to the difficulties of distinguishing the legal - illegal. This phenomenological characteristic of this criminality imposes serious difficulties on the organs of persecution in the perception, discovery and in its proving. In the modern conditions of economic operation of the functioning of economic relations, the distinction between the legal and the illegal is so complex that it is very difficult to determine the boundary between the two. This condition is a product of the
modern development of the economic relations, but also of the tendency, the modern liberal economy to get rid of the control of the state that seeks to control the constant operation of the economic, economic organizations and the relations in which they are realized. This contradictory tendency creates the problem of the difficult differentiation of the legal from the illegal, the aspiration to provide a prosperous economy. (Arnaudovski: 2008)

The economic criminality violates the proper conducting of the economic relations and the functioning of the economic relations as well as the realization of the economic activities and directly undermines the stability of the society. The numerous misconduct and criminal activities, especially those of the most difficult type relating to the business relations with the foreign countries, have a negative impact on the balance of payments and commodity flows, reduce the possibility of placing domestic products, strengthen the discharge of the accumulation from the country by establishing, black funds, and private companies with state funds, stimulate inflation factors by uncontrolled borrowing of the economy abroad, violates the reputation of the country and the trade companies by breaking the norms of the business ethics. The consequences on the legal order and the legal system manifested by their non-use, disrespect, disruption of their authority and their effectiveness are also negative. Also, the economic criminality as an attack on the general development of the society has a great negative impact on the general moral awareness of the citizens. (Sulejmanov: 2003)

The economic criminality as a phenomenon is usually reduced to the use of a special position in the society, these acts are nonviolent in terms of physical force or psychological violence, which can sometimes be more severe than the physical violence, and the reduction of risk is through indentation and linking the criminal activity with the legal sphere of business, finance, banking, politics, functions of state bodies and other social spheres and is the most efficient way to eliminate the risk of detection and prosecution, because their confusion of the permitted and the forbidden lead to glare and blocking the sensor power the penal legislation and criminal justice. While the formal system of protection consists of assisting or admitting criminal activities by the state authorities or in blocking the penitentiary and criminal justice organs and placing them through corruption in the function of protecting or tolerating criminal activities due to the expected eco-nomic or political benefit, the informal system is a form of self-organization of the criminal underground against the system of criminal justice.

The analysis from several periods of research of the economic criminality show that in the structure of this type of criminality dominate the criminal offenses against the official duty as well as criminal offenses against the public finances, payment system and the economy. Namely, the research of the structure of the economic criminality for the period 2007-2013 shows that 48,5% are criminal
offenses against the official duty, 27.3% are criminal offenses against the public finances, the payment system and the economy, 9.5% are criminal offenses against the living environment, 4.9% are criminal offenses against the public order, 3.5% are criminal offenses against the legal traffic, 2.8% are criminal offenses against the labor relations, 1.8% are criminal offenses against the judiciary, 1.5% are criminal offenses against the property, 0.7% are criminal offenses against the freedoms and rights of the citizens. According to the data from the same period of the same period, it showed that the percentage of the accused was 44.1% in relation to the reported perpetrators, and the conviction in relation to the accused perpetrators was 65.6%. But taking into account the percentage of convictions in relation to reported perpetrators is 28.9%. What is the improvement of this situation in relation to the investigated period from 1997 to 2006 when the conviction is 12.7% in relation to the reported perpetrators? These indicators are challenging for the 2011-2016 period when it covers part of the previous period and the new period in order to compare the dynamics and structure of economic crimes. However, for more comprehensive research and obtaining a picture of the actual situation, an analysis is also made of the data for detected criminal acts and reported perpetrators of economic crimes of the Ministry of Interior and the Financial Police at the Ministry of Finance, especially for the most committed crimes according to their records based on guided crime investigation procedures in pre-trial proceedings. (Nikoloska: 2015)

The economic criminality is a type of crime that causes huge financial damages to the society, and the perpetrators are small number of people who on behalf of the country and its citizens are getting rich in the exercise of their duties and powers on behalf of the State and for the State. I emphasize this, that is the truth, the perpetrators of economic crimes are enriched either by evading payment of legal obligations towards the State or by extracting illegally means from the State Budget. However, with the analysis of the data that reflect the state of the conduct of the proceedings against the perpetrated perpetrators in a further phase before the courts, indicators can be obtained for one occurrence of the same economic crimes related to corruptive behavior in the process of clarifying and proving the crime until the final conviction.

2. TERM AND FORMS OF ECONOMIC CRIMINALITY

Usually, for the economic criminality is said to be a socially negative criminal phenomenon that is carried out by persons possessing certain quantum of knowledge in the field of economics and payment operations and who in a criminal manner use the entrusted powers and positions, primarily, with certain economic means, thus causing damage to the State Budget and the citizens as a whole. As a phenomenon, the economic criminality takes a high position in the overall crime,
highlighting through its vast quantity, structure and dynamics, but also after the huge damages that are causing. (Arnaudovski, Lj., Nanev, L. and Nikoloska: 2009)

The economic criminality consists of those forms of behavior in the economic relations that can be related to subjects by some authority or duty in those relations, or regardless of the ownership relationship they are based on, regardless of the form of ownership or property which the subject possesses. (Puhler: 1993)

The economic criminality during the history has been defined by many authors, starting from the first definition given by Sutherland in 1939 until today all authors emphasize the special position of the perpetrators in the society and its use for malversation and illicit enrichment. The definitions have been adapted to the social and the economic arrangements of the State, but what is characteristic of all is the descriptive approach to defining (Tupancheche: 2015), or defining it by listing the emerging forms of economic crime. The definition can be of several aspects and it is good for recognizing the problem of the economic criminality, especially from the aspect of criminology that sublimes the achievements of other sciences and creates its own methods for applying tactics and techniques for detection, clarification, proofing and prevention of economic criminality.

The perceptions of the economic criminality and its emergent forms have evolved from the first concepts of "white robbery" according to Sutherland to the contemporary theories of "crime under the protection of the law," "unconventional crime," and so on. But these terms cover only part of the emerging forms of economic criminality whose enrichment is enriched as a result of the use of information technology and the opportunities provided by computer systems and networks in business and electronic commerce. (Tupanchevski: 2015)

As there are many terms, there are also numerous definitions for the economic criminality, but the most convenient definitions for the research that is subject of this paper are the descriptive definitions that cover the emerging forms and shapes of the economic criminal offenses. Such is the definition contained in Recommendation no. (81) 12 of the Council of Europe's Committee of Ministers, under which economic crime is described through individual criminal behaviors, such as: cartographic punishable acts fraud and abuse of the economic situation by multinational companies, fraud by the acquisition and misuse of state and international donations, computer crime, fake companies, falsification of balance sheets of legal entities or bookkeeping delicts, frauds given the economic situation and corporate capital of companies, violation of the standard (bankruptcy, disregard for banking or industrial rights), frauds of consumers, unfair competition, fiscal delicts, customs delicts, deeds aimed at controlling the money and the deeds of the employees stock market. The aforementioned criminal behaviors cover almost all criminal behavior from the economic and financial sphere, and the perpetrators of this crime in the society are predominantly respectable and respected citizens, and
the damages that are inflicted are on a larger scale. Characteristic of this crime is that it is under the wing or directives of the government, which it includes in the group of criminal behaviors that are hard to reveal, and it is even more difficult to clarify and prove by the competent authorities because in most cases there is a connection with these structures, as seriously organized crime networks. There is almost no area of human life where there is no economic crime in the name of acquiring vast treasures. This kind of criminality occurs in the area of "abuse of trust", which is the guiding principle of work in this area, and these are delicts that, in their comprehensiveness, threaten the general and individual interest.

Apart from the theoretical definitions of the economic criminality, the practical work of the relevant state bodies and services, which in accordance with their needs, should lead to the statistics of the economic crimes, as well as certain operational definitions that are determined in the theoretical empirical research and the special analyzes of economic criminality. (Banovic: 2002)


The perpetrators of economic crimes are adult citizens with formed personality, and according to the psychological theories of investigating the motives for criminal activity there are two perceptions: according to the one understanding, those are the theories of the immutability of the motives during the human life (instinctive, classical - psychoanalytic theories) and, according to the second understanding, those are theories according to which the motives change and transform in the course of human life (modern psychological theories about personality, existentialists, Manny psychoanalytic theories, etc.). (Batkoska: 2007)

What is characteristic for the economic criminality is that perpetrators are persons with business ability, because they are persons who are parties in a legal or economic relationship, but what has led them to do it or do not commit a crime is the most crucial motive. And the motive for these delicts is the acquisition of treasures, property, money which as a motive breaks the reasoning and knowledge of what is allowed and what is prohibited. Besides the motive for the economic crimes, the character of personality is also important. Behind every criminal act stands a certain motive, the stimulating energy that causes the criminal activity, directs and manages it. Identifying the motive of certain criminal behavior is in fact the key indication of the crime and the reconstruction of the entire criminal event. The motivating behavior of the perpetrator leads to the achievement of a particular goal. The goal has its own "WHY" and "BECAUSE". If the degree of intent or conscious that focus on the goal is greater then the influence of the will will be stronger. (Batkoska: 2008) Is there a will and intent in the economic crimes is an
indication, and whether the will was crucial in the pursuit of economic delicts is an irrelevant factor. An important factor is the motive, and this is the acquisition of illegal property gain and the intention to achieve it. Of crucial importance is the possibility or situation in which the perpetrator can do economic crime and whether other factors such as position, professional qualifications and professional knowledge in relation to the execution of the crime are affected. Crucial for the act is the character, whether it is a character that overcomes the common sense of what is allowed and what is forbidden. The limit of the permitted or prohibited, prohibited in economic crimes is very thin, because it is about respecting or disregarding the law, respecting or disregarding the competences and powers granted on the basis of a law. For example, a director in a public company is a healthy person with a solid character, but the firmness of the character is refuted by greed and exploitation of the position, but also the belief that crime can not be revealed. Economic criminology focuses on the influence of the person, her will, intention and motive for exploiting the position, competencies and powers to commit unlawful or criminal behavior from which the perpetrator will receive a certain financial gain. The criminology should be studied as well as the person of the perpetrator (the culprit), the time of execution (whether at the time of enforcement he had certain powers) and other relevant facts. In doing so, the internal (subjective) and external (objective) factors and causality between them should be distinguished. Particularly important for the perpetrators of economic crimes is that criminal psychology should be cautious with the way and methods in dealing with perpetrators of economic crimes. It should be borne in mind that these are perpetrators educated who sovereign rule the area or area in which they commit crime have professional and professional knowledge of how to commit crime, but also how to hide the traces or evidence of committed criminal activities. (Batkoska: 2008)

The intention among the economic delicts is also an indication, and if the will has been crucial while the committing of the economic delicts is an irrelevant factor. An important factor is the motive, which is acquisition of illegal property gain and the will of how to do it. Of crucial importance is the possibility or the situation in which the perpetrator is, if he can do economic delicts and whether other factors such as position, professional qualifications and professional knowledge in relation to the execution of the crime are affected. Crucial for doing the act is the character, whether is about a character that conquers the common sense about what is allowed and what is prohibited. The line between allowed and prohibited among the economic delicts is very thin, because it is about respect or disrespect of the law, respect or disrespect of the authorities given by law. For example: a director in a public company is a healthy person with a solid character, but the firmness of the character is refuted by greed and exploitation of the position,
but also the belief that crime can not be revealed. Economic criminology focuses on the influence of the person, her will, intention and motive for exploiting the position, competencies and powers to commit unlawful or criminal behavior from which the perpetrator will receive a certain financial gain. The criminology should be studied, the person of the perpetrator (the culprit), the time of execution (whether at the time of enforcement he had certain powers) and other relevant facts. In doing so, the internal (subjective) and external (objective) factors and causality between them should be distinguished. Particularly important for the perpetrators of economic crimes is that criminal psychology should be cautious with the way and methods in dealing with perpetrators of economic crimes. It should be borne in mind that these are perpetrators educated who sovereignty rule the area or area in which they commit crime have professional and professional knowledge of how to commit crime, but also how to hide the traces or evidence of committed criminal activities. (Batkoska: 2008)

The need to investigate the scope, structure and the dynamics of perpetrators of economic crimes is important of several aspects and getting the indicators on the number of reported perpetrators of these crimes is of particular importance, first of all, because these are crimes committed by perpetrators with saturated properties who in the performance of the crime use the position of power, the function or the authorizations. The situations with an emerging form of criminality or reported perpetrators of individual economic crimes provide indicators on which acts are most frequent and how a strategy for the prevention of these criminal forms should be built, as well as building strategies for legal solutions for checking personal capacities and values of persons who pretend or bid for performing official duties and authorizations.

Subsequently, the presentation and analysis of the statistical data on economic crimes is necessary for comparison with the same or similar crimes abroad and the development of common strategies and policies for cooperation in the criminal and financial investigation of these crimes. Therefore, in 2003, the UN adopted the Dublin Declaration containing ten recommendations, the sixth recommendation determines the need of building a European crime statistics system and developing a strategy aimed at producing information necessary for the analysis and tracking of movements (trends) in crime. "The recording, monitoring, detection, removal of criminality, the setting up of programs and actions for prevention are directly related to the possession of empirically verified knowledge of the phenomenological characteristics of criminality. In order to resist society, it must possess scientifically proven knowledge of the phenomenon we call criminality. Consequently, its feature of mass phenomenon, it selects the statistical methods and procedures for recording, monitoring, processing the collected statistical data, presenting them in a way that they give the opportunity to perceive
the phenomenological characteristics, identify certain phenomena, relationships with etiological significance for the emergence and on that basis, programs for prevention, removal and prevention should be set up. "(Arnaudovski: 2008)

The structure of the economic crime includes criminal offenses of several Chapters of the Criminal Code of the Republic of Macedonia, but the most common are the criminal acts against the labor relations from Chapter 17, Crimes against the public finances, payment operations and the economy from Chapter 25 and Criminal offenses against official duty of Chapter 30. There are also criminal offenses from the other Heads, but this is the May number of reported perpetrators. According to the survey for the period 2007-2013, 78% of the total number of reported perpetrators of economic crimes were from the mentioned groups, 71, 1 of the accused and 68.7 of the convicted perpetrators. (Nikoloska: 2015). Therefore, this research covers only the mentioned groups that make up the bulk of the structure of the economic criminality, and based on the analysis, conclusions can be drawn on the situation with the economic criminality in the Republic of Macedonia for the investigated period 2011 - 2016 year. In order to obtain information on the most economic crimes committed, accused and convicted perpetrators make an analysis of the most common individual crimes, as well as the most current ones, from the aspect of their connection to a criminal situation. Particularly current are Abuse of official position and authority, Tax evasion and money laundering and other proceeds of crime.

Table no. 1. Scope, structure and dynamics of perpetrators of economic crimes in the Republic of Macedonia for the period 2011-2016

<table>
<thead>
<tr>
<th>Year</th>
<th>Chapter 17</th>
<th>Chapter 25</th>
<th>Chapter 30</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Con.</td>
<td>Con.</td>
<td>Con.</td>
<td>Con.</td>
</tr>
<tr>
<td></td>
<td>Ed</td>
<td>Ed</td>
<td>Ed</td>
<td>Ed</td>
</tr>
<tr>
<td>2011</td>
<td>51</td>
<td>18</td>
<td>240</td>
<td>133</td>
</tr>
<tr>
<td>2012</td>
<td>26</td>
<td>12</td>
<td>212</td>
<td>150</td>
</tr>
<tr>
<td>2013</td>
<td>53</td>
<td>10</td>
<td>255</td>
<td>137</td>
</tr>
<tr>
<td>2014</td>
<td>34</td>
<td>18</td>
<td>277</td>
<td>243</td>
</tr>
<tr>
<td>2015</td>
<td>30</td>
<td>15</td>
<td>277</td>
<td>201</td>
</tr>
<tr>
<td>2016</td>
<td>44</td>
<td>6</td>
<td>261</td>
<td>113</td>
</tr>
<tr>
<td>Total</td>
<td>238</td>
<td>79</td>
<td>1522</td>
<td>977</td>
</tr>
</tbody>
</table>

The analysis of the data in Table 1 of reported, accused and convicted perpetrators shows that in total, three groups of perpetrators were reported as perpetrators (Chapter 17, Chapter 25 and Chapter 30) for the crimes investigated, 7224 perpetrators were reported in total during the period 2011 - 2016 of them, the perpetrators of Chapter 17 are 238 or 3.3%, 2548 are from Chapter 25 or 35, 3%, and 61.4% are from Chapter 30.

According to the parameter of the accused perpetrators in relation to the reported, the situation is as follows: 52.9% of the total number of the accused are
charged. According to separate chapters, the analysis shows that: Chapter 17 is 49.2% charged against the reported, Chapter 25 is 76.7% charged against the reported, and 39.4% are from Chapter 30. In the total number of defendants: Chapter 17 is 3, 1%, Chapter 25 is 51.1%, and 45, 8% are from Chapter 30.

According to the parameters of the convicted perpetrators in relation to the accused, out of the total number of accused perpetrators 3821, 67.5% or 2578 perpetrators were convicted. The structure of convicted perpetrators for Chapter 17 is 3.1%, Chapter 25 is 59.0% and 37.9% are for Chapter 30. Individually from Chapter 17 of the defendants 67.5% are convicted, Chapter 25 are convicted 77.9% of the defendants, while from Chapter 30 55.8% of the defendants were convicted. This points to the fact that the degree of conviction in criminal acts against official duty is the lowest, indicating certain circumstances that occurred after the reporting of the perpetrators. In the theoretical part of the paper it is emphasized that for this crime it is written that it is a "crime under the protection of the law", or "crime of trading with influence", it can be concluded that corruption makes its own special in the part of court proceedings, and this is a statement of several international reports on corruption in the Republic of Macedonia. But it can be concluded that certain types of abuses are skillfully made "under the cover" of legal inconsistencies, or different interpretations of laws, even a collision of laws and in the phase of expertise, certain criminal activities were not established as criminal offenses, but as "legal activity" of the suspects, ie the accused perpetrators, who were not convicted. The degree of conviction with regard to the applicability is 35.7%, and this is a clear improvement compared to the previous research period (2007-2013) was 28.9%, and from the researched period 1996-2006 the percentage of convictions was very low with 12 , 7%, indicating a gradual improvement in the situation. This improvement may be due to greater dedication to the provision of evidence material in the pre-trial procedure, improvement on the basis of the team work of several state authorities responsible for economic crime.

Table no. 2 Scope, structure and dynamics of reported, charged and convicted perpetrators of the most common economic crimes

<table>
<thead>
<tr>
<th>Year</th>
<th>Art. 166</th>
<th>Art. 273</th>
<th>Art. 279</th>
<th>Art. 353</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Reported</td>
<td>Charged</td>
<td>Convicted</td>
<td>Reported</td>
<td>Charged</td>
</tr>
<tr>
<td>2011</td>
<td>34</td>
<td>18</td>
<td>11</td>
<td>13</td>
<td>7</td>
</tr>
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<td>2012</td>
<td>16</td>
<td>13</td>
<td>9</td>
<td>19</td>
<td>8</td>
</tr>
<tr>
<td>2013</td>
<td>40</td>
<td>7</td>
<td>4</td>
<td>14</td>
<td>20</td>
</tr>
<tr>
<td>2014</td>
<td>23</td>
<td>14</td>
<td>10</td>
<td>0</td>
<td>27</td>
</tr>
<tr>
<td>2015</td>
<td>22</td>
<td>16</td>
<td>11</td>
<td>8</td>
<td>15</td>
</tr>
<tr>
<td>2016</td>
<td>28</td>
<td>5</td>
<td>5</td>
<td>4</td>
<td>5</td>
</tr>
<tr>
<td>Total</td>
<td>163</td>
<td>73</td>
<td>50</td>
<td>58</td>
<td>82</td>
</tr>
</tbody>
</table>
It has been conducted collecting data on the most committed criminal offense from Chapter 17 against the labor relations for the criminal offense "Violation of the rights from employment", pursuant to Article 166; of Chapter 25 on criminal offenses "Tax evasion" under Article 279 and "Money laundering and other proceeds of crime" and Chapter 30 on the crime "Abuse of official position and authority". After one, the most accomplished work has been taken from all three Heads, but data on money laundering have also been analyzed, as a criminal activity that is quite current and pointed out by the international community, especially for investigating the type and amount of criminal proceeds and their generation in another type of ownership or "sheltering" of "safe places" abroad.

According to the data shown in Table no. 2 have been committed a total of 4757 criminal acts, of the previously investigated 4 criminal offenses. These criminal offenses participate in the total number of the economic crimes according to Table no. 1 with 66% of the reported perpetrators, with 60.4% of the accused perpetrators and with 55.1% of the committed perpetrators. This confirms the assumption that these crimes are the most committed crimes of their own groupings and in the overall economic criminality. In these criminal offenses, the degree of conviction is 29.9% in relation to the reported perpetrators, and individually the degree of conviction for Art. 166 is 30.7%, for Art. 273 is 138%, for Art. 279 is 64.6% and 20.1% is for Art. 353. The fact that there is a higher percentage of convictions of 138% for the criminal offense "Money Laundering and Other Proceeds from Criminal Offense" according to Art. 273 is due to the charges after the reporting of the perpetrators, ie the investigation has expanded the basic activities and money laundering, in cases when a financial investigation has provided relevant evidence for legalization of the criminal proceeds from other predicate offenses, which may be economic, but also other crimes, and that is the most often illicit drug trafficking.

4. CONCLUSION

The economic criminality in the Republic of Macedonia is mainly manifested through several criminal offenses: "Abuse of official position and authority" according to Art. 353, which is represented by 51.05% in the total number of investigated economic crimes of the three Heads representing 80% of the total economic crime in the Republic of Macedonia. This data is similar to the previously obtained knowledge of the research done by adopting the same methodology of research. Second in the list of economic crimes with 11.7% is "Tax evasion", 2.3% are "Violation of the working rights". The stated data are for reported perpetrators of these crimes, while according to the conviction the participation in the structure of convicted persons increases with 55.1% for abuses. These are important indicators for the scientific and professional public in order to
contribute to the creation of policies for suppression of economic criminality that inflict enormous consequences on the overall development of the State.

The Republic of Macedonia is a country where the economic criminality finds its own convenient ground, the perpetrators use their knowledge, but most of all the power and influence both in the commission of criminal acts, especially with elements of abuse of authority in the exercise of public functions, and the exploitation of "influence" after the registration, which affects the final result for conviction of the accused or the reported perpetrators, this is indicated by the low degree of conviction. However, by comparing the previous research period, this percentage has increased, and many factors deserve this status, such as the team approach to work, full investigation of criminal cases, which is also indicated by the fact that after the reporting of the perpetrators, the investigation is also suspected of money laundering, or in addition to the basic criminal acts, the perpetrators are prosecuted for money laundering as a secondary crime for legalization of criminal money. This can also be the result of financial investigations that are more often realized as parallel to criminality research.

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23
FAMILY MEDIATION: PORTUGUESE EXPERIENCE

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Abstract
Family mediation is an alternative dispute resolution (ADR) method still poorly known in Portugal although being especially suitable for family conflicts. Its consensual nature has the potential to look closely to the parties’ interests, allowing a win/win situation.

This alternative dispute resolution method has the prospective to release courts from family conflicts and at the same time find an effective solution for the parties involved. Family mediation is still not very popular in Portugal or, at least, not as popular as it should be.

Despite all the advantages the Portuguese judiciary reality has shown some resistance towards family mediation. Nevertheless, in the last years steps have been taken in order to make this ADR more effective. Some countries want to practice family mediation because of its decreased economical costs and are not paying enough attention on all the family mediation potential.

We hope that these brief comments will favor a deeper and needful reflection on this matter.

Keywords: family mediation; alternative dispute resolution methods; family conflicts; family courts; conciliation

1. INTRODUCING FAMILY MEDIATION

Family mediation is an alternative dispute resolution (ADR)1 method that relies on the dialogue between the parties – with the help of a mediator - leading to a solution based on their own terms. So the problem will be solved by those who know it better: the opponents.

Since family disputes are particularly sensitive, family mediation is especially suitable for these emotional related issues. The family conflict is very distinct from others. The struggle is not only legal but also as personal as it can be.

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These issues arise between people who have a strong and lasting bond between them that is why the system should provide a way to find an effective solution that can answer the different family dynamics.

The way that these issues are dealt is essential in order to maintain a minimum relationship between these disputants. Let’s not forget that the people involved will, most commonly, to continue to interact with each other (for instance, an ex-married couple with children).

Only a solution that satisfies the ultimate and genuine interests of the parties – granting a consensus – will be effective and efficient.

In family mediation, the intervention of the mediator – a neutral and impartial party and also not a decision maker – is fundamental in order to promote the dialogue between the disputants. The mediator’s task is to restore the long lost communication, helping the parties to find an agreement that can satisfy them and meet their needs, as well their children’s needs, if they exist.

It is this consensual nature that makes family mediation so important within divorce settlements and custody agreements. Not only meets the parties needs but, at the same time, can avoid lengthy legal disputes in which the final outcome would be imposed.

This alternative dispute resolution mechanism privileges the parties’ ability to find the best solution to their necessities, making them achieve their own outcomes by empowering them (empowerment is precisely one of the techniques used by mediators).

Given the intertwining of family mediation with eminently emotional issues the judiciary world sometimes is skeptical of it (GRAY 2006, 200). However, family mediation is legal based and needs strong legal foundations. Despite being and extrajudicial method it needs legal integration.

It is essential to promote and divulge these ADR methods, particularly family mediation, within the judiciary practitioners. These professionals are the ones who can recognize when a conflict is suited for family mediation. Usually the citizen, absorbed in his altercation and troubled by it, needs proper guidance. Without it, he will resort to the traditional means that he knows: the courts.

If law practitioners (e.g. lawyers, judges, notaries, court clerks, etc.) do not know and do not have proper respect for family mediation, how can we expect others to use it? There is work to be developed in this area, showing the actual benefits in ADR methods. That perception doesn’t diminish the importance of Courts of Law in Family matters. On the contrary, some conflicts will not be eligible for mediation and should be addressed in court. Nevertheless, there are many others that would find better solace in family mediation.
2. FAMILY MEDIATION

In family mediation, the mediator (as an independent and neutral third party) helps the disputants to achieve an agreement by trying to restore communication and dialogue between them. He has different tools such as the «empowerment» technique, making the parties believe that they can find the best outcome for their disagreement.

In a way, mediation not only demonstrates new forms for unraveling the conflict but also contributes to constructive communication, separating the desires from the possibilities and the fantasies of realistic expectations (DELGADO ÁLVAREZ 2011, 341). This is why it is especially suited for sentimental and emotional conflicts.

The mediator can’t enforce an agreement but should encourage the parties to dialogue into a consensus. Is this perspective of restructuring the relationship – not in the same terms as before but restoring the cordial ways – that makes mediation adequate to conflicts resulting from lasting relationships. That is why is so imperative to have competent mediators with specific training in order to help to reorganize that family dynamic.

At the same time, let’s keep in mind that if the mediation is successful, it will prevent possible future conflicts between those parties.

Mediation focus on the core of the conflict, emphasizing the genuine interests of the disputants not avoiding the real emotional issues as often happens in a judicial court.

The traditional system of justice (court related justice) is frequently based on a victorious vs. defeat kind of logic and family mediation aims at a solution of mutual gains (win/win situation).

The advantages of a self-compositional method, such as mediation, are more and more appreciated since it responds to the interests and longings of those who face family ordeals.

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2 Empowerment means the increase in the parties’ ability to make their own decisions and the corresponding reduction of their dependence on third parties including professional advisers. (BROWN 2005, 130).

3 It is important to distinguish between reconciliation and mediation. The aim of reconciliation is to encourage the parties to abandon the divorce petition and to rescue their marriage. Mediation, however, accepts the fact of breakdown and attempts to assist the parties in deciding what should happen in the future. (HERRING 2013, 144). Mediation and family therapy are forms of intervention that also differ essentially in terms of their objectives, process and method, and theoretical assumptions. (ROBERTS 2008, 21). Vide also SCHWARZ 2010, 50-53; and HAYNES, 1993, 16-17 and 27-28.

4 Positions are usually taken in an emotional climate and do not always match the disputant’s self-interest. HAYNES 1993, 4.

5 For family mediation advantages, vide HERRING 2013, 145 et seqq.
Although it is not the solution to all problems that arise from the family, it has been particularly helpful for a large majority of them.

3. FAMILY MEDIATION EVOLUTION IN PORTUGAL

Family mediation is not a recent phenomenon in Portugal (CALHEIROS 2014, 149; CRUZ 2011, 66). It has existed for two decades but unfortunately its expression is not the one desired.

Let’s focus on the Portuguese legal framework.

The first legal outline was Order no. 12 368/97, December 9th, from the Justice Minister. This has created the Family Mediation Cabinet. It was a public service granted for citizens facing only parental issues (like custody agreements).

At first, this was just an experimental procedure with a territorial jurisdiction limited to Lisbon (the country’s capital city). Afterwards, the Justice Ministry extended, in 2002, the territorial scope of this Cabinet to other areas near Lisbon due to the increased demand for these services (Order no. 1091/2002, January 16th). A few years later it was extended also to the area of Coimbra (Order no. 5524/2005, March 15th).

We should not forget that in between these legal Orders there was the Recommendation R (98) of the Committee of Ministers to Member States on Family Mediation (adopted by the Committee of Ministers on 21st January 1998). This Recommendation recognises the growing number of family disputes and its high social and economic costs to States and takes into account the results of mediation and because of that:

Recommends the governments of member states: I. to introduce or promote family mediation or, where necessary, strengthen existing family mediation; ii. to take or reinforce all measures they consider necessary with a view to the implementation of the following principles for the promotion and use of family mediation as an appropriate means of resolving family disputes. - point 11 of the Recommendation.

This Recommendation was very important and helpful as it also introduces in the European context the scope of family mediation, its principles, the status of mediation agreements, etc.

Once it already existed this valuable Recommendation, the Portuguese legislator could take it in account on the 2002 and 2005’s Order. It could take advantage of the legal densification and instilled some of it when revisited family mediation in 2002 and 2005. However, it fell short then (only in 2007 a better diploma arose).

In 2007 it was approved the Order no. 18778/2007, August 22nd, giving to family mediation a more complete print that had long been awaited. It also repealed the previous Orders (Orders no’s 12 368/97; 1091/2002 and 5524/2005).
Even though it had short come, this 2007’s Order was a huge step into the right direction. Not only made public family mediation available throughout the country but also enlarged the scope that was no longer limited only to conflicts arising from parental responsibilities (it was extended to various areas of family law such as custody, divorce, separation, maintenance, etc.).

It reconfigured the whole structure of the public service creating the Family Mediation System (instead of the Family Mediation Cabinet from 1997).

This legislative instrument had more strength then the previous ones. Nevertheless, it could have been much further – for example, with regard to the densification of the principles – particularly since benefiting from Recommendation R (98) contribution.

Until today the Order no. 18778/2007, August 22th, is still in force. However, in 2013 emerged the so called «Mediation Law» (Law no. 29/2013, April 19th) and it regards to mediation in general. Although it does not only apply to family mediation (nor is fully applicable to it) it has embodied a long-awaited improvement.

This law specifies the principles applicable to mediation, establishes the mediator’s disciplinary status, duties, supervision, etc. It has also benefited from the already long existence of the Directive 2008/52/EC of the European Parliament and of the Council of 21st May 2008 on certain aspects of mediation in civil and commercial matters. Even though the provisions of the Directive should apply to mediation in cross-border disputes, nothing should prevent Member States from applying such provisions also to internal mediation processes.

At first the Portuguese reception of the Directive was primarily focused on confidentiality and to ensure that the rules on limitation and prescription periods do not prevent the parties from going to court if their mediation failed (arts. 7 and 8). So these concerns were expressed in Law 29/2009, June 29th, that introduced four new articles in our then Civil Procedure Code (articles 249.º-A; 249.º-B; 249.º-C and 279.ºA)6. By then it was already clear that a proper mediation law was needed.

A few years later the already mentioned Law no. 29/2013 emerged (the «Mediation Law»). This Law has a more solid legal outline and combines many important aspects in just one diploma7. Chapter II outlines the important principles of mediation (such as voluntarily, confidentially, equality, impartiality, competence, responsibility and enforceability – articles 3.º to 9.º). Unlike Order no. 18778/2007, the 2013’s Law defines each principle and describes its own limits (particularly important regarding confidentially in domestic violence issues). This law addressed many aspects triggered by the Directive 2008/52/EC (HOPT 2013, 7.).

6 The current Civil Procedure Code now has only one article referring to mediation – art. 273.º
7 And also defines important concepts (in article 2).
Even though the Mediation Law isn’t fully applicable to family mediation (article 10.º reminds that Chapter III is not suitable for family mediation), it still is a very important legal figure within this ADR method.

Thus, as far as the family mediation is concerned two diplomas are applicable at this current time: Order no 18778/2007 and Law 23/2019.

The current Civil Procedure Code (Law no 41/2013, 26th June) now has just one article about mediation in general – article 273.º. We believe that the Civil Procedure Code and also the Civil Code should have specific references warning the possibility of family mediation in the chapter on family matters.

In the Portuguese Civil Code there is just one reference in article 1774.º regarding only divorce. This article establishes a mandatory information on family mediation services by the courts and the civil registry to the spouses at the beginning of the divorce proceedings. Although it is a mere duty of information was an important measure to make family mediation more effective. The legislator understood that this would be a first step in the acknowledgment of family mediation, allowing a more binding solution in the near future (OLIVEIRA 2010, 7). The scope of this article 1774.º should be broader but it has the benefit of being the first reference in such an important legal outline like the Civil Code. Maybe the time has come for a more fruitful and operative plan.

The legal system certainly will be enriched with more allusions to family mediation and the judiciary world would benefit from a more expressive use of it.

4. FINAL THOUGHTS

Over the last decades, Portugal has slowly incorporated family mediation more and more into family law. While the effort is worth some praising, it is still not bold enough in order to make family mediation an effective alternative dispute resolution method for most citizens.

Some argue that mediation should take place in courts and others understood that should remain an independent structure. There is no consensus on this issue. On one hand, it is feared that the inclusion of mediation in the courts may distort it and the citizen would not differentiate it from the judicial environment; on

8 These regulate family mediation procedure. However other laws allude to family mediation like Law no 141/2015, September 8th, regarding children important issues (such as parental responsibilities and custody); Law 103/2009, September 11th, referring to a special guardianship by others than the parents («Apadrinhamento Civil»); Law no 23/2013, March 5th, about inventory and shared goods after divorce, etc.


Also, 'mediation is well-established in the context of English family law, having been available for over 25 years, and is commonly referred to as 'family mediation'. SCHERPE 2013, 409
the other hand, if present in the court house that could perhaps promote some more respect and awareness for this ADR mechanism.

It seems that primarily the goal must be to gain more respect for those who can direct the citizen to family mediation. When lawyers, judges, notaries, solicitors and all players of the judiciary world will have complete confidence in family mediation it will become more accessible to all.\(^{10}\)

It is important to reiterate the idea that family mediation is not a perfect formula that will resolve all family disputes. It is a better place to address and settle some of these conflicts taking into consideration that the will of the parties works as a proposition.

Naturally, the need for the judicial system in family matters is not at all overlooked or ignored. It is emphasized that for some of these conflicts there is a more appropriate alternative.

If the disputants reach by themselves an agreement, it is only natural that they comply with it. As a result, although it is a friendly solution, it will be more binding than a decision imposed by a third party with the power to do so.

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\(^{10}\) Regarding Germany: Moreover, due to the lack of information on the principles of mediation, many judges and lawyers still have prejudice as to this relatively new procedure. Especially some judges regard mediation as exotic or esoteric and therefore are unwilling to learn more about mediation. TOCHTERMANN 2013, 568.
INSTITUTE POLITICAL CONTROL THROUGH THE PRISM OF PRACTICAL ISSUES AND INTERPELLATION AS THE LIMITS OF PARLIAMENTARY CONTROL OVER THE GOVERNMENT

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Abstract

The sculptures of the idea of political control appeared with the principle of separation of power and the need for mutual control and restriction of different branches of government. To mitigate and neutralize the possibility of abuse, one of the mechanisms is to organize the government in a way that one power oversees the other government. In that sense, in the relations between the legislature and the executive, it is necessary that the legislation does not have a legal means to stop the decisions of the executive power, but with the possibility and authority to control it. Conversely, the executive has the right to veto the legal acts, but can not participate in their voting.

Political control is one of the essential and standardly established functions of parliaments in all countries with a parliamentary or mixed system of government organization. It is a process in which parliament continuously and systematically monitors, analyzes, checks and evaluates the work of the government. In addition, the controlling parliamentary prism observes the overall work of the government as a collegial body of the executive power and the work of ministers as its members in terms of whether they achieve the goals and policies of parliament expressed in the constitution and laws, and whether the manner of who act, the means and the methods they use are purposeful.

Subtlety in the use of instruments of political control is necessary in order not to jeopardize the fundamentals of the independence of the executive, that is, not to undermine the necessary independence of the ministers in undertaking measures within the scope of their portfolio, as well as on the activities for consistent implementation of government policy in general.

However, political control, on the other hand, has been established, first of all, to prevent the independence of the holders of the executive power from reaching beyond the limits of the normatively projected trajectory of movement and action, not to turn into arbitrariness, arbitrariness and voluntarism, not to manifest ignorant attitude towards the policies and attitudes of the parliament expressed in the laws, and thus indirectly in accordance with the will of the citizens represented in the parliament.
The focus of the scientific-research interest will be deep and extensive study and awareness of the immanent features of parliamentary issues and interpellations, as forms through which parliamentary control over administration is effectuated. Also, in the same context the author’s intention is by using some of the premises and attributes of the normative, historical, sociological and the comparative method to approach to the relevant material in direction of claryfing of the subject definitions of the paper that is, to present the effectivenss of the control parliamentary mechanisms, emphasizing at the same time the parliamentary issues and the interpellation.

**Key words:** political control; parliamentary issues; interpellation; political responsibility.

1. **INTRODUCTION**

In ordinary and everyday speech, the term control means all possible forms and modalities of controls, examinations, checks and surveillance in general. And in the legal theory a variety of definitions are circulating and views about the definition of the term control. In general terms, control is an activity of continuous, careful and systematic observation, analysis and assessment of someone else's work, acts and behavior. It implies the existence of at least two entities. One, active entity that carries out the control and it has certain legal authorizations, and the second-passive subject, where the supervision is carried out and has legal obligations and duties.

Political control is government control by parliament. If we see it through a historical prism, the initial cap on political control was the confrontation between the parliament and the monarch and an endeavor to legally limit the prerogatives of the monarch. Namely, the root or genesis of major constitutional and political turbulences in the 17th century in general, and especially in England, is the question of control over the work of the executive and the demand the king to respect the opinion of the parliament. Such a demand can be qualified as the foundation in the history of the emergence of English parliamentarism, due to the clearly proclaimed aspiration for political control of legislation over the executive, with the ultimate goal of the government's responsibility for eventual failure to act in the opinion and direction of parliament.

One of the conditions sine qua non for the existence of a parliamentary system is the joint political responsibility of the government in front of the parliament. Parliament (should) constantly monitor the work of the government and ministers through: asking parliamentary questions about the work of the government and its ministers; setting an interpellation for the government's responsibility as a collective body; establishing permanent committees for monitoring of the work of the government; forming temporary survey commissions for examination of the responsibility of
ministers for the measures taken in specific cases, and deciding on the budget as a basic act for financing government activities.

2. TERM AND ELEMENTS OF POLITICAL CONTROL

The term, political control" covers all legal powers and factual possibilities of the electoral organs of the political power that influence the work of other state authorities, primarily the work of the executive and administrative bodies, their responsibility towards the representative bodies and the manner of checking whether the actions of these bodies are in line with the policy that the representative bodies determine with their acts (Political encyclopedia, 1975, 475). Political control is the control that parliament executes to the holders of executive functions. It covers several substantive elements:

- political control is a set of powers and mechanisms that are given to the parliament by the highest legal and political act of the state-constitution;
- in the conduction of the control, the parliament appears as an active entity, with the right to undertake measures and the ultimate effect the determination of the political responsibility of the government with appropriate consequences, which also determines its legal character;
- subject that is controled is the overall work of the government as a collegial body of the executive power and the work of ministers as its members in terms of whether they realize the goals and policies of parliament expressed in the constitution and laws, and whether the way they act and the means and methods they use are purposeful;
- political control is a process in which the parliament continuously and systematically monitors, analyzes, checks and assesses the work and conduction of the government, and if it finds that it is contrary to the views, the perceptions and opinions of the parliament through the implementation of the control mechanisms, specific political responsibility will become effectie (Gusheva, 2008, 22-23).

So, political control through normatively established mechanisms and in a normatively well-defined procedure leads to determination of the political responsibility and consequently it can be effected by political sanction. Control may provoke the initiation of the political responsibility for any act and for any action of the minister in the exercise of his function, as well as for his attitudes and actions, so that his behaviour is not evaluated by the criterion of legality, but on the basis of the criterion of political expediency.

As we have previously pointed out, political control, primarily, is aimed at re-examining of the achievement of political goals. However, indirectly, it also examines whether and how the administration fulfills its tasks. Administration

For some theoreticians, the parliament, that is, the MPs, are primarily a controlling function, and the professionally trained executive has the real, achievable powers for direct management of the country. In doing so, the controlling powers of the MPs can come to the expression in the best way by examining governmental acts, activities and behavior, thus making the work of the executive public and transparent, as well as subject to a comprehensive critical observation and assessment.

Other theorists, however, believe that the function of parliament should not be reduced to government control, but in acting as a forum for critical consideration of government decisions and as a focus on opinions that govern outside the state structure, that is, the representative house should be holder and guarantor of governance by means of public opinion (Gusheva, 2008, 23-24).

In any case, political control must be normatively established as one of the most important and standard functions of parliament in order to establish the responsibility of ministers and the government in order to act *aposteriori*. On the other hand, since such control does not always have to be effected and generate political sanctions, it should stand as a certain, sword of Damocles “, that is, to act intimidating *apriori*.

3. **POLITICAL RESPONSIBILITY**

Political responsibility means the responsibility of the ministers, each individually for their work, that is, for the work of the government as a whole, in front of parliament. Such political responsibility is normatively designed and practically established in all state systems, except in the presidential, in which the president and state secretaries of the individual departments that he appoints are not liable in front of the parliament (except for a delict, which entails the so-called impeachment of the president according to US Constitution).

Until the emergence of political responsibility, there was only criminal responsibility for ministers. Namely, in the English parliamentary system, the House of Commons (the House of Commons) could, by impeachment, charge the ministers for a criminal offense before the House of Lords (House of Lords) who, in the capacity of a judicial authority, imposed a sentence or had a deposition of the minister.

Political responsibility was first introduced in England at the end of the 18th century, first for the individual ministers, and then for the entire government. The authorization for determination of the responsibility and the right to appoint individual ministers and the entire government, as well as the dismissal of ministers,
or the pressure on the government to submit a statute, belonged to the lower house (Radulović, 1982, 75).

Historically, the individual-personal responsibility of the ministers first appeared, and the collective-solidarity political responsibility of the government first appeared in England in 1782, when the House of Commons voted mistrust of the Lord North's cabinet. Hence, 1782 was noted as the year of the introduction of the parliamentary system, because the previously established institute dissolving the parliament from the executive power is added to the second key element - a solidary political responsibility of the government in parliament (Shkarić, 2015, 683). As it was known that the individual minister can not perform functions against the will of parliament, it became clear later that all ministers - if the government should represent a single body, not a set of sovereign advisers acting for each other - must together to survive or fall into parliament (Grizo, Gelevski, Davitkovski, Pavlovsk-Daneva, 2008, 204).

Political responsibility, as the right of the political-representative body to recall ministers (officials) or the government, is a benefit of parliamentary democracy. Today, in all countries with a parliamentary system, regardless of the differences in terms of whether parliament is elected by the government, it confirms its composition or entrusts the mandate to offer the personnel of the government and regardless of whether members of the government must, may or may not be members of parliament, the government is politically accountable to parliament for its work. This responsibility is political because it does not imply unlawfulness as in judicial accountability, but it "diagnoses" incompetence and consists of expressing mistrust of the parliamentary majority against the executive branch. This means that parliament does not judge ministers nor punishes them, but merely declares that they have lost their trust as bearers of state functions (Spektorski Evgeny, 1933, 11).

Political responsibility manifests itself in an individual and collective form. Individual is the one that the minister has individually, and collective responsibility is that which all ministers submit together, ie the government as a whole. The minister is politically responsible for: 1. the acts, actions and procedures he has taken and undertaken independently, as the head of the department; 2. the acts and procedures which it has taken upon a previous decision of the government, in accordance with its general policy; and 3. acts and procedures arising from the minister's participation in the work of the government, the creation of its policy and the adoption of its decisions (Vitanski, 2014, 315). Ministerial responsibility is wider than solidarity (collective) responsibility, because ministers have a dual role: they are members of the government and heads of individual ministries. Minister politically answers not only about his own acts and actions, but also about the acts and actions of all organs within his portfolio. In this context, he can not take responsibility from his own shoulders and transfer him to one of the officers.
Among the countries with a parliamentary system, it can be pointed out those, in which exclusive individual responsibility of ministers is foreseen. Thus, according to Art. 43 of the 1919 Constitution of Finland (which is still in force), the members of the Council of Ministers are responsible to the House of Representatives for the actions taken in the performance of their duties. Each member of the Council, who has participated in the resolution of certain issues, is responsible for his decision if he did not express a different opinion that is entered in the report "(quotation by Grizo, N. Gelevski, S., Davitkovski, B., Pavlovsk-Daneva, A, Administrative Law, Skopje, 2008, p. 205).

A second example for the existence of a sole individual ministerial responsibility is found in the Basic Law (Constitution) of the Federal Republic of Germany from 1949. It foresees individual political responsibility, on the one hand, of the President of the Government, the Federal Chancellor, and on the other, of the individual ministers. However, in practice, the chancellor's responsibility turns into a collective responsibility of the entire government, that is, distrust in the chancellor entails the fall of the entire government (ibid, p. 205)

Particularly interesting for marking is the fact that in the countries with a parliamentary system, the minister is also subject to political responsibility for the work of the head of state. Namely, the minister has such responsibility for the acts and actions of the head of state, because with his own signature, he actually participated in their adoption or in some other way participated in certain actions undertaken by the president of the state.

Viewed from a historical retrospective angle, this kind of political responsibility originates from England and draws its essence from the constitutional convention under which the king can not work alone - "The king can not act alone" and is expressed through the rule of ministerial pre-registration of the acts that are reached by the head of state. Namely, the signature of the minister in addition to the presidential signature stands on his acts and in an explicit and unequivocal manner indicates, in case if a liability issue is initiated, who will be responsible for those acts (Jovićić, 1968, 20).

With the introduction of the pre-registration institute, the rule is confirmed, that in countries with a parliamentary system, "the king kings, but does not rule" or "the president presides, but does not rule" that ministers bear the responsibility for the overall execution. So, the ministers are under constant control of the parliament and the acts adopted by the head of state, which they sign, because their signature means confirmation of their agreement with the content of those acts. They are also responsible in cases where they were supposed, but no acts were passed by the head of state.

Regarding the types of political responsibility, the immanent feature of the parliamentary system is collective responsibility. This responsibility is important for
ensuring uniqueness, cohesiveness, compactness and co-ordination in the conduction of internal and foreign policy. Metaphorically, this essential determinant can be expressed as: "The state ship can not go at the same time in different directions" (A. Corry Abraham, pp. Marković, R, 211).

4. PARLAMENTARY QUESTIONS

The parliamentary question is a form of control over the work of the Government and its ministers by MPs. "This form of political control allows lawmakers, and in particular the opposition, to put an end to the government's activity and the work of every minister without having to officially raise the issue of government accountability" (Thiery Debard, 2002, 133). In a number of countries, the institute parliamentary question is in principle determined and regulated by their constitutions, while in other countries all aspects related to the procedure for using this control mechanism are elaborated in detail in the procedural rules of the parliaments.

In practice, members of parliament ask questions to ministers and government, originated in England. The first issue for which there is written information was set out in the House of Lords 1721, regarding the financial mismanagement of the Government (quotation according to Gusheva, 2008, 47).

The regulation for the parliamentary question was first introduced by the Speaker of the House of Commons, Cornwall, in 1783. According to these rules, each MP had the right to ask a question to a minister or an official, and that person, for his part, had the right to give or not to give an answer, depending on his personal assessment. However, by the beginning of the 19th century, issues were rarely applied. However, with the development of the parliamentary system, the practice of asking questions over time was taken wider, so that the ministers were exposed to real "bombardment" with questions in the House of Commons (Grizo, Gelevski, Davitkovski, Pavlovska-Daneva, 2008, 206).

Parliamentary questions are the simplest form of research. All parliamentary systems give lawmakers the opportunity to ask questions to ministers. These issues may relate to the ministerial and political decisions of the ministry. This is particularly true of the Westminster system, in which the minister is considered politically responsible for everything that happens in his portfolio, even for the behavior of lower officials (B, G, Peters, 2009, 350).

The parliamentary questions are established as a means of direct communication of the MPs with the government and they allow through the received information and data, the MP, and the indirect and the legislative body to form its assessment of the work of the government.

The parliamentary question is a mean, a mechanism available to members of parliament, through a request, i.e getting an answer to the question immediately to
get acquainted with the situation in certain areas. Through these questions the MPs have the opportunity to be informed about various segments of the scope of the ministries, opinions and attitudes of the ministers and the government on specific issues, the activities that are undertaken or are planned to be taken, etc. The questions can be asked to the president of the government or directly to the line ministers, and in some parliaments the opportunity is given to appoint representatives of other state bodies. However, in comparative constitutional law, as a rule, parliamentary issues are directed to the government and ministers, and not to public officials elected or appointed by the representative body.

Comparatively, in the procedural rules of most parliaments, the obligation is defined, the questions must be brief, concise, clearly defined, i.e. defined and briefly explained, and in the English Parliament it is required that the questions be in accordance with the usual parliamentary convention regarding the decorative language and a respect for the crown, the judiciary and lawmakers from both houses. According to the form in which they are being asked, parliamentary questions can be oral or written. In addition, as a rule, oral questions require an oral response (but, due to justified reasons, it may be written), while written questions are followed by written answers. The Minister may refuse to answer the question to him if this does not apply to matters within his scope. An answer can also be refused if the issue concerns things that according to the law are official, state or military secret. In those cases, it may be proposed to give the answer to a closed parliamentary session without the presence of the public or in any other appropriate manner, which will ensure the secrecy of the response.

In some countries, a certain day in the week or the month in which parliamentary questions can be raised is determined. In other countries, they can be set up at each session by determining and making concrete it before the beginning of the session, that is, before the commencement of the debate on the items of the agenda or at the end of the session, in which the time set for the placement of parliamentary questions is called the actual hour, and in some parliaments the day and time for parliamentary questions are determined as needed (Gusheva, 2008, 62). In this context, for example, in England, every Monday, Thursday, from 2:00 am and 4:00 pm to 3:00 pm, parliamentary questions are raised in the House of Commons, and twice a week, on Tuesday and Thursday, the Prime Minister personally corresponds to them. "Question time" does not always mean the in-depth control of politics, but through the direct transmission of television, it involves the citizens in it. In France, however, parliamentary questions are set up every Thursday at the end of the month. But in addition to these, there are also questions that are "eyes-to-eyes". In addition, the Government responds spontaneously to such issues in the afternoon from 15:00 to 16:00 in the presence of the television (Shkarić, 2015, 783-784).
The parliamentary questions can lead to the publication of information, shame the government, and alert the "cautious public" with regard to the current administration problems (B, G, Peters, 2009, 350).

Most often, the purpose of the parliamentary questions posed by the opposition MPs is through criticism of the policies, measures and activities of the government and ministers, discrediting the executive power to the public, and at the same time, by presenting their own positions and positions to mobilize and win the ballot body on its side. While, when questions are asked by members of the parliamentary majority, the intention is to promote and give a hyperbolic picture of the positive effects of the government's work.

The main difference between the parliamentary question and the interpellation is that, after the question that a member of parliament appoints to a minister, a response from the minister is followed. Thereafter, the Representative may ask an additional question and receive an answer to it. And here the use of this instrument is absolved, that is, for the subject matter of the question there is no further discussion in which the other members of the representative body would participate, nor does it approach the voting for the trust of the official. Immediate political responsibility and imposing a sanction can not arise from the parliamentary question (Vitanski, 2014, 315-316). However, despite the absence of immediate political sanctions, parliamentary issues are a profiled and well-established control mechanism of great importance, because on the basis of the received answers and information, the MPs have the opportunity to express their attitude, attitude and assessment of the work of the executive. This, in turn, can encourage them to reach other control mechanisms (an interpellation or a question of trust), and thus raise the issue of direct responsibility of ministers or government.

5. **INTERPELLATION**

The expression of interpellation drags the roots of the latin word interpellatio, which means to ask, attack or protest. It can be set up for the work of the Government and for each of its members separately.

The interpellation appeared for the first time in France during the July Monarchy (1830-1840), a period when France was intensively pursuing the tendency to establish the foundations of a responsible government, which then responded to both houses of parliament.

The interpellation is a special mechanism available to members of the legislature for exercising political control over the government and its individual members. It may be raised on a matter of principle, issues of general policy that fall within the competence of the government or actions undertaken, actions or measures by a member of the government in the exercise of his office. This instrument is activated
in order to prevent the government from acting arbitrarily and voluntarily and not taking measures and activities that are contrary to parliamentary projections. Comparatively speaking, the interpellation as a special mechanism of political control in principle is envisaged in the constitutions of most states. However, the number of lawmakers they can initiate, the form and content of the issues on which it is being filed, the deadlines in which the government is obliged to respond, the hearing, the voting on the interpellation, the consequences that may arise from it, and other issues and aspects directly derived from this institute are elaborated in more detail and regulated by the procedural rules of the parliaments of those states. The interpellation can be submitted in writing, with an explanation and signed by the applicants. In the interpellation, which is most often initiated by a group of lawmakers, following the pronouncement of the official against whom it is directed, there is a wide discussion in which not only the interpellate and the interpellated but also the other members of the parliament can participate. An immanent mark that gives the character of an independent instrument to the interpellation is that after receiving the answer to it, that is, after the official or the government placed on the "wallpaper" will present their own arguments regarding the allegations contained in the interpellation, a debate is started when all MPs with the right to speak express their opinion on the work of the minister or for the overall government policy. At the end of the debate after the interpellation, there is voting. In this way, with the vote, the parliament expresses its position regarding the work of the minister as a member of the government or in relation to the government as a collegial body. This, in turn, depending on the constitutional solutions and the procedural rules of the parliaments, can lead to the political responsibility of the minister, that is, to a vote of no confidence in the government. So, the interpellation is a pivotal instrument for raising the issue of political responsibility of the government, because in the final stage it leads to a parliamentary assessment of the work of the government or of one of its members, which is not the case with the MPs. If for the parliamentary question the information is important, for the interpellation the discussion and the evaluation of the Government policy are important. The common denominator of the interpellation and the parliamentary question is reflected in the fact that both instruments have an informative character. This means that they may be required by the government or ministers to refer to certain issues, problems, elaborate individual attitudes, aspects, actions and procedures from the scope of their work. The differences between these two mechanisms, on the other hand, consist in the fact that the parliamentary questions lack the debate and the immediate political sanction, which, on the other hand, is a substantial element that constitutes the essence of the interpellation. Also, the subject of the interpellation is, as a rule, of a wider scale and refers to the general and overall policy of the
government and the ministries, that is, of procedures and events in which the wider social (public) interest intertwines.

6. CONCLUSION

The primordial mission of the legislative body is the fulfillment of the normative, regulatory function - by adopting the laws as the basic general legal acts, essentially and originally determine and regulate the relations in which the subjects of law enter into different areas and segments of the social life. The basic attribute, however, of the executive is the executive component, which is expressed through the implementation and realizing of the legal provisions in the real life. Regarding the expediency of the executive power, political control has been established as one of the basic functions of the legislative representation bodies in all countries with a parliamentary or mixed system of government organization. It is a process in which parliament continuously and systematically monitors, analyzes, checks and evaluates the work of the government. In addition, the controlling parliamentary prism observes the overall work of the government as a collegial body of the executive power and the work of ministers as its members in terms of whether they achieve the goals and policies of parliament expressed in the constitution and laws, and whether the manner of who act and the means and methods they use are meaningful.

The mechanisms of political control are not modeled for the manifestation of the vanity, superiority and supremacy of the legislature in order to jeopardize the foundations of the executive, that is, violating the necessary independence of the ministers in taking measures from the scope of their department, as well as activities for the consistent implementation of government policy in general. On the contrary, the institute of political control has been designed, first of all, to prevent the holders of the executive power from coming out of the boundaries of the projected trajectory of movement and action, not to turn into arbitrariness and voluntarism, and not to manifest ignorant attitude towards the policies and attitudes of parliament expressed in the laws, and thus indirectly in accordance with the will of citizens represented in parliament.

The conditions for the sine qua non to ensure the compactness of the architecture of the parliamentary system and its effective and efficient existence are: first, the political responsibility of the government in front of parliament, and second, the right of the executive to dissolve parliament and put the dispute before the electorate, as a top arbiter. Without the possibility of effecting any of these two cumulative elements, there can not be a parliamentary system in its original view. So, the essence of parliamentarianism is, first of all, the dynamic balance and the reciprocal action of parliament and the government, which implies the possibility of
parliament voting mistrustful of the politically irresponsible government, and the government can dissolve the inefficient parliament.

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STRATEGY FOR DEFENSE DIPLOMACY OF THE
REPUBLIC OF MACEDONIA

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Abstract
Diplomacy and international politics are the key tools in the establishment of a
sovereign and independent state as an international political subject, and also in its
communication with other sovereign entities. Looking at the socio-political system
on a global scale, we can come to a conclusion that the interaction between entities
does not strictly have a civil dimension (economics, politics, resourses).
Diplomacy has its own military side which is truly crucial in the establishment of
peace and democracy. Defense diplomacy, de facto, creates a surrounding where the
use of force is being replaced by dialogue, mutual understanding, recognition and
respect. Aware of the power and real meaning of the defense diplomacy, the
Republic of Macedonia undertakes serious and determined steps towards building a
defense diplomacy network encompassing our key global partners, including some
of the most powerful and influential countries in the world.

Key words: Defense diplomacy; peace; security; Republic of Macedonia;
international community; society; Army

1. INTRODUCTION

The emergence of defense (military) diplomacy in the history of human
society is a process that has been moving alongside the emergence and the
development of the general diplomacy. This parallel development was conditioned
by the historical developments during which the element of the power and power of
the state was reflected above all in the power of the military. The powerful army
within its own state has shown its influence on all institutions in the country, but
also on the diplomacy, by putting the works of a military nature in the first place.
Thus, de facto diplomats were required to have a good knowledge of military issues.
Of course, the best soldiers in the military are professional soldiers, so their
knowledge as experts in the work of diplomatic institutions has become more than
necessary (Vagts Alfred, 1967, p. 11)

From time to time, the military factor in the diplomacy was more powerful
than the general one, which inevitably led to "predominating" of the military
diplomacy over the general diplomacy. This kind of diplomacy was probably
imposed by the rulers of the time, who, despite being statesmen, were also military leaders, which means that the political and the military functions were concentrated in one person.

The middle Ages was devoid of complicated warfare, that is, there was no deliberate military planning, nor tactical movement of the troops, which more or less made it uninteresting among the military diplomatic activities. In fact, it can be said that Machiavelli was one of the few authors who studied the military diplomatic practices of the middle Ages in their works.

The conflicts between the states in the 17th and 18th centuries were mainly led by the allies, which has imposed the need for the participation of professional soldiers in the role of Liaison Officer, ie in the role that preceded the introduction of the post "Military representative". Their duty, as the name itself says, was above all maintenance of the relationship between their own and the allied forces, assistance in training soldiers, giving military advice to Allied generals, and reporting on where the financial assistance was directed by their government. The liaison officers also had the task of representing the ambassador in situations where the said person could not leave the capital for any reason. Certainly, in this way, the liaison officers of the occasional diplomatic missions were given the opportunity to become more familiar with the armed forces of the host country, that is, to be informed and to inform their own government about the situation inside the host country. "The sending of occasional missions at the time was almost the only way to maintain official political relations between the states, and such missions were valuable to familiarize themselves with the socio-political situation in the country, and when it was a remote country, notifications from such missions were also basic a source of information about an unknown country (Вајовић Петар, 1965, стр. 23)"

"The French Cardinal Richelieu, during the reign of Louis XIV, formed a Military Political Intelligence Office, “ (Ђорђевић Обрен, Шта је то шпијунажа, 1978) and French officers were often sent by that office with the task of maintaining links between the Allied armies. "A French officer of the Swedish court has been sent with such a task, and what is particularly interesting with that officer is that he was the first subordinate (command) of the ambassador for the first time." (Vagts Alfred,1967, p. 9).

Regardless of the case, that is one of the first attempts of establishing civilian control over the members of the armed forces.

Since the time of the first officers sent abroad, to this day, the military attaché has had some independence in relation to other diplomats and the ambassador himself. But, nevertheless, the ambassador had a general authority over everything including the military attaché. The military attaché was attached to the Ministry of Defense, not to the Ministry of Foreign Affairs, which has given him independence, but only to the extent allowed by the ambassador. With the French
Revolution and the reign of Napoleon, the conditions for the active participation of military personnel in the work of the diplomatic service were created. Napoleon among the first saw the benefit of sending his officers to foreign diplomatic missions and was the first (unofficially) who on March 3, 1806, sent Captain Lagrange (Зечевић Милан, 1990, стр. 31, 32) to Vienna, with the task of "continuously keeping precise data on the strength of the Austrian army and on its combat positions" (Vagts Alfred, 1967, p. 9).

The said captain noticed the collected data on a daily basis, misdirected them by dates and sent monthly reports to his General Staff, that is, to the military intelligence service, as well as to the Ministry of Foreign Affairs. Due to the way the French captain works, which is still used in a more recent form, it can be said that it was the first military attaché (Вујаклија Милан, 2004, стр. 83). At the same time, the referral of the aforementioned officer to the diplomatic service is in most of the literature taken as the official start of the activities of the officers within the diplomatic mission that is, as the official start of the work of military diplomacy.

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2. FUNCTIONS OF THE MILITARY DIPLOMACY

In order to be secured the important political positions of the state, as well as to realize its foreign policy by applying the allowed funds, the diplomatic missions have built their own organization, but have also established their own functions. It is considered that the word "function" comes from the Latin and signifies the performance of the service or the performance of a duty " (Вујаклија Милан, 2004, стр. 958). At first glance, it may seem that the functions of diplomacy are the same as its tasks, because diplomatic affairs can be performed, or by performing tasks, so the logical question arises as to the difference between the two concepts of function and task.

"The function cannot be separated from the task, but complementarily unites all the tasks performed by the military diplomatic mission and which can be entrusted to it (Зечевић Милан, 1990, стр. 127-128)." On the other hand, the tasks are more numerous, more specific, and always set up execute, while the functions are reduced to a global setting within the framework of those tasks that can and do not have to be performed. So, functions are framework tasks that do not enter
deeper into the way they are executed, and by whose execution a certain service achieves its final goals. The ratio of tasks to the function can be seen as a ratio of the part to the whole. Namely, tasks are parts of functions; or rather they are a sub function with the execution of which functions get their own characteristic features.

The Vienna Convention for the Diplomatic Relations determines the functions and tasks of diplomatic representatives. By performing and adapting them to the needs of the military diplomacy, these functions could be fully transferred to the military diplomatic missions and be introduced in the following manner:

- Presentation of the Armed Forces in the State of Reception;
- Protecting the interests of the armed forces and its members;
- Negotiating with the representatives of the host country's armed forces;
- Reporting to the host country's armed forces and submission of timely reports to its own government and
- Promoting friendly relations and developing military cooperation.

The first problem the diplomatic practice is facing by the implementation of the functions of both the general and the military diplomacy was seen in their imprecise formulation, precisely in the imprecise determination and with which means the diplomatic functions can be carried out. The fact that the ways and means of their implementation are not precisely defined results in the different legal interpretation and understanding of the contents of diplomatic functions. Hence, it is necessary for the diplomatic mission to know the laws of the state of admission, but also the laws of international law in order to successfully carry out its tasks and functions. At the beginning of their active engagement in diplomatic practice, officers appeared in two functions: in the function of military observers and in the function of securing the ambassador. This kind of engagement of officers within the diplomatic missions was a completely logical type of use of professional soldiers for the needs of the diplomatic service.

Over the time, the manner of functioning of the general diplomacy, and therefore of the military diplomacy, was adapted to the needs of its own state, but also to the laws of the state of admission. The implementation and adaptation of the functions of general diplomacy to the needs of military diplomacy over time proved necessary for military diplomacy to be able to successfully accomplish its tasks. If in some cases its activity was retained solely on the notification, military diplomacy could not perform its tasks, because without the implementation of other activities provided with the Vienna Convention, the function of the notification could not be fully implemented.
3. DEFENSE DIPLOMACY OF THE REPUBLIC OF MACEDONIA

The Republic of Macedonia, through its foreign policy, which is in direct correlation with its defense policy, promotes its national values and interests on a bilateral, regional and multilateral level and is fully committed to meeting the foreign policy priorities, which are also strategic goals.

The Republic of Macedonia is committed to meeting five foreign policy priorities: NATO membership, getting a date and starting negotiations for full membership in the European Union, maintaining the visa liberalization between the EU and the Republic of Macedonia, overcoming the issue of the name difference imposed by our southern neighbor and reinforcing economic and public diplomacy.

What is the most important in terms of the function of the Ministry of Defense is the European and Euro-Atlantic integration of the Republic of Macedonia, which has no alternative and is of vital interest for its long-term stability and development, ie it is of invaluable significance for the security and well-being to its citizens and to the preservation of peace and stability in the region and beyond.

The agenda of the Ministry of Defense is determined by three main activities at the state level, which are also guidelines for the defense reforms and the transformation of the Army:

- Internationally, within the framework of the Euro-Atlantic integrations and the European integrations, the Republic of Macedonia continues to implement the necessary reforms and provides for the forthcoming towards the global peace through participation in the myths and the presence/visibility of the state in all of the international institutions.
- On the inside plan, with the enrichment of the inter-ethnic and inter-ethnic relations and tolerance.
- In the area of the defense, the creation of a modern and highly professional army is continuing, with the more elaboration of the working conditions and improvement of the standard of its life, with democratic and civilian control over it and the affirmation of military service to the country.

The integration in the Euro-Atlantic structures is a process in which we are making significant progress and concrete results, since the country has invested in it since 1993. At that time, the Assembly of the Republic of Macedonia unanimously adopted the Decision on joining the Republic of Macedonia in membership in the North Atlantic Treaty Organization, and it was confirmed in 2007 and reaffirmed in April 2012 with the adoption of the Declaration of the Assembly of the Republic of Macedonia for reaffirmation of the determination for realization of the strategic goal for Macedonia's NATO membership.

For the membership in NATO and the EU, there is a political consensus among all parliamentary political parties, and this goal stands high on their political
agendas, and there is also a social consensus, which is repeatedly confirmed through the results of the public opinion surveys, which state that this determination is enjoyed extremely high support among citizens. Since joining NATO's Partnership for Peace initiative in 1995, as a long-term partner, the Republic of Macedonia is recognized as a worthy ally of the Alliance, ready to promote common democratic values, share responsibilities and participate in the activities of the international community for tackling the threats and challenges to international peace and security.

For a long period, Republic of Macedonia has been giving a significant contribution to the regional and international peace and security by participating in the Alliance's efforts to combat global security threats. The great contribution of the country to the international community's peacekeeping operations is an indicator of the commitment of the Republic of Macedonia to the defense of the principles and values of NATO and is a confirmation of the demonstrated capabilities for top professionalism of the Army of the Republic of Macedonia and the personnel performing the most complex tasks and tasks in missions outside of their own country.

Republic of Macedonia is committed to the development and establishment of contemporary values - peace, democracy, human rights, ethnic, religious and cultural equality tolerance and respect, on a global level. Indisputable proof of this is the continued participation of the Army of the Republic of Macedonia in the international peacekeeping missions led by NATO, the EU and the UN.

4. MISSION OF DEFENSE DIPLOMACY OF THE REPUBLIC OF MACEDONIA

The mission of the defense diplomacy is to provide capacities for carrying out various activities for promotion of the wider interests of the Republic of Macedonia, building and maintaining confidence measures, as well as expanding and deepening the defense cooperation at all levels (bilaterally, regionally and multilaterally).

The activities of the defense diplomacy form an integral part of the integral activities that the Republic of Macedonia undertakes in the conduct of its foreign policy. The implementation of the activities implies full coordination and concerted action with other foreign policy subjects, in accordance with the principle of separation of powers, established by the Constitution of the Republic of Macedonia. The development of defense diplomacy is closely connected with the development of the international relations of the Republic of Macedonia with the world, as well as with the development of the capacities of the Army and the Ministry of Defense. The Ministry of Defense of the Republic of Macedonia raises a number of initiatives in the field of defense cooperation. With the help of the defense
diplomacy, we are active in the direction of affirmation of our country, implementation of defense reforms, development and promotion of multilateral, bilateral and military economic cooperation with the countries where the defense-diplomatic representatives and international organizations are sent, as well as development and promotion of partnership relations with international security and defense institutions.

5. CONCLUSION

According to the previously said, we can conclude that Republic of Macedonia, with the commitment to full membership in Euro-Atlantic structures sets military diplomacy to the fore. Her path towards full NATO membership leads through implementation of activities undertaken obligations and international agreements and their implementation including the activities of the Partnership for Peace initiative. When it comes to the strategic determinations of the Republic of Macedonia, defense diplomacy is in the focus of the events and has a central role in the implementation of the commitments. The Euro-Atlantic integrations are in the interest of Macedonia, which is why it is a top start-up priority for which there is political consensus among the parties, as well as the greatest support by the citizens. The NATO admission is significant from a time aspect and it is necessary to make every effort to be realized with greater dynamics. Euro-Atlantic integration is important for the stability of the region, therefore defense diplomacy should focus on deepening bilateral relations with our neighbors. Any delay causes the region's peace and stability and delays the development of the region, and this process needs to be completed and implemented at a faster pace, especially when there are still open issues, such as the northern part of Kosovo, the state apparatus in Bosnia and the functioning in that system, as well as our open name issue, which can easily contribute to destabilization. In general, the general assessment of Macedonia is that it meets the requirements for NATO membership. We need to be proactive and not give up or to be discouraged, especially because we have what to show. Macedonia is one of the most credible partners in the Alliance's international missions. At all meetings with the NATO structures, only good words are heard for our peacekeepers who are our most experienced ambassadors in the world and are an important segment of our defense diplomacy. Observed by the number of troops in missions, we are one of the countries that have the largest number of participants in international missions per capita. We can also be an example of a model of an army with universal values, cohesion, integrity, high morale and professionalism, with mutual respect for interethnic, interreligious, intercultural cohesion, values that have existed for centuries in Macedonia. From importing countries or users of international peace we have become a contributor to peace or an exporter of peace.
The defensive diplomacy is a huge potential field for work, which is why it is imperative in a global context. The objectives of the defense diplomacy policy of the modern states are in the area of strengthening the relevant institutions and implementing effective measures and activities in the security plan, in order to protect the national interests and successfully preventive action and to overcome the challenges, risks and security threats. This involves development of a politically and economically stable and prosperous society, participation in building a favorable security environment at the regional and global level through inclusion in European integration and other regional and international structures and cooperation with other democratic societies.

The national security policy of the modern states, as well as the Balkan states, is based on the principles of prevention, defense, compatibility, security and responsibility indivisibility. The basic components of contemporary national security policy are foreign policy, defense policy, internal security policy, economic policy, social policy and policies in other areas of social life. All this, along with the promotion of education, science, scientific research, environmental protection, culture and other areas of social life, as well as their compliance with the standards of the European Union, have strategic significance for the protection of national interests.

The Republic of Macedonia has a broad political and social consensus in support of our determination to participate actively in the building of security and stability in the Euro-Atlantic area. In this direction, we will constantly contribute to strengthening the Euro-Atlantic security through participation in the UN, NATO and EU. The Republic of Macedonia, in the long run, develops operational capabilities for deployable and sustainable forces, prepared and equipped for deployment in international operations. The long-term contribution to international operations will gradually increase in accordance with national interests and the development of the operational deployable capabilities of the ARM.

The Republic of Macedonia is working intensively to fully integrate into the EU and to actively pursue the development of the Common Foreign Security Policy and the European Security Policy.

The strategic partnership with the United States is of particular importance for the security, stability and economic development of the Republic of Macedonia and the region. The US partnership and support resulted in strong assistance in the construction of the ARM military forces, as well as with the significant contribution of the Republic of Macedonia in the global fight against terrorism. The Republic of Macedonia is also committed to continuously improving regional and bilateral co-operation in the field of defense.

Indeed, what can be drawn by induction from the overall global quantum of data is that precisely the promotion of regional and bilateral co-operation in all
regions is an imperative for achieving perpetual peace and stability as a prerequisite for economic and social welfare. An example is the countries that, because of their location, simply have to develop relationships of cooperation, friendship and tolerance.

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INTERNATIONAL NORMATIVES MEASURES AND INITIATIVES FOR PROTECTION FROM “FAKE NEWS” IN THE MEDIUMS

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Abstract
Famous Machiavelli’s quote “The ends justifies the means”, the most used and practiced in electoral processes and everywhere in the world got a real “competition” in another effective quote “When a lie is said 100 times, it becomes truth”! According to research from the author of this labor, in 2017, the term “fake news” is proclaimed as an expression of the year. It is just one from the reasons which caused institutions to start process for normative measures and other initiatives to protect from “fake news” in the mediums as a serious threat on institutions.

It is not difficult to conclude that use of “fake news” is in function of electoral process in order to directly influence the public opinion and voters, it can be with unexpected consequences. Also it is not difficult to conclude that if we don’t start process against this “virus” in the mediums, then we won’t be able to talk for the rule of law, correct informing neither for voting based on facts and truth for a long period of time.

In this labor, the author analyzes international normative measures and initiatives for protecting from “fake news” in the mediums which are taken from EU Member States, initiative from Jean-Claude Juncker, President of the EC, for protection of the public. The author presents an overview of media mobilization on famous world newspapers for raising awareness among the public for the problem with “fake news” and points out examples from Macedonian journalistic associations for preventive measures from “fake news”.

Key words: “fake news”, mediums, journalist, rule of the law, normative.

1. INTRODUCTION
The phenomenon of "fake news" is not a novelty. "Fake News" is dating from a long time ago! With a brief overview of the past, we will notice that "fake news" existed before our era, at the time when Octavian campaigned against disinformations sent by his angry rival Marc Anthony, portraying him with unreasonable associations and even being a "doll" in the hands of the Egyptian Queen Cleopatra VII. Without making a historical view, it can still be said that
"fake news" was written and spoken in this region, more than a century ago, in the former newspaper "Bitoljske vesti" and their vigorous struggle to prevent this phenomenon. Perhaps the maximum for broadcasting "fake news" is reached over time, and after the end of the presidential election in the USA in 2016, when both presidential candidate teams claimed to be victims of "fake news". But clearly, the distribution of "fake news" has always been with certain goals, a fact to which one doesn’t have to come with a special and greater effort.

In the recent period, there are often certain occurrences in the public, and in different countries, to be measured according to the development of the states, with the level of democracy and the power of protection and self-protection from adverse events, and in function of the rule of law. But the problem of "fake news" as a virus manages to blow up everywhere in the world, without selection, but with a clear purpose and goals. This means that instead of the flow of information and news in the media to be done on the basis of their accuracy, more and more "various clients" inform the public by serving "fake news". It is therefore not surprising that the famous Machiavellian saying “The ends justifies the means” most commonly practiced for political purposes, especially during political elections, today has a real "competition" in another, also effective wisdom that reads “When a lie is said 100 times, it becomes truth”.

The author of this scientific work doesn’t intend to count published "fake news", which will indirectly contribute to their promotion, but he won’t miss the opportunity to share the information with every reader that precisely in 2017, the term "fake news" was declared an expression of the year in the world (Hunt, “Fake news named,”). It also means that it isn’t possible to count the tricked audience with the news that has been published, and it is more than certain that it didn’t go unnoticed. And, the foundation for the rule of law is known! In order to be able to exercise their authority, citizens must be able to make a choice based on accurate information, good information and personal choice. This is achieved only with reliable data that must be provided by a professional medium. In that sense, if the media have the task to give a positive contribution to the citizen’s awareness, then the institutions unambiguously have the task of ensuring the rule of law.

2. MEDIA FOR "FAKE NEWS" IN MEDIA

Media in the world, especially those who enjoy high credibility, integrity, image and tradition, don’t accept at the expense of someone's political interests to renounce their professionalism and real values. Public notifications, media space, analyzes and comments are for the unique purpose of reducing the intensity of "fake news", which is especially noticeable on the eve of election campaigns and elections. Media pressure is on the rise and visible, and this is indicated by the examples that follow in this scientific work.
The newspaper *The Telegraph* in an article titled Fake news: What exactly is it - and how can you spot it? (Titcomb and Carson, “Fake news: What exactly,”), strikingly emphasizes that the term "fake news", which was almost unused until 18 months ago, is now considered one of the biggest threats to democracy, free debate and social order. *The Washington Post* on his front page asks "How do you stop fake news?"(Faiola and Kirchner, “How do you stop,”), while *The Hollywood Reporter* (Roxborough, “How Europe,”) in the article "How Europe Is Fighting Back Against Fake News" emphasizes that any "fake news" is no longer perceived as a joke and that the governments of the states in Europe should really deal with this common problem in the media. In *The Week*, in the text titled "Should the UK adopt European-style fake news laws?", It’s publicly advised and warned that if thousands of "fake news" and propaganda are prevented, then the denial of political officials, public figures and journalists. Similar clarifications are also published in the *BBC News* where the text "Germany starts enforcing hate speech law" announces, among other things, the legal solution to prevent "fake news", which will be discussed below in this scientific work. From the research conducted for this scientific work, we also highlight the article in *The Guardian* (Cathcart, “Fake news need,"), "Fake news needs real press self-regulation", which among other things points to the danger of capturing or transmitting the "fake news virus" from social media to newspapers, and in that sense some care and attention should be taken. The author completes this research review with information published in *The New Yorker*, "Solving the problem of fake news," by author Nicholas Lemann, who recalls that "fake news" was always there, which indirectly means that he will have them in the future, but it’s important for the audience to be able to believe in facts and truth and vote on the basis of what is published in the press (Lemann, “Solving the problem,”).

3. INTERNATIONAL NORMATIVE MEASURES AND INITIATIVES

The fight against "fake news" is pursued at many levels and with various measures focused on the same goal, preventing misinformation and developing democratic processes based on accurate and precisely information to the public. The fight against "fake news" is being carefully guarded not to influence the independence of the media, but it’s resolutely and unwillingly directed against all the media that spread "fake news" and misinformation.

In his so-called Roadmap11 The European Commission, with the initiative for “Fake News and online disinformation”, publicly points to the care for the right information to people, in the access to credible information which is the heart of effective democracy. "Fake news" comes in different forms and those fabricated

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11 European Commission, Roadmap, “Fake news and online disinformation”, 09/11/2017
content can affect the lives of citizens, undermine the functioning of political institutions or influence democratic decision-making. The ultimate goal, of course, is to have direct influence on the elections, preventing citizens from truly choosing and causing harm to the community, emphasizes the EC Initiative. On the same line is the European Parliament Resolution from 15 June 2017 of online platforms calling on the European Commission to analyze in detail the situation and the legal framework and to confirm the possibility of legal intervention and to limit the dissemination and spread of false news and content.

The highest authorities of EU member states are standing for the open fight against “fake news”, so French President Emanuel Macron will say in the beginning of 2017: "democratic life must be protected from" fake news "and therefore necessary is a new law that intensifies Internet control and the fight against "fake news" especially during the election period (Ludovic, “Emmanuel Macron veut une loi,"). France is also considering banning foreign media activities on its territory if they publish "fake news" although, according to lawyer Jean Pierre Minard, this is a difficult situation because, however, the media are foreign. It’s actually one of the dilemmas that the law to combat "fake news" can be enforceable !?

According to the author's research, in the part of normative initiatives and measures, the greatest pro-activity is shown by the Government of Germany, which established an appropriate Law for protection against "fake news" and misinformation. It’s about the Act to Improve the Enforcement of the Law in Social Networks ( NetzDG, 3352-3355, 2017) or in a free translation of the Law on Implementation and Breakthrough of Social Networks adopted by the Bundestag as a real prevention for the upcoming federal elections in that country. The law drafted and proposed by Minister Haiko Maas is not large and contains only 6 articles. In the Article 2 of the Law emphasizes that emitters / news and information producers who receive more than 100 complaints and objections about illegal content during a calendar year, have an obligation every six months to publish on their platforms a report of complaints on illegal content. The report must be easily recognizable, clear and accessible throughout the whole time.

In Article 4, the legislator clearly points to the penal provisions contained in the law ranging from 500,000 to 5,000,000 euro’s (it’s not a mistake, you read well, from 500,000 to 5 million euro’s). A violation of the legal solution may also be punished in a situation where the offender isn’t in the state. The German authorities are unanimous in the view that the rule of law must respect the basic democratic principles, above all, accurate information without insulting the citizens.

High penalties for the publication of "fake news" are contained in the law that was submitted to the Parliament of Malaysia by the Prime Minister of that country, Najib Razak. The law provides for a sentence of up to 10 years in prison for disseminating inaccurate information. The legal solution to "fake news" includes
all news, information, data and communications that are wholly or partly inaccurate, whether it's about journalistic articles, videos, or audio-recordings. Those acts in Malaysia will be punished with a fine of 10 years in prison, with a fine of $129,000 or both fines together.

In contrast of the decisions in some countries to lead the fight against "fake news" with measures adopted in national parliaments, this struggle in the Czech Republic is being led through the established Center Against Terrorism and Hybrid Threats\(^\text{12}\), which works within the Ministry of Interior. The motives for establishing such a Center with specially trained persons are in order to provide conditions for free and fair elections. The decision for the Center to work within the Ministry of Internal Affairs is made because according to the authorities there is internal security. The Center will not "force the truth" itself to come out of the surface, neither will censor media content, but it will always inform the public when the misinformation is announced to the public, it is emphasized in the part of the competences of the Center Against Terrorism and Hybrid Threats.

The Republic of Macedonia can't be proud of specific activities for normative initiatives and measures for protection from "fake news", although it has been perceived as a country in which certain individuals or groups distributed "fake news" from the territory of the Republic of Macedonia. In an interview for the needs of this research work, the General Director of the National Macedonian Information Agency-MIA Dragan Antonovski says that the professionalism of news and other media products remains to be defended only by professionals. "Fake news" is a new public tool of power holders and in that package is politics and business, but the essence of the journalistic profession is verified and accurate information. That battle in the current ambience of infiltration of on-line media, social networks, can only be struck by professional media and most agencies. They are a source of verified information, and what was another context, with the exemption of journalist professional agencies, is executed at this point in time. Agencies such as MIA who are impartial, professional should influence the media literacy of both journalists and the audience, and must also learn the media and readers, that the correct news is only the one that has been checked, officially confirmed by an institution, that has all the stakeholders, different views on one condition, and everything else is a commentary, a subjective attitude, propaganda or a pure lie, said Antonovski, general manager of MIA.

4. CONCLUSION
The fight against "fake news" is in progress. Media alert is visible and that encourages, and the fact that certain countries except from norms decide to impose high penalties and sanctions, confirms that it’s necessary to institutionally tell to "those" who invest in production of "fake news" that it’s a unprofitable business.

In the fight against "fake news" everyone, the public authorities, the civil sector, the journalists ... But it’s especially important that the engagement of the academic community that doesn’t have to be a passive or obscure observer of the problem. The task of the academic community is to offer new knowledge, but also to call for action! For the rule of law there is an equal responsibility of all factors in the community - but a democratic community.

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OMBUDSPERSON AND HIS ROLE IN KOSOVO

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Abstract
By this paper author aims to describe, explain and analyze the work of Kosovo Ombudsperson in the after war period in Kosovo. Kosovo Constitution determines the role of Ombudsperson and its competencies. Furthermore, Kosovo the Law No.05/L-019 on Ombudsperson regulates the institution of Ombudsperson, its organizing and functioning up to procedures of lodging complaints and investigation of them. Author by the article describes the process of establishing the institution of Ombudsperson and the main activities and the obstacles that made it impossible the accomplishments of determined goals. By using historic, comparative, Legal, systemic methods and with the combined methodology author will present the aim of the paper, whereas the discussion on the paper will direct towards the conclusions and the recommendations, which are expected to be very useful for the institutions, academia, NGOs, media and other bodies that deal with the human rights.

Key words: ombudsperson, constitution, institution, procedures, activities

1. INTRODUCTION
Originally, the word ombudsperson is Swedish and it means representative. Ombudsperson represents people who are actually to be protected by this institution.” It was first used in its modern sense in 1809 when the Swedish Parliament established the office of Justiceombudsman, who was to look after citizens’ interests in their dealings with government.” (http://www.ombudsman.parliament.nz/about-us/history (accessed on March 10, 2018). Since then this institution is spread all over the world and by “2001 the institution of ombudsman on the national level had spread to approximately 110 countries of the world.”( http://www.varuh-rs.si/about-us/history-of-the-institution-in-slovenia/origin-of-all-ombudsman-institutions/?L=6 (accessed on March 08,2018)

In addition, EU has established the European Ombudsman and that by the Maastricht Treaty. Ombudsman as the institution increased on its sense in the XXth century. “The institutions took varied forms and modifications depending on
the historical, political and social background of the given country. The names used to refer to the ombudsman institutions may, of course, differ. For example, in Spain it is “defensor del pueblo”, in France, “médiateur”, in Austria “Volksanwaltschaft”, in Poland “Rzecznik praw obywatelskich”, in Romania “Avocatul Popolurui”, and in the Czech Republic “veřejný ochránce práv”.

(https://www.ochrance.cz/en/history-of-the-institution-of-ombudsman/ (accessed on March 10, 2018).) The fact that the institution of ombudsman is named differently in various countries doesn’t mean that there are essential differences in the scope of the activities it does, in the role it plays in different countries, etc. Since the Ombudsman was first seen in Sweden we will add to this part the following:” In the Swedish Constitution (article 6, chapter XII, on parliamentary control) the Ombudsman's Office is established in the following terms: ‘Parliament shall designate one or several parliamentary commissioners (Ombudsmän) who shall be placed in charge, according to the instructions given by the assembly, of overseeing the application of laws and regulations within the public sphere, and who shall be empowered to act before the courts in those situations envisioned by said instructions.’ The possibility of designating as many ombudsmen as necessary was also considered, thus creating a tradition, which continues today, of having various ombudsmen, such as the Justice Ombudsman, Ombudsman for Free Trade, Military Ombudsman, and, more recently, Environmental Ombudsman. The union of these different Swedish ombudsmen into a single institution, supervised by one of them, was made official in 1968.“ (The Book of the Ombudsman, https://www.defensordelpueblo.es/en/wp-content/uploads/sites/2/2015/06/The_book_DP_Ingles.pdf, pg.185).

2. OMBUDSPERSON IN KOSOVO
2.1. HISTORY AND LEGAL BASIS

The institution of Kosovo Ombudsman is relatively new. Actually the Ombudsman Office in Kosovo was established immediately after the war and based on the SC UN Resolution 1244, (The Security Council Resolution 1244 was adopted on June 10, 1999 and it created the legal basis for deployment of the international administration in Kosovo), as all other mechanisms of international civil administration the ombudsman was established by the UNMIK Regulation. (See UNMIK Regulation 2000/38 on establishing the Institution of Kosovo Ombudsperson). This means that this institution was established before Kosovo declared its Independence. (Kosovo Parliament declared Kosovo as a sovereign and independent state on February 17, 2008).

Based on this, Kosovo Ombudsman Office went through various phases of development and with different personnel composition. At the beginning it was run internationally and by passing the time the office gradually was transformed into the
Kosovo Office. But nonetheless content of the activities was essentially the same in all phases and it could be summarized simply as promotion and protection of human rights in Kosovo. According to the UNMIK Regulation,” The Ombudsperson shall promote and protect the rights and freedoms of individuals and legal entities and ensure that all persons in Kosovo are able to exercise effectively the human rights and fundamental freedoms safeguarded by international human rights standards, in particular the European Convention on Human Rights and its Protocols and the International Covenant on Civil and Political Rights.” (Section 1, UNMIK Regulation 2000/38). This provision of the regulation gives enough information regarding the main goals of the ombudsperson in Kosovo. But, to this it is important to explain who could be a person that exercise duties of the ombudsperson, which could open the door for various analysis depending on the various viewpoints. In this sense, SRSG (Special Representative of the UN Secretary General) ( with the regulation gives the following:

The Ombudsperson institution shall be composed of the Ombudsperson, at least three (3) Deputy Ombudspersons and a professionally competent staff. (Section 6 of the Regulation 2000/38) According to the Regulation, Ombudsman had to be appointed by the SRSG whereas “The Ombudsperson shall be an eminent international figure of high moral character, impartiality and integrity, who possesses a demonstrated commitment to human rights and the rights of minorities and who is not a citizen of the Federal Republic of Yugoslavia, of a state that was part of the former Yugoslavia or of Albania.” (Section 6, point 6.1). From this paragraph of the regulation it is clear that no Kosovo citizen and no citizen of Albania and the Federal Republic of Yugoslavia is eligible to be appointed for the position of Ombudsperson in Kosovo.

In February 2006 was promulgated the UNMIK Regulation 2006/6, which superseded the Regulation 2000/38. According to this Regulation, the Ombudsperson Institution had a mandate to investigate complaints filed against the local authorities or other bodies of the Provisional Institutions of Self-Government of Kosovo (PISG), but it had no more mandate to investigate the complains against the international administrative bodies in Kosovo. ([http://www.ombudspersonkosovo.org/en/legal-basis](http://www.ombudspersonkosovo.org/en/legal-basis) (accessed on March 12, 2018)). Changes on the legal basis followed in a way the process of power transfer from international institutions to the local ones. Thus, ”in 2007 was adopted the new Regulation no. 2007/15 for Amendment of UNMIK Regulation no.2006/6 on the Ombudsperson Institution in Kosovo. By this regulation there were made the following changes: Denomination of the Institution (from “The Institution of the Ombudsperson” into “The Ombudsperson Institution of Kosovo”); the internal structure of the institution, as well as the mandate of the Ombudsperson and its
Deputies.” (Ibid). The process of transferring power from international institutions of civil administration to the local institutions took a determined period of time and the content of this transferred power went according to measurement of the performance of the PISG (Provisional Institutions of the Self Governance).

On February 17, 2008 Kosovo Parliament declared Kosovo independent and sovereign state, whereas Kosovo Constitution entered into the force in June 15, 2008. The Ombudsperson of Kosovo with the adopted constitution becomes a constitutional institution and this is regulated within the Chapter XII with the four articles of this chapter. Thus, for the needs of this paper there will be given some disposals from the chapter which will explain the role, duties and the power the ombudsperson enjoys as the constitutional category. Based on this, “Every organ, institution or other authority exercising legitimate power of the Republic of Kosovo is bound to respond to the requests of the Ombudsperson and shall submit all requested documentation and information in conformity with the law.” (Article 132, paragraph 3 of the Kosovo Constitution). The Ombudsperson is elected by the Assembly of Kosovo by a majority of all its deputies for a non-renewable five (5) year term, (Ibid. article 134, paragraph 1) whereas any citizen of the Republic of Kosovo, who has a university degree, high moral and honest character, distinguished experience and knowledge in the area of human rights and freedoms, is eligible to be elected as Ombudsperson. (Ibid. article 134, paragraph 2). Kosovo ombudsperson according to the Kosovo Constitution cannot be member of any political party or exercise any political activity, or so. Process of electing the ombudsperson is a long one, and on the other side it is not an easy process the dismissal of the ombudsperson. The Ombudsperson may be dismissed only upon the request of more than one third (1/3) of all deputies of the Assembly and upon a vote of two thirds (2/3) majority of all its deputies. (Ibid. 134, paragraph 5) For his/her job and/or his/her activities, the Ombudsperson shall submit an annual report to the Assembly of the Republic of Kosovo. (Article 135, paragraph 1). Finally, according to the Kosovo Constitution, the Ombudsperson is eligible to make recommendations and propose actions when violations of human rights and freedoms by the public administration and other state authorities are observed, (Ibid. paragraph 3) and among other activities, the Ombudsperson may refer matters to the Constitutional Court in accordance with the provisions of this Constitution. (Ibid.) In addition to the Constitution which actually makes ombudsperson as a constitutional category there is a set of other legislation which regulate and specify in details the way on how the ombudsperson and his/her office is organized and made functional. Some of them are as follows: Law on Ombudsperson, Regulation on competition, election procedure and proposal of the list with names of candidates for deputy ombudspersons, Regulation on internal organization and systematization of job positions in the ombudsperson institution, Regulation on rules of procedure
of the ombudsperson institution, Regulation on job description and classification of job positions in the ombudsperson institution chapter general provisions, Regulation on the procedure of recruitment, appointment and probationary work of employees in the ombudsperson chapter I general provisions, Regulation on career advancement and transfer of employees of the ombudsperson institution chapter I general provisions, The Code of Ethics of the Ombudsperson Institution, etc.

2.2. Work in the field

The first ombudsperson who was elected by institutional administration was Mr. Marek Antony Novicki (he was of Kosovo nationality) and thus the first report was not to be delivered to the Kosovo Parliament. They were to be addressed to the Special Representative of the Secretary General of the United Nation who ate that time was Mr. Hans Haekkerup. The report was covered the period of time 2000-2001 and it was addresses on July 18, 2001. This report in its content has first of all some introduction on the Kosovo Ombudsperson and it gives some historic background explaining how the institution was established and how it established the relationships and cooperation with the international administration. It also gives a description of funding issues along with the problem faced. Report has four annexes where the first one was a summary of cases and the second one contained the texts of letters requesting that political action be taken. Two last annexes were more with the rules and the procedures based on what the ombudsperson office worked. It is important to take two or three paragraphs of the first report in order to see who were excluded from investigation conducted by ombudsperson. The Regulation prohibits the Ombudsperson from investigating complaints against KFOR, or against the Federal Republic of Yugoslavia, Serbia, or other governmental entities or authorities outside of Kosovo. At the same time, the conduct of such actors may negatively affect the human rights of individuals within Kosovo. In such circumstances, the only avenue open to the Ombudsperson is to solicit the political support of persons with the power to influence the conduct of those actors. During the period covered by this Report, the Ombudsperson made four such requests by letter, one to the United Nations High Commissioner for Human Rights, one to the Secretary General of NATO, and two to the Special Representative of the Secretary General of the United Nations (see Annex 2). And in connection with Special Report No. 1, the Ombudsperson recommended that the SRSG encourage KFOR to establish equitable policies and accessible procedures for individuals with claims against KFOR (See the first report dated 18 July 2001 and the annex 1). This shows that in the cases raised and that naturally needed action for investigation against Federal Republic of Yugoslavia, KFOR, etc., this could not be done because this was the competence of the Kosovo ombudsperson. Nonetheless, it is interesting to present the following data:
Since the opening of the Ombudsperson Institution, approximately 1000 people have visited the Institution to obtain advice and/or to file applications.

PROVISIONALLY REGISTERED CASES: 344
ETHNICITY OF APPLICANTS:
Albanian: 228
Serbian: 112
Other: 32 (9 Bosniak; 9 Roma; 9 Turkish; 1 Montenegrán)
No ethnicity listed: 4

RESPONDENT PARTIES
UNMIK: 148
KFOR: 62
Municipal Authorities: 62
Other: 58 (Ibid).

Further within the report one can find data about admissible case, inadmissible case, etc. The form of reporting changed by passing time and by changes in the legislation. Thus from an international person that could be only eligible to be appointed for the position of the ombudsperson it came due to the legislation changes that national is eligible to be elected. And now from the parliament whom he reports each year. In accordance to this an analysis of all annual reports (the last one is published on March 2017 covering the period of 2016) there could be seen that the requests for investigation increased. But no matter of the volume of the requests, etc., ombudsperson cannot act as a substitute of physic or judicial persons, in cases when they submitted individual complains regarding protection of their rights. (Enver Hasani, Tema të zgjedhura nga e Drejta Kushtetuese, Jalifat Publishing,2016 pg.333) The competences and the responsibilities of the ombudsperson are precisely defined by the constitution and other legislation mentioned in this text. Among his/her it is an important role reserved for him and that is in sense of the abstract control of constitutionality of laws either in prevention or repression as well as other judicial acts issued by central authorities and accordance of municipal statues with the constitution. (Enver Hasani (former President of the Kosovo Constitutional Court being cited) gives the following: Cf. article 113.2 (point 1 and 2) [“Jurisdiction and Authorized Parties”] of the Constitution. In one case the Constitutional court made it clear that the Ombudsperson cannot submit the constitutional complain in his name and also in the name of other persons or other judicial persons. Inadmissible Decision in case KI 98/10 date: April 04, 2012 regarding the ombudsperson request on assessing the constitutionality of decisions 01 nr.06/837 date: April 16 2009 of Shtimje Municipal
Assemble.) Moreover and further, the Ombudsperson may conduct investigations on his own initiative (ex officio) if testimonies, facts, findings or knowledge gained from public information or other sources provide an indication of the violation of human rights. Likewise, the Ombudsperson uses mediation and reconciliation, and can also provide good services to citizens of the Republic of Kosovo located abroad.” (Annual Report, 2016, pg.11 (English version), Prishtina 2017).

By analyzing the annual report available to accessed at the ombudsperson web page, the following sentence is taken from the last annual report:” The main goal of the Ombudsperson’s work is restoring of individuals’ violated rights through recommendations addressed to responsible authorities, in the function of finding and using of effective remedies, to amend violations produced and to improve situation of human rights and freedoms in the country”. (Annual Report, 2016, pg.7 (English version), Prishtina 2017). The goal of the ombudsperson’s work may have been phrased differently in different times but in essence this remained to be always the same goal. A simple comparison made between the first report (done by Mr. Marek Nowicki) and the last one available on the web page of Kosovo Ombudsperson, clearly shows the strengthened capacities of the ombudsperson in one side and the increase of the activities of the ombudsperson on the other side. The increase in the number of cases and increase of the activities developed ex officio by the Ombudsperson institution. Ombudsperson’s initiatives and actions were very various since it exists as an institution. It has played an important role based on its authority and competence, even though in many cases it has been criticized quite a lot. Its intervention was based on individual cases whereas it played also a role in the so called abstract constitutional control. “A very important role is reserved for the ombudsperson in the field of abstract constitutional control of laws, as prevention and repression as well as other judicial acts taken by central authorities and the accordance of the municipal statutes with the constitution”. (Enver Hasani, Tema të zgjedhura nga E Drejta Kushtetuese, Jalifat Publishing, Prishtina 2016, pg.333). Former head of the Kosovo Constitutional Court, who was cited few times in this paper, for the irony of the fact was accused by the ombudsperson. Indeed, based on this a process was developed in the court against the former head of the constitutional court. Nonetheless, ombudsperson as an institution from the beginning of its existence was criticized from different viewpoints. It was criticized as it was either politically affiliated or that it was nominated by politics, etc. But no matter of critics the need for an ombudsperson cannot be criticized. It as an institution has been established and that office is being developed vis-a-vis the development of the Kosovo state and its democracy.
3. CONCLUSIONS/RECOMMENDATIONS

Kosovo Ombudsperson is a relatively new independent institution which as the Kosovo independent institution exists since July 2000. It as the institution firstly was created by International Civil Administration and thus the first person appointed by the SRSG was Marek Antoni Nowicki. On a later phase of Kosovo development this institution became a Kosovo institution. As the institution it became the constitutional category with a good reputation among Kosovo communities, even though based on the Kosovo circumstances it could have given a lot more to what has been achieved up to date. The legal infrastructure is enough rich so the ombudsperson could perform and work properly. The way the ombudsperson is elected by the Kosovo Parliament doesn’t avoid perceptions that the process is politically affiliated and that this position is occupied by position in the Kosovo Parliament. There were important cases raised by the ombudsperson which were solved from the activities developed by the ombudsperson. Process of electing the ombudsperson should be completely open for all and the possibilities to be elected should be given equally to all interested and qualified candidates.

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THE WOMEN RIGHTS ON HERITAGE ACCORDING TO THE LAW AND PRACTICE IN KOSOVO

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Abstract
Law on heritage in Kosovo regulates the way of division of heritage from deviser to the heirs. Disposals regulate transmission of the rights and obligations from de cuius to heirs by law and testament. By this paper author describes, analysis and interprets the legal norms with this issue. Law determines testament as priority for transmitting heritage whereas in cases when there is no testament then the heritage by the law procedure is done. In legal procedure all heirs are called on according to the order of heritage. The orders of heritage are determined in a taxative way with the Law on Heritage.

With this paper there will be described an analyzed case which based on statistics in most cases result that women during the procedure of heritage are discriminated in this direction. According to the court practice in most cases wealth/property is transferred non equally because women give up. Abnegation in most cases is done by women heirs to the benefit of men of the family.

The author uses during the analysis the historic method in order to analyze Albanian Custom Law; systemic and comparative methods in order to analyze norms in the other countries from the region. By using the combined methodology, the author will explain the goal of the paper. At the end author will come up with the conclusions and recommendations which could be used by a big number of governmental and non-governmental institutions.

Key words: Law, heritage, heirs, women, transmission of property

1. INTRODUCTION
Heritage in Kosovo is regulated with the Law on Heritage. Heritage based on the positive law disposals in Kosovo is transferred from devisers to heirs, based on the law heritage and the heritage by testament.

Courts during the procedures of heritage develop court procedures where in most cases wealth of women is transferred by the law. In practice there are very rare cases when heritage is done by testament.

By analyzing cases of transfer of wealth/heritage in Kosovo it is rarely that the parent’s wealth is transferred to female heirs. Most of female give up on their name and in the name of their heirs. According to a survey done on January by
BIRN monitors in Kosova there are rare cases where females inherit heritage from devisers and where 98% give up from heritage. This always happens as a consequence of the Leke Dukagjini Code (http://kallxo.com/dnk/trashegimia-ne-kosove-femrat-ende-besnike-ndaj-tradites-dhe-kanunit/ accesseddt.15.03.2018).

Code (Kanuni) recognizes son as an heir and not the daughter. (Leke Dukagjini Code, article 88). Therefore, in most cases females are not involved at all in heritage because “neither to parents nor to husband spouse doesn’t enter into the heritage” (Lek Dukagjini Code art.91) and as the reason for this, later on they are initiators of law procedures for dividing the heritage according to the law inheritance.

According to the law heritage and according to the disposal of the Kosovo Law in heritage all heirs inherit wealth equally.

Disposals of the same law stress out that heritage by testament is principal in comparison to the heritage by law. Testament is valuable if there are fulfilled all law conditions. Even by testament there could never be escluded the necessary heirs. They could be excluded if they are announced as unworthy.

Author by using the historical method will describe the way of heritage in the past based on the tradition of the Leke Dukajgini Code. Analysis method will serve to analyse thoughts of various theoricients. Through systemic method positive norms will be explained on how the issue of heritage is regulated. The method of comparison will help to compare norms of few countries of the region and court decisions, various theories as well as cases of transfer of heritage according to the custom law.

If female is equal with male according to the law on heritage in Kosovo, then the equality on transfer of heritage to female heirs is equal to male heirs. The entire paper is an effort on answering: are women equal in heritage according to the law? Are there any barriers in this regard? Are there cases when they give up of heritage based on custom law (code)? Is there any law disposal that protects them against discrimination related to this issue?

According to Kosovo Law on Heritage there are two basis of heritage: law heritage and heritage with testament. It was also th Civil Code of Albania of 1929 year which knew two bases.” Heritage comes by law or by testament. (Albanian Civil Code 1929, article 454, par.1)

2. HERITAGE WITH THE LAW

Heritage in the Republic of Kosovo is regulated with the Law on Heritage. According to this law heritage is transfer based on law or based on testament of the heritage of deviser to one or many persons (heirs or legatars), according to determined disposals of this law (Kosovo Law on Heritage, 2004, art.1, par.2). Based on the same law it is determined that heirs of deviser are considered female
and male. Based at the same law heritage with law is the transfer of heritage/wealth of a dead person to one or many persons according to the determined rules, law heritage is executed when heir did not leave testament, or he has left testament only for a part of his wealth or when testament is totally or partially invalid (Kosovo Law on Heritage 2004, art.9). From this it derives that the priority is given to the testament heritage and that the law heritage is applied only if there is no testament. In most of these cases heritage is transferred according to the Lek Dukagjini Code. This Code recognizes as successor son and not daughter (Lek Dukagjini Code, art.88). In this case the right of female is directly violated as well as the disposals of the law on heritage are violated.

During centuries mentality of Albanians was such that wealth should remain to the men of family, because only they are considered successors. According to Shyqeri Sherifi: “boys have shares, daughters did not get shares because they get married and create families somewhere else. They come to their brothers on vacations; they have right to vacations twice a year in duration or two weeks or twice In duration of a month. At that time they were married in a long distance village and daughter came to her home twice per year” (https://www.evropaelire.org/a/1808961.html, accessed 15.03.2018).

Meanwhile Law on Heritage “legal heirs are:” devisers children, adopted and their successors, spouse, parets, brothers and sisters, grandfather and grandmother and their successors. (Kosovo Law on Heritage nr.2004/26, art.11). According to this it is understood that heirs of deviser are females. Based on this article it is that in the first row there are considered to be spouse an children (where there are included male and female). The second row of heritage, mother and father as well as brothers and sisters of deviser. The third row there are grandfather and grandmother. Fourth row or the last one there are public authorities (see more: Podvorica H. E Drejta Trashëgimore, 2010, pg. 35). There are even cases when females give up the legal heritage because they will not be well understood by the community where they live. They are excluded also from the division of wealth when it is done by the custo law (kanuni), they are not called on “the table of division of wealth” (https://www.evropaelire.org/a/1808961.html, accessed dt.15.03.2018).

There are those that exclude females because they say that “our wealth could be herited by sister but always according to them “this is impossible, because in this wealth of deviser the wealth is taken and used and that is sold by spouse.”

In this case, this is not at all in accordance with the Law on Heritage because this law tge inherited wealth from spouses considers special wealth of woman, that is considered her wealth and only she could be the absolute owner of that.

They act like this because they are secular?!
In many cases in trials sisters are excluded from heritage even it may happen they are not at all present in the process. They bring false evidence like their sisters are dead, so the entire heritage to be transferred to them (http://archive.koha.net/?id=1&l=98401, accessed dt. 9.03.2018).

There are no rare cases when females are also threatened as “if you inherited and if you do not give up, then you will never visit the family”. There are cases when they are not invited regularly in court and in this case the procedure ends in that way that court decision gets the final form. According to the law the developed procedure is contested procedure in court where the last residence of heir was.

There are cases when females ask for heritage through the Council for Defending Human Rights in Prishtina. According to the head of this council, Mr. Behxhet Shala “Kosovo is traditional country, but anyway there is an awareness on the equal right to heritage for both men and women.” (http://archive.koha.net/?id=1&l=98401, accesed dt. 09.03.2018).

3. TESTAMENT HERITAGE

Testament is a unilateral act which is realized in presence of witnesses by which pater familias possesses the wealth when he is not going to be alive. (Arta Mandro, E Drejta Romake, Tiranë, 2007, pg.434.). Testament is disposal in the case of death. From this we notice that testament is basis for transfer of heritage. Testament is unilateral legal act, personal and revoked. (Andrija Gams “Hyrje në të Drejtën Civile”, Prishtinë, 1986 pg. 370). Based on this it is understood that testament could be final, but it may be revoked by de cuius and it could be annulled if it doesn’t fulfill basic conditions to be a testament. The Civil Code of Albania (1929) says that “heritage comes by testament or by the law”. (LDC neni 454). This code contained disposals on legal heritage and with testament in its second book. Albanian Civil Code limited the circle of legal heirs up to 6th indirect grade. According this code, father, mother and every antecedents was herited by legitimate children or offsprings without sex difference even if they were born from different marriages. From this disposal we understand that also this code has determined expressively “without sex difference”. Thus because until that time in the Albanian territories it was more applied the custom right leaving the heritage by testament to only male. In the Civil Code there also was included that:” legal heritage may be applied only if there is no testament”. Based on this priority is given always to testament in relation to the legal heritage.

Testament in order to be almighty there should be fulfilled determined conditions.” It is almighty if the principal conditions are fulfilled by law”. (Inheritance Law, of Republic of Kosova, 2004, art. 70). According to the law there are several types.
It is abrogated by every testament of new date; it may be completed by deviser. 

Part of his wealth he may disponoj as he likes. But not in any case or paragraph, deviser cannot exclude the necessary heirs if they are not declared unworthy to inherit. Unworthiness of heir, even though related with the behavior of de cuius mainly because of the violation of moral rules transformed into law, again contains unworthiness to inherit. (Arben Hakani, Testamentar Inheritance, Botimet Dudaj, Tiranë, 2010, pg. 154). He is not completely free to be so generous; beyond some borders which are determined for the necessary heritage that belongs to relatives. Individual cannot decide based on his will also in the case when he begins for humanitarian or social intentions. (Francesko Galgano, Private Law, Fondacioni Soros, Luarasi, Tiranë, 1999, pg. 872).

According some statistics, the biggest number of testaments rarely contain a big quantity of heritage for female heirs. The biggest part where female is involved with testament is in urban places whereas this cannot be said for rural places.

The procedure of heritage starts after the death even with the testament. Rows of heritage are similar to those of legal heritage and it is also covered the necessary part of heritage.

4. OPPENING OF HERITAGE

Court procedure to the heritage law starts with the opening of heritage. Heritage is opened in the moment of the death of deviser. (Hamdi Po dvorica, Inheritence Law, 2010, pg.39). According to the Albanian Civil Code 1994, heritage is opened in the time when deviser dies in the place where it was the last residence. (Albanian Civil Code, 1994, neni 318). Opening of heritage happens when de cuius dies and by his death the heritage is open. (ILK, neni 124, pargrafi 1). In the same way it is acted in the case when a missing person is declared dead. The heritage is done because of the death in the moment od the death of physic person. (ILK, neni 4). The place of opening of heritage is considered stronghold or the last residence of deviser. Based on this, both positive Albanian laws the opening of heritage initiate after the death of deviser whereas this is the competence of court and for such a procedure competent is the court where it was the stronghold ore residence of deviser.

4.1. Deviser

It is every physic person. Every physic person based on his will decides on his wealth. He will determine those to whom the heritage will be transfered. Deviser, his property/wealth may transfer while he is alive through the testament, whereas his wealth could be inherited by law if deviser didn’t leave testament. The
word heir or deviser itself make us understand that heir and deviser might be female.

4.2. Heirs

Heirs may be universal or singular. Heir is considered a person who at the moment of devalation was alive or was born within the term of 300 days from the date deviser died. (see LTK, art. 7, par. 1 and 2). Based on this they (heirs) are considered to gain the ability to inherit.

4.3. Ability to inherit

In order to be heir there should be fulfilled basic conditions and one of the basic conditions is ability to inherit. According to Kosovo Law on Heritage a person should be alive or initiated before the death of deviser (see more at ILK, art. 126). According to this female and male are considered equal. In the heritage procedure there could be unknown heirs. They could be male or female. According ILK, art. 127, these unknown heirs are called through public call by court. To these heirs, there could even nominated tutors.

4.4. Necessary heritage

To each heir belongs the necessary heritage which is determined by law. Based on the interpretation it comes that male and female are the necessary heirs. Female in mos cases give up heritage in favour of their brothers. Some from the desire, most from the threatening and some because of false declarations brought in court by brothers---declared as dead. They are forced to give up in mos cases. According to the law heir may give up heritage by a declaration before the court until the heritage procedure ends. (ILK, art. 130). Females are determined that apart of themselves to give up expressively also for their descendants. Often the question is raised: why male heirs do not give up of heritage in their name and in the name of their descendants? This because in the Albanian territories according to the Lek Dukagiini Code, female doesn’t inherit. According to the positive law quit cannot be revoked. Quit could be revoked only if deviser requires anulement in case when it was given under intimidation, under violence, under fraud or under mislead.

After giving up from heritage that in most cases are females, the heritage wealth increases in equal part for all men.

Heirs may give up from their part after “registering” inherited of imovables. (Law on Gender Equality, 2005 art. 16, par. 13). Increase of the property is done in such a way so it will be considered that this person died before deviser. (see ILK, art. 136 and 137).

76
Kosovo Constitution forbids discrimination of women (see art.7.2 of the Kosovo Constitution). The part of Kosovo Constitutional System is Convention for elimination of all forms of discrimination against women. Very often we should think if these norms are being violated? In most cases answer is yes.

In Kosovo female are with the lowest rate of employment. The number of employed women whstw the smallest in Europe. (The right of women on heritage of property in Kosovo- Kosovo Gender Study Center pg.17). Economic dependence is the other reason on giving up heritage.

Weaknesses – Law on contentious procedure of Kosovo, art.172 underlines that property could be divided freely between all heirs. By being based in tradition and in economic issues this article makes it possible transfer of heritage from female to male.

4.5. Registration of property

According to the Kosovo Law on Family the joint property of spouses is considered the property which was created from the marriage establishment until the end of it. That property could be registered on the name of one spouse or in the name of both of them. In most cases property of de cuuius is in his name but it is clear that that is also in the name of surviving spouse/s.

But based on the Property Law and other rights on items the titular is determined the person which is its carrier. The will of barrier is expressed by testament. Registration of property in the name of two spouses would facilitate job in case the spouse dies. This would facilitate the position of widow in heritage procedure. It could happen that according to kanune if the spouse (wife) had no descendants then she is excluded from heritage of close relatives of husband eventhough spouse in this caseis not the only heir of property, but according to LTKshe is in the second low of heritage along with parents of spouse. She is the only heir if deviser (her husband’s parents are not alive). But according to the Albanian tradition (Kanune) in most cases she is removed from the house where she lived with the husband that died and this without any compensation.

5. CONCLUSIONS

Heritage in the territories of Kosovo is regulated with the Law on Heritage. Based in custom norms the right to inherit had only men of the family. Today even though positive law regulates such a thing, heritage has quite a little changed or not at all.

In some analysis it is noted tat women are those that do not inherit their part. Their part of heritage becomes part of heritage of their brothers. Women in most cases are not excluded from heritage but they on the other side in one or on the other way are forced not to receive heritage property from deviser.
Kosovo Law on Family determines as the heir of the first order spouse/s or spouse with children of deviser.

In the second order if deviser had no descendents and only has spouse she even though heir always sis excluded from heritage giving priority custom in relation to law.

Heritage according to the law has two bases on what the property in transferred for deviser to heirs. After the death of devisr property is transferred by the law or with the testament.

Priority is given to testament related to legal heritage. The law heritage happens only in cases where there is no testament.

To both forms of heritage in order to be a heir there should be fulfilled certain conditions. In the procedure sof heritage by all means there should be present heirs. The heirs of the first order are the necessary heirs and in this line deviser cannot exclude them by testament. He should divide his property as per his wish but also respecting the first, second and the third order. According to statistics form the courts testament heritage in Kosovo is very rare related to the law heritage. It is a need for an awareness of population in this regard and this should be done among the others via media: electronic and printed.

During the procedure in cases when one gives up from heritage, there are females to give up always due to the custom tradition. In this case they do not inherit their parents’s property, they even give up in the name of their descendents. According to this the state should think clearly of a strategy in order to eliminate this phenomenon. It could be better if there should be put a tax obligation as a sanction in cases when female gives up as per above explained reasons.

There are cases when they are not called at all in the trial, where the false evidence is provided by heirs’ men saying that female heir has died. In this case e strategy should be put in place about the detailed control of heirs. It should or could be done in form of control from a type of special inspectorate before the procedures of heritage start.

Law on initiating heritage procedure states that it should be started with the opening of heritage and this procedure is initiated by heirs. Therefore, detailed control by institutions would be necessary because it may happen that in the trial someone from heirs has not been invited and as stated before there might be presented false evidence as they do not exist any more.

Since heritage with testament is rare than giving up should be controlled if the testament is done from the use of force, pressure, fraud, etc. According to custom law wealth is not transferred to been son and this is one of the reasons why property is not transferred also to females.
Law the inherited wealth determines as a special property of spouses and it is absurd to think that that is trasferred to been son and not to the daughter of deviser.

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INDIGENOUS PEOPLE’S DISCOURSE IN MODERN DEMOCRACIES: THE NAGA NATIONAL MOVEMENT IN NORTHEAST INDIA

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Abstract
The past three decades have seen the rights of indigenous peoples (IP) take centre-stage in the international legal and human rights regime, with far reaching implications for relations between indigenous peoples and the state/s they inhabit. In postcolonial states like India especially, the IP discourse has helped reshape longstanding secessionist ethnonational movements like that of the Nagas. The patrimonial right to territory enshrined in the self-identified category of the indigenous has helped to conceive of sub-national aspirations of self-determination in forms other than the demand of strict state sovereignty. However, the enabling spirit of the IP discourse has also let loose forms of exclusion, foremost among them- xenophobia towards non-indigenes, competitive territoriarity amongst rival indigenes, and hostility towards migrants on indigenous land; sometimes legitimately, sometimes in complete contravention to the existing political economy of the region. Through the case study of the Naga national movement in Northeast India, this paper situates the global IP discourse within larger conversations about political economy, civic nationalism, substantive democracy, and the iniquitousness of migration. Such a conversation, it is submitted, is of import to the many challenges of sub-nationalism, notions of indigeneity, and migration besetting western liberal democracies in recent times.

Keywords: Indigenous Peoples’ Discourse, Ethno-territoriality, Political Economy, Democracy, Migration, Naga National Movement, India, Europe

1. INTRODUCTION
On 17 November 2012, The Kuki State Demand Committee resumed an indefinite blockade of the National Highway 39 in the northeastern state of Manipur in India. At stake was an assurance from the Government of India that it would begin talks regarding the modalities of Kuki self-determination and more immediately, it was to demand the creation of a separate Kuki dominated
Autonomous Sadar Hills District in Manipur. It was also a show of strength against, and a response to the frequent blockades called by the Naga bodies, that paralyze life in Manipur and cause heavy monetary losses, often for months at a time. The Nagas have been leading a strong movement for an alternate arrangement of governance and administration in Manipur, in line with the eight-decade old struggle for Naga independence and self-determination. Though both communities identify themselves as indigenous, are culturally contiguous and share common accounts of origin and migration, the Nagas regard Kuki’s as encroachers on their ancestral land, and part of a historical ploy by the British colonizers and then the Indian state to keep the Nagas divided. The Kukis in turn, protest against the discriminatory use of the a-priori principle of the Naga claims to land, and demand that the rights of one indigenous group should not jeopardize another such people. They also harbor grievances from the infamous Naga-Kuki clashes between 1992 and 1997, wherein more than 1000 Kukis were killed and tens of thousands of Nagas and Kuki’s were displaced (Kipgen 2013, 21-38). In 2016, Kuki demands of a separate district were again reneged upon, when the Manipuri Chief Minister, cancelled the creation of the district, even as the inaugural plaques were being installed, ostensibly, in deference to the demands for a Greater Nagaland being negotiated between the Naga national movement and the Union government (Kipgen 2016).

There have been popular tendencies to slot the Naga-Kuki stand-off and other similar intransigencies in northeast of India as localized insurgency, and endemic corruption within the political economy of ethnic-conflict. What is often missed is that such communities increasingly source their ideological ammunition from the international discourse of indigenous peoples’ (IP) rights, and their predicament in-turn highlights the shortcomings of the indigenous peoples’ discourse as it stands today. The IP discourse is unique for attempting to cut across the north-south and first-second-third world divides in its conception of the individual, community, democracy, self-determination, and development. However, many of the fundamental features of the discourse, as enshrined in the United Nations Declaration on the Rights of Indigenous Peoples remain wedded to the experiences of indigenous communities of the global north and larger political imagination of the western world (UN General Assembly 2007). This paper attempts to map the inadequacies and contradictions, as well as the unexpected strengths of the IP discourse as evidenced from its application in movements and politics in the postcolonial settings, through the case study of the Naga national movement.

Advanced industrial countries in the European continent today face severe challenges to their liberal democratic and multicultural credentials in view of both economic and demographic crises, thus increasingly undercutting the first-second-
third world divides in significant ways (Muller 2018). The postcolonial engagement with the global IP discourse attempted in this paper, and the consequent conceptual insights, it is hoped would dovetail with inform conversations about migration, populism, indigeneity, and political economy in Europe today.

2. THE SOUTHERN PREDICAMENT

Concern about indigenous peoples began to be voiced in International Non-Governmental Organizations (INGOs) like the International Labour Organization (ILO) from as early as 1957. By 1989 however, the ILO changed its earlier welfare-centric position, to insist that governments return lands traditionally owned by IP’s and let them set their own developmental priorities (Nair 2006, 3). The spadework towards this controversial convention had begun with the establishment of the International Working Group on Indigenous People (IWGIP) at the United Nations (UN) in 1982. It identified five main criteria for the recognition of IP’s, namely, self-definition, non-dominance, historical continuity with pre-colonial societies, ancestral territories, and ethnic identity. In the year 2000, a Permanent Forum of Indigenous Peoples at the UN was constituted, and a Special Rapporteur on the Rights and Fundamental Freedoms of Indigenous Peoples was appointed in 2001. The UN’s adoption of the Decade of Indigenous Peoples from 1995 to 2004 allowed many self-identified indigenous groups to contribute to the making of the Draft of the Rights of Indigenous Peoples. Such involvement at almost all levels of decision-making, made indigenous peoples the “first grassroots movement to gain direct access to the UN” (Karlsson 2003, 403). Nearly three decades of deliberations culminated in the adoption of the International Declaration of the Rights of Indigenous People by the UN General Assembly in September 2007.

As against the consumerism and high capitalism of the developed and developing worlds, indigenous people are considered in an ecologically sustainable relationship with their environment. Non-materialistic and egalitarian, their social systems are said to be synechdocic instead of metonymic (Weaver 1999, 227). Inhabiting sensitive ecological hot-spots, passed down as ancestral territories, the protection of indigenous peoples and their ways of life is seen as indispensable for the preservation of the common goods of mankind. In the words of Jonathan Friedman, “the indigenous is now part of a larger inversion of western cosmology in which the traditional ‘other’, a modern category, is no longer the starting point of the long and positive evolution of civilization, but a voice of ‘wisdom’ (Freidman 1999, 2). The growing currency of the IP discourse has been traced to the changes taking places in Western societies since the 1970’s, especially in the replacement of class-based protests by those based on identity (Larana, Gusfield et al 1994, 7). Viewed as a network, the indigenous discourse operates at a global level, at the UN and other INGO’s and transnational environmental activist groups. At the same
time, it manifests locally in grass-roots non-governmental organizations, popular peoples’ movements and sometimes also in political movements for self-determination. Such local organizations form the interface between the actual masses and the articulation of their aspirations globally.

Central to the experience of indigenousness is the claim of colonization, and this was the primary point of departure between such people in the global north from those in the south. The discourse gained prominence primarily through the assertion of first nations in America, Canada, Australia and New Zealand. Such nations experienced what is known as ‘Salt Water Colonization’ or overwhelming dominance by people of a non-contiguous territory. Contrasted with the claims of indigenousness in Africa and Asia, here there was no intermediary in the form of the ‘indigenous’ postcolonial nation-state. Accordingly, Miquel Alfonso Martinez, acting as the Chairperson of the IWGIP held in 1999 that groups from an overwhelming number of states in Asia and Africa could not be considered as indigenous, and that they should address their concerns to the newly established Working Group on Minorities instead. Further, he held that the indigenous claim from these regions challenged the fragile sovereignty of third world states and ran counter to the spirit of the United Nations Charter (Martinez 1999, 13-16).

However, the principle of self-identification was already enshrined in the working definition of IP since the 1980’s. This allowed indigenous representatives from such countries to protest strongly against and ultimately counter the claims of Martinez. The various delegations from India, and especially a large contingent representing the Naga People’s Movement for Human Rights (NPMHR) regretted Martinez’s failure to grasp, “the process of re-colonization of indigenous people and nations by successors of European colonial governments”, and the severe implications such “racist” non-recognition would have for the “enhanced cultural genocide” of such peoples (Karlsson 2003, 412).

3. ETHNO-TERRITORIALITY IN THE INDIGENOUS PEOPLES’ DISCOURSE

Article 3 of the United Nations Declaration on the Rights of Indigenous Peoples has been at the heart of the controversy surrounding the IP discourse. While IP across the world have hailed it as a historic development and a vindication of their struggles, governments have been extremely critical. For the latter, Article 3 gives rise to ‘separatist’ or ‘secessionist’ tendencies and threatens the sovereignty of nation-states. It is therefore important to understand the spirit in which self-determination was upheld and adopted by the Working Group itself. Dr Erica Irene

13 It reads, “Indigenous peoples have the right to self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development” (UN General Assembly 2007, 4).
Daes, Chairperson of the IWGIP differentiated between external self-determination, whereby the entity of the state determines its international status, from internal self-determination whereby the state population determines the form of government it gives to itself. In her opinion, the right to self-determination of IP specially excludes the right of secession (Daes 1986, 96-99).

This was in line with earlier studies commissioned by the UN that understood the right to secede only obtaining to “people who were subject to ‘alien’ subjugation, understood as subjugation by non-contiguous population (Espiel 1978). However, Article 26 of the Declaration goes ahead with the right to ancestral territories and the resources therein, thus lending a significant territorial aspect to the right to ‘internal self-determination’ (Weaver 1999, 231).

Though IP’s in the South could not yet claim ‘alien subjugation’ they were quick to cease upon the territorial right enshrined in the Declaration, to demand a redress of the ‘internal colonization’ that they were experiencing. And even though secession was explicitly ruled out, the possibilities for a radical restructuring of spatial arrangements and thus power relations of both colonial and postcolonial conditions was undeniable. In concrete terms, for many IP’s in the south, the securing of the right to self-determination would allow for the re-transfer of land and forest rights and hence put a break to the creeping colonization of the postcolonial developmental state (Karlsson 2003, 407).

4. THE NAGA NATIONAL MOVEMENT

A conglomeration of some 42 tribes at the straddling the shared border of northeast India and northwest Burma, Nagas are distinct autochthones who have had no historical, cultural or political ties with the Indian mainland. It was this distinctness, combined with the fear of a takeover of the Naga way of life by the Indian state, which prompted the Nagas to declare themselves independent on 14th August 1947, a day before the formal declaration of Independence of India. Consequently, the Naga national movement’s military wings and the Indian Army have seen almost four decades of armed confrontation. In mainstream Indian accounts the Naga demand was for complete Westphalian sovereignty. A closer examination reveals that, “pressures to integrate were mistaken as steps towards annexation or forced assimilation. This was as far from the truth as differentiation, a holding out for time to consider and consult, was interpreted as separatist, or secessionist” (Verghese 2008, 16).

The Nagas were among the first indigenous people from South Asia to participate in the IWGIP deliberations and have been extremely active at using the Permanent Forum and other such platforms to highlight their struggle. There had initially, in the early 1990’s, been some reservations on the part of the IWGIP on the inclusion of the Naga representation, given the explicitly secessionist nature of
their movement in the past. Accordingly, in all representations at the UN, while identifying themselves at par with indigenous people worldwide, the Nagas have been vocal about the uniqueness of their political struggle and their goals (Lotha 2009, 335).

For the Nagas, the experience of the IWGIA, the making of the Declaration of IP Rights and participation in bodies like the Unrepresented Nations Peoples’ Organization (UNPO) has not only given a fillip to their movement, but on closer examination seems to have changed the contours of the movement itself. The opening of such political opportunity structures has allowed the movement to divert its energies from concentrating on a Westphalian sovereignty, to re-envisioning self-determination, in line with the changes taking place worldwide. Especially participation at the IWGIP, according to their insurgent leader Isak Chishi Swu, gave the Nagas a voice, who otherwise were, “choked up… without any outlet to the outside world” (Lotha 2009, 331).

Such a ‘softening of stance’ also needs to consider the fatigue resulting from four decades of armed struggle that has seen several contestations for leadership of the movement. Even as the Naga national movement was gaining increased visibility worldwide, they scaled down their demand from a strictly Westphalian territorial sovereignty to a self-determination that territorially integrated all Nagas scattered across four Indian States. It was now possible for Naga nationalism to potentially coexist with the Indian State. In making this political shift, Naga ideologues borrow heavily from the experiences of other First Nations, viewing nationalism as, “… a liberatory category in the global public sphere… that lends itself to both political realities and subversive political imaginaries” (Lotha 2012).

Alongside a ceasefire, a section of the Naga leadership has been engaged in talks with the GoI continuously since 1997 and no concrete outcomes are yet discernible.14 The movement has been greatly weakened internally by tribalism, factionalism, cooptation with the Indian state, and increasingly, harassment of the Naga populace by the armed underground through over-taxation. On the other-hand, this very undoing of the erstwhile structures of the national movement has brought to the fore-front a new breed of activists, intellectuals and national workers. And this new generation is reimagining a Naga nationalism that is more in tune with the international IP discourse on self-determination. It would be wrong to foresee the winding down of the movement with only token demands of cultural autonomy remaining. Increasingly Naga self-determination is becoming, ‘a process, rather than just the outcome of the process’ (Pomerance 1982). The set of novel

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14 The NDA Government in 2015 signed a framework agreement with the main negotiating Naga representation, the NSCM (IM). The contents of the framework however, remain undisclosed, and the fate of the Naga national movement, indeed of other people’s and states in the region, in abeyance.
experiments that are underway have the potential to not only open-up additional layers of federalism within the Indian state, but also extend the political imagination of self-determination itself, in line with and even beyond the IP discourse.

5. POLITICS OF BELONGING/ POLITICS OF HATE: CULTURE, MIGRATION, DISPLACEMENT AND THE INDIGENOUS RIGHT TO TERRITORY

Over and above the widely circulated images of their elaborate costumes and cultural rituals, the Nagas have taken great pains to keep the cultural aspect of their struggle from overshadowing their political legacy and political demands. However, in the case of many other indigenous people in India, the dynamics of international norm creation has dictated that their cultural demands find more takers than their political grievances. The spread of global capitalism and the language of political liberalization brings with it a strong desire to bypass the state, engendering a neo-western obsession with disappearing cultures (Li 2000, 149-179), a reflection of which is also to be found in the global IP discourse. Instead of a discourse of rights and duties between holders of the covenant, a new form of cultural politics is activated. Increasingly, IP’s are forced to articulate their political issues in cultural terms (Shah 2007, 1820). Moreover, the increasing legitimacy of the IP struggle has resulted in the withholding of legitimacy for groups that do not explicitly claim indigeneity. This has not only resulted in a paucity of political articulation in the way many collectives relate to the Indian State, but also in their own self-imagination. Most importantly, the rich and complex idea of self-determination as means to redress political and economic inequities is often reduced to mean autonomy based on cultural distinctiveness.

Moreover, the overtaking of the language of citizenship by cultural politics is further complicated through the IP discourse’s prescriptions on the ownership and use of territory. Article 26 of the Declaration on the Rights of Indigenous People enshrines a long-held demand of numerous IP’s worldwide. On the face of it, it appears a radical move seeking to right the historical injustices meted out to such peoples. However, in an increasingly globalizing world, neither do the motivations of such a right stem merely from historical injustice, and neither do its effects remain confined to creating a level playing field between IP’s and others. As against the communitarian value systems of IP’s, the current right to territory rests rather on

15 It reads, “Indigenous peoples have the right to the lands, territories and resources which they have traditionally owned, occupied or otherwise used of acquired…. (they have) the right to own, use, develop and control the lands, territories and resources that the possess by reason of traditional ownership or other traditional occupation or use, as well as those which they have otherwise acquired….States shall give legal recognition and protection to these lands, territories and resources” (UN General Assembly 2007, 10).
the modern western notion of individual property rights (Nair 2006, 4). Additionally, the blanket observance of a-priori claim to land for IP’s, bypasses the long histories of migration and nomadism that characterizes much of world history and more importantly the histories of indigenous peoples’ themselves. Most IP traditions themselves account for their histories of migration, many have been nomadic in the past, and few still are in the present. The fluidity of identities, and the possibility of claiming rights in-spite of being an outsider, was an integral part of IP cultures. However, the culturalist territoriality engendered by the IP discourse makes precarious the citizenship rights of not just those indigenous who move, but those who co-habit with the indigenous. As Adam Kuper reminds, such vision of equality that is directly proportional to the genealogy of one’s occupation of certain lands, as against an equality of right can have explosive consequences and can also potentially breed fascism and racism (Kuper 2003).

In the northeast of India, especially in the Naga areas, the ‘politics of belonging’ (Schendel 2011: 18-43), has played out in especially problematic ways. Central to the rise and perpetuation of exclusivism among IP’s and other vulnerable communities is the concept of ethnic homelands. The sixth schedule of the Indian constitution, through which autonomy and protection was extended in the region, covered only the hill-indigenous and not those of the plains. Sanjib Baruah claims that the practice of granting homelands provided an effective way for the central government to penetrate the region and create local stakeholders. It also has the effect of imposing a very specific developmental paradigm. “Bringing an ethnically defined group scattered in many states into a homeland, maintaining the territorial integrity of a homeland that exists, creating a new homeland for the group that does not yet have one”, have all contributed to the perpetuation of a “cosmetic federal regional order” (Baruah 2003, 57). While this has enabled the State to keep a direct control on this ‘sensitive’ region and also emerged as a relatively peaceful ‘counter-insurgency strategy’, it has ended up creating a nightmare scenario of increasing numbers of internally displaced people.16

Apart from internal displacement, tensions against immigrants from Bangladesh are also growing by the day, especially in Assam, Manipur, Nagaland, and Meghalaya. This is evident in the popular demand for re-invoking the colonial-era inner line permit to keep outsiders at bay (Choudhary 2013). The move from indigenous justice to (sometimes chauvinist) ethno-nationalism, even xenophobia is seamless, as witnessed from the increasing number of public lynching of Bangladeshi immigrants on suspicions of crime (Datta 2015).

Guarding against such an increasing politics of hate, various alternatives are envisaged. Willem Van Schendel explores the idea of graduated degrees of

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16 As of 2000, conservative estimates suggested 157,000 IDP’s in the region (Baruah 2003).
indigenous control in places (2011, 40). Baruah roots for a framework of dual citizenship, which defines political communities in civic terms, and incorporates new members, at least those who have lived on the land beyond a generation. Such a regime, he feels would be more in line with the ‘actual’ liberal political ethos of the indigenous peoples of the region that an extremely exclusionary politics of belonging threatens to submerge (Baruah 2003, 63).

6. CONCLUDING THOUGHTS: THE LIBERAL-POSTCOLONIAL DILEMMA, INDIGENOUS EXPERIENCES AND THE PROMISE OF DECOLONIALITY

The paper sought to interrogate the indigenous peoples’ discourse by first bringing out its practical and theoretical antecedents in the indigenous experiences and political imagination of the global north. The discourse nevertheless extends deep into the most urgent political issues in the global south. It not only shapes the IP struggles in these parts, but is also, in turn, impacted by the trajectory of these struggles. In the realm of self-determination, its role has been largely emancipatory as seen in the case of the Naga national movement. However, it has also reified the western liberal notion of cultural authenticity and in the process emasculated the political agency of indigenous and other peoples. While considering the phenomena of migration and displacement, a narrow understanding of the territorial right has militated against the over-all well-being of indigenous people and those who live and work alongside them. Yet, there has been creative channelization of the IP discourse to bring about inclusive political outcomes.

Certainly, we need to be always reminded of the creation and consumption of the ‘indigene’ as a transnational discourse embedded in the hegemony of western cultural theory (Griffiths 1994, 82). We are warned against the primitivizing and essentializing tendencies of the discourse that takes focus away from the real challenges of and viable policy options for indigenous people today (Bates 1994). It is undeniable however, a reductionist, rights-based language notwithstanding, the IP discourse is a useful legal and political tool for people who might need special rights (Barnard 2006). It is precisely the non-recognition of their rights, political and cultural, by the dominant sections of society, which has led to the eager acceptance of the ‘indigenous slot’ (Xaxa 1999, 3594). For Dipesh Chakraborty, the idea that the poor and oppressed, in pursuit of their rights, have to adopt every means at hand to fight the system that puts them down constitutes a ‘politics unlimited’ (2006, 242). Trapped in liberal-postcolonial dichotomies not of their own making, and fighting on unequal political spaces, it should not be surprising that IP’s often resort to strategies that are often compromised, with results that are not always emancipatory. Moreover, the lack of significant theorizing on the condition of ‘internal colonization’ or ‘postcolonial sequestration’ (Halliday 2008) belies the
spatio-territorial limits of postcolonial thought. Finally, neither liberal, nor postcolonial theory anticipates or accommodates the fact of mass migration, not just of non-indigenes on indigenous territories, but also of IP’s far and wide.

Thus, it is at the conceptual boundaries of not just liberalism, but also postcolonialism then, that the debate on indigenous peoples’ discourse emerges as ‘nothing short of the question of how we imagine the political today’ (Chakrabarty 2006, 235). Here it finds common grounds with the discourse of ‘decoloniality.’ Emerging from sociological enquiries of subaltern and indigenous conditions, it aims to recognize, negotiate and move beyond the colonial/ post-colonial patterning. By ‘de-linking’ spheres of radicalism from the constraints of both nationalism and global multiculturalism, it hopes to usher in more reflexive and transformative methods of imagining and doing politics (Mignolo 2007). Located in an explicitly indigenous subjectivity, Alfred Taiaiake attempts to disconnect the notion of sovereignty from its western, legal roots and to transform it. From the legacy of the Mohawk nation, Taiaiake makes a case for the restoration of a ‘regime of respect’ to replace the legal guarantees of Westphalian sovereignty (Taiaiake, 2001, 30-32). Similarly, the potential for inclusiveness and peace in indigenous political philosophies are also beginning to influence scholars of international law (Anaya 1996).

Through a cursory interrogation of select Indian experiences, the burden of the paper has been to make a case for improvisations in the popular and legal aspects of the indigenous peoples’ discourse as it stands today. Additionally, the rich indigenous philosophical traditions of the subcontinent, and their contemporary improvisations, can also contribute towards a de-colonial project. Such a project holds promise not only to imagine and conduct politics in geographical concentrations of indigenous people, but to radically restructure the way liberal democracies conceive of citizenship and migration. As such, a conversation between liberal democratic and decolonial theory, centering around the experience of the IP discourse holds much promise for the crisis of liberalism besetting Europe today.

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IMPACT OF GLOBALIZATION WORLD ON THE WESTERN BALKANS

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Abstract
Balkans as a geo-strategically important European space area south of his representing "European cradle" in its cultural, historical and civilizational development. In its geographical and geo-strategic importance to the Balkans as a "geopolitical Cross" (Ilic, 1997) and "geopolitical junction" between East and West, and a large door to the east, west, north and south of Europe, or so-called "World chain." (Matic, 1995)

Also, the Balkans are considered "area of Southeast Europe" between black, Marmara, Aegean, Ionian and Adriatic Sea, which means that its northern boundary line constitutes highlighted the Gulf of Trieste to the Black Sea, its from Trieste to Odessa. Balkans, also as sill and door to Europe is an important point of approaching and meeting the various clashes civilization a priory Orthodox, Muslim and Catholic in its history, but today.

In ethnic terms the Balkans an area of so-called "Ethnic cocktail" (Mitrovic, 1999) bridge meeting, but, collision (collision) of many nations, large migrations of peoples, migration, division, secession, strong national and nationalist passions, which are based on "excess of history of the Balkan peoples"

Key words: Balcan, geo-strategically space, ethnic cocktail, collision of many people`s.

1. INTRODUCTION
Because of this geopolitical and strategic importance of the Balkan area, the makers of the new world order a special strategy the Balkans, which includes several important factors:

1) Instead of the bipolar international order or multipolarniot reinforce the tendencies of unipolarniot order dominated by U.S., also strengthen the NATO alliance and E.U. in order to neutralize Russia as a powerful empire that once could by them in the future to strengthen and revitalize (Lloyd, 2000);

2) Strongly dominant and the stationing of Germany in Europe and E.U. and its control and balance with European allies: France and Great Britain;

3) It prevents the emergence of a new dominant state in the Balkans and Europe;
4) Transformation of the Balkans in the area of permanent latent conflicts and dangers instead of community cooperation and integration on the basis of the existence of so-called "World policeman to solve these conflicts";
5) Revitalize the role and function of the NATO alliance, opening perspectives and meaning of his existence and possible actions;
6) Extending NATO eastward and thus the impact of the U.S. environment and isolation of Russia and the Orthodox transferzala cut to the south - the Middle East and meditteran area;
7) The interests of the United States toward the Balkans and Germany are observed through the so-called "Balkanization of the Balkans", the creation of small and minor dependent halfcoloniyal states, which are permanently under the influence of big powers (Galua, 1997);
8) The common interests of the United States and Germany are observed through the reduction of nationalism in the Balkans, and thus minimization of specific national interests of states in the various purposes (Ibid);
9) The infiltration of Islamic fundamentalism in the Balkans and Europe with the ultimate objective of political and cultural latently weakening of Europe, the Federation BiH, Kosovo, should play the role of "Trojan horse" of the United States;
10) The Balkans is the process of symbiosis of Catholicism and Islam in the function of neutralization and weakening of Orthodoxy in the Balkans open clash of civilizations (Pavic, 1990).

As a prerequisite to achieving this primary pre-order geo-strategic and economic actors of the new world order - with insights into the east and reign with the space of Eurasia - appears a problem with an earlier conquest, conquest and control of the Balkans, and especially its central and southern part as the most important geo-strategic area, which lies between the two most important, richest and largest population continents: Europe and Asia connecting the main and the shortest land, sea, river and air routes. These roads and corridors linking northern Europe with meditteran area and Western Europe in the Middle East and Africa.

2. THE PROCESS OF GOVERNANCE AND CONTROL IN THE BALKANS

The process of governance and control of the Balkans previously understood the process of turning the Balkans conflict in the ever area of the small Balkan states, the activation process of separatism and nationalism (creation of false stereotypes about individual Balkan peoples, and on this basis and their Satanism) simultaneously placed in one of colizion sides and so cause more conflicts in advance prepared their centuries-old policy as world powers "devide et impera".
Policy of destabilization of this important European region then serves to legitimize the presence and survival of the world's largest military alliance NATO pact in the region, which practically justifies its existence, but also further spread.

End result is control of European states and European limits by a military alliance, the subordination E.U. a rigid and dangerous Leviathan, behind whom stand Hegemon global interests, which has a primary role in decision making in the military alliance.

2.1. Balkanization of the region

The main result is a global destabilization of the Balkan region in the so-called "Balkanization of the region," a small ideas dependent, and controlled the satellite states, which should unconditionally accept the values of "Western democracy" and to align their institutions are aligning them, the dominance of U.S. influence, and Germany, and the strong presence of the Turkish (Islamic) factors articulated by strengthening the Albanian factor in Kosovo and Macedonia and the Albanian state in the Balkans, as exclusively controlled satellite state.

The Balkans for the last 15 years with the entry of foreign factor in ex Yugoslav crisis, have created several new dependent countries. Created ethnically pure Croatian state is almost cleansed of Serbs who lived on its territory for centuries, with the policy of the protagonists of the new world order created the Federation BiH in which its entities are also ethnically pure and its entities have almost no communication because muslim politics and the muslim factor and the level of the federal government.

On June 10, 1999, by Resolution of the Security Council the UN, after the NATO aggression on Yugoslavia created a "New Kosovo" which rapidly perform ethnic cleansing and genocide of the Serb population and the remaining non-Albanians out of institutional rules, norms and Government of the Republic, of those crimes and terror the democratic Western world closes eyes.

Also, there are tendencies towards division of Macedonia and creating conflicts in it also appears anarchic Republic of Albania with its internal problem of criminalization.

2.2. Recolonization on Balkan states

All of the above and other Balkan countries today are in half colonial status in relation to the U.S. and E.U. That is a new colonialism of E.U. confirms the fact of the secret document on the basis of which is made secret plan E.U. colonization for the Balkans, with the end of February 2000 it wrote to the Swedish journal "Aftonbladet", revealing the secret plan.
The diary came to the secret document that sochinile leaders E.U. on April 28, 1999 meeting in Brussels under the name "System afterwar Southeastern Europe" which documented intentions E.U. for colonization of Serbia, Montenegro, BiH, Croatia, Macedonia and Albania.

This document is prepared Centre for European Policy Studies. The essence of the document seems to view that in these countries EU will provide assistance if disclaimer of its independence, which ultimately means recolonization enslavement and Eastern Europe and the Balkans, loss of freedom, national identity, state sovereignty and territorial integrity of states in this space.

3. WHAT THIS BASICALLY MEANS THE PROCESS
1) The process of ideological pre-characterizing the former ex-Yugoslav republics in the Balkans as "primitive societies" that are in pre-industrial feudal period, and therefore must be changed to be able to accept Western democracy and a developed capitalist economy;
2) It means that these states are bulk transition to transform its system of governing capitalist system;
3) To accept Western liberal democracy;
4) To create social and economic conditions and environment (creating new is existing legal system in the area of banking, taxation, foreign investments, etc.) that will allow free operation and efficient functioning of western corporations primarily in field of control and exploitation of economic resources and the entry of foreign capital;
5) Construction of a market capitalist economy, which will be dependent on Western countries;
6) Creating and bringing us so-called power controlled and docile governments to make decisions and laws in coordination with and under the influence of western factor;
7) Creation, essentially a kind of "latent protectorate" that phenomenological declarative and not seen (Mitrovic);
8) Use of space for certain criminal matters nchisti etc. "Criminalization of the region" around it;
9) Convert the Balkans in the eternal debtor;
10) Using the Balkan region for the storage of nuclear, chemical and other waste of wastewater technology as a result of depredation economic and technological development in the West.
4. EXPLOITATION THE BALCAN THROUGH LOCAL CRISSES

By challenging and exploitation of crises in the Balkans as the military conflict in 2001 in Macedonia, the crisis in Kosovo and Metohija, strategists of the new world order is trying to strengthen its strategic position in this part of the world and turn the area the Balkans in their own colony or Dominion, with shrewd instruments of turning the Balkans into the eternal debtor, which will therefore have to carry out their interests, as happened in history after the Second World War, when Western Europe came under the political umbrella of its brother across the Atlantic, which operates today.

Namely, after causing the Kosovo crisis, destabilization of the whole region caused by the NATO aggression on Yugoslavia, now the United States and Western Europe want to stabilize the region, investing their capital in the rebuilding of the ruined buildings around the so-called "Marshall Plan" for South East Europe (Balkans), which is to turn all of Southeast Europe and Balkans in the West an eternal debtor, the debt which, of course, will never get out, as was the case in the implementation of "Marshall Plan" from 1947, when U.S. diplomacy chief Joseph Marshall proposed a program to help the west European countries, the commitment necessary to pursue economic cooperation with the U.S., which enabled him to Washington since then dominate these states (eg in Germany) relying on the so-called political sense "Trumanova doctrine," which implied an excuse that the struggle against communism, Western Europe must be subordinate to the interests of the United States.

5. CONCLUSION

Many Balkan countries belonging to the Eastern Bloc believed that by accepting the western model and under the dominant Western influence, through the process of adoption in western structure - military and other European associations, will cross the path of democracy and resolve many of the key problems of economic development and increase the standard of population without Balkan regional connectivity will become fashionable and wealthy democracies.

However, the opposite happens. Balkan states to go retrograde primitive form of capitalism that is beset with many problems of crime, through stratification, to the complete destruction of the social structure of society, or rather included in the form of a feudal system that is dependent on western factor.

Balkan states became protectorates of the IMF, World Bank and the United States, which provide natural resources and cheap labor, expand the market of finished products, which in extreme distance means further impoverishment of these countries. Examples of the Republic of Macedonia, Albania, Romania, Bosnia and Bulgaria show that well.
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NOTARY PUBLIC – GUARANTEES OF LEGAL CERTAINTY AND EFFICIENCY

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Abstract
A notary public is an expert from the field of law, appointed by the minister competent for judiciary, entrusted with public authority to take declarations of will from the parties and transform them into the required written form, as well as to issue related identification papers having the character of public identification. A notary public keeps the originals of those identification papers and other entrusted documents, issues transcriptions of identification papers, publicly confirms the facts, conducts certain activities as the commissioner of the court in certain proceedings, advise the parties regarding the issues that are the subject of the notary's activity, undertakes other actions and conducts other affairs stipulated by law. A public notary is independent and autonomous in conducting of their duties. The history of the Latin type of notary, the role of public notaries, and the manner in which this new legal profession has contributed to ensuring a more efficient and effective protection of the rights and interests of the citizens in the Republic of Serbia, where the first notaries public have commenced their activity on September 1, 2014, will be shortly presented in this paper.

Key words: notary public office, legal certainty, efficiency, The Republic of Serbia.

1. INTRODUCTION – A SHORT HISTORY OF PUBLIC NOTARY

Alongside the invention of writing, and later, the creation of legislative activity and development of social-economic relations had conditioned the need for certain rules of conduct and certain activities of individuals to be permanently recorded in written form, which in time had grown into a separate profession.

The idea of official creation of identification for the purpose of regulating the legal relations related to the legal standing and the protection of private property can be found in Old Egypt, old Judea, Ancient Greece (see: Malavet 1996, 406-408). There is a copy of a contract regulating the sales of slave from Mesopotamia from the time of Rim-Sin, from around 2300 B.C., concluded in the presence of the witness Likulubishtum, son of Appa, a scribe who sealed it with the seal of the witness (see: Karčić 2004, 11).
In doctrine, however, prevails the opinion that notary public originate from Roman law and the Digest. The term Roman law includes the law applied in the Roman state from its creation in 754 B.C., until the death of emperor Justinian in 565 A.D., meaning until the fall of the Western Roman Empire.

The very term – notary, has origins in the Latin word *notarius*, which means scribe. The term *notarius* originates from the Latin word *nota*, which means inscription, note, remark, stenographer (Korač 2008, 308). The word notary was first used by Marcus Tullius Tiro, Cicero's secretary. Tiro developed a system of stenography for recording Cicero's speeches. This stenography was called *Notae Tironinae*, after which, the name *Notarius* was used for this system of keeping data records, which has been widely used since the first century A.D. (Shea 2009).

The development of economic relations and commodity exchange conditioned the development of Roman law, and therefore, the professionalization of those dealing with legal regulations. All this, in turn, conditioned the appearance of *tabelliones*, who are believed to be the predecessors of today's public notary. *Tabelliones* were persons with good public reputation and possessed avid legal knowledge, and who were appointed by the governing authority that determined their scope of activities. They provided services regarding making legal acts and documents. The records that *tabelliones* kept had to be made from wooden panels covered in wax (*tabula cerata*), tied with a string through holes in the panel, with a seal at the end of the act, which gave the act – *tabelia*, a certain level of protection from various forms of forgery (Trgovčević-Prokić 2007, 23). The term *tabellion* comes from the Latin word *tabella*, *codicilli*, *pugillares* and *libelli*, which means panel, board (Meyer 2004, 22).

We must particularly point out the fact that in the very beginning, the acts made by *tabelliones* did not have the status of authentic identification, however, they later gradually won the trust of the state. The later changes based on which the advantage in court proceedings was given to written evidence over oral evidential means, as well as the commitment of *tabelliones* to use a mandatory, special system of dating and protocol, had great impact on the strengthening of the acts made by *tabelliones*. Later on, from the time of Emperor Constantine, clerks have conducted the transcription of public acts, mostly made by *tabelliones* into the public registers (*digeste*), which enabled the option of always acquiring a transcription of an act from the public registry. Act processed in this way was a certain evidence in court (*instrumentum publicum*), by which it became somewhat closer to the modern idea of a public identification (*fides publica*). However, the act of *tabelliones* never had the authority of a public identification nor that of executive title, as the state did not delegate public authority to the *tabelliones*, but had only determined their scope of activities, and therefore, the citizens were not obliged to make an act through *tabelliones*. What needs to be mentioned is that the act that was not included in the
Digesta did not have the same legal power as instrumentum publicum, but only the power of privileged evidential means (Crnić, Dika 1994, 32-33).

Considering that, in the time of Justinian, the tabelliones did not have any public authorizations, nor did their acts have significant evidential value, we stand behind the opinion that the origin of the Latin type of notary (see: Selaković 2017, 153-166), with important qualities similar to modern Western and Middle Europe, is linked to the later Byzantium era (see: Avramović 2005, 35-83).

A more significant development of a notary position occurred in the 10th century in Italy. In order for one to practice being a notary, they needed to have legislative education, be of certain age, have official practice and take an expert exam, as well as to be listed in the notary list and to belong to organized notary colleges, the predecessors of modern public notary chamber (Lazarević 2014, 10-11).

In theory, it is most often believed that the type of notary later developed by the French legal system was created in the time of Saint Louis IX from the Capet dynasty, who named 60 authorized royal notaries in the year 1270 in Paris. It is believed that here lie the origins of the modern Latin type of notary, as the identification issued by these notaries had the authority of an authentic document characterized as a binding public identification. Later on, French rulers continued to develop the notary profession. So, for example, king Francois I of Valois, had introduced the crucial novelty for the acts created by the notaries to have the force of an executive title in the whole of France in 1539. In his time, Louis XIV – the Sun King, ordered for all the notary documents across France to be marked with a mandatory seal carrying royal authorization. In this way, the notaries became persons conducting public authorizations in the name of the king. Introduction of a notary document as an executive title in the whole country authorized by the king himself was an important factor to ensure legal certainty and undisturbed legal traffic, and therefore, the Latin notary was definitely given its physiognomy and great importance in the legal system. Later on, in the time when French revolution was beginning to take root, King Louis XVI made a law consolidating all regulations regarding notaries valid in the whole country (see: Selaković 2017).

During the reign of Napoleon in France, the Law from 1803 (Ventôse Act) was used to conduct a significant reform of notaries, establishing the independence of notaries from political power and returning the power of a public document to notary acts, which was jeopardized in the mean time, and assigning notaries with a state seal used to verify the acts (Crnić, Dika 1994, 38). According to this Law, a notary is an officer aiding in concluding contracts by carefully examining them in order to prevent litigation (Trgovčević-Prokić 2007, 80). The role of notaries seen in such way served as a model for the development of public notaries in continental Europe, which, apart from the aforementioned qualities, is characterized by...
independence, autonomy, and a firm professional organization seen in the public notary chambers that have a supervisory function over the work of public notaries.

Today, the Latin type of notary is accepted in Albania, Austria, Belgium, Bosnia and Herzegovina, Croatia, Estonia, France, Greece, Germany, Holland, Hungary, Italy, Latvia, Lithuania, Luxembourg, Macedonia, Moldavia, Montenegro, Poland, Portugal, Romania, Russia, Slovakia, Slovenia, Spain, The Czech Republic, and The Republic of Serbia.

Therefore, this type of notary is also present in “our local area”.

In the year 1930, under the influence of the Austro-Hungarian model, in the Kingdom of Yugoslavia a Law on Public Notaries (“The Official Gazette” no. 220/1930) was passed. According to the provisions of this Law, public notaries were appointed by the state, and they conducted public authorizations, which included: making identifications, auditing and verifying identifications, as well as acting upon the order of the court in certain proceedings. However, this Law did not consolidate public notary in the entire territory of the state, as it was not applied in the territories of Bosnia and Herzegovina, Montenegro, nor in some parts of Serbia. The date of cessation of the law is controversial and differs based on the territory of the former country. The years 1943, 1944, and 1945 are mentioned (Bikić, Suljević, Povlakić, Plavšić 2013, 9-10). However, regardless the date, the fact is that the notary service in Serbia did not only fail to include all its parts, but it had also ceased to exist so long ago that the historical memory of it is barely preserved (Vesna Rakić-Vodinelić, 2015).

For this reason, even though historically and from a comparatively legal perspective this is an old judicial profession, in practice, for the citizens in Serbia and the current legal system of this country, this is a new profession.

The legal basis for (re)establishing public notary office in current Republic of Serbia occurred significantly later than in other countries in Europe, even in the region.


2. THE ROLE OF PUBLIC NOTARY OFFICE

What can be said for certain, is that, through its evolutionary process, the public notary office took various forms, but it also had enormous significance for the stability of the legal order and the fixing of legal certainty.

Today, public notary office presents an unavoidable public service in every legal country that wants to have an efficient and secure legal system.
In comparative law we can meet various legislative solutions referring to the competencies and the mode of operation of public notaries. However, what is in common for all legal systems (when talking about the Latin type of notary) is the legal nature of this institute, i.e. the fact that the public notary is an individual of public trust conducting activity within the sovereign competencies placed upon them by law through the state government, who conducts their operations independently and impartially as an autonomous carrier to whom any party can address, who has the right to compensation according to the established tariff, whose work is, in greater or smaller measure, controlled by the government, and whose documents have the character of public identifications. Therefore, a public notary primarily conducts the function of public authority, which includes their impartiality and autonomy (in this case, relative autonomy considering that it is limited by government control), and the obligation of secret keeping, but at the same time, a notary public also conducts a private function seen through the obligation of counseling and providing aid to the parties. Through their qualified legal advice, warnings and instructions, notaries’ public provide certainty to their parties, excluding doubt and confusion, aiding them in determining and declaring their legal will, and in providing advise about the legal ramifications for them and other persons created by their will. Finally, a notary public transforms the stated true will into a corresponding public notary document, complied in the proper form, which has the power of a credible, i.e. public, and even executive document, which will serve the party to create, alter, or terminate legal obligations, which the notary public is obliged to preserve in the long term.

Thus, it becomes clear that the notary public is given an important role regarding the protection of legal certainty and preventing litigation. Preventive legal support for the parties and their counseling by the public notary, as well as providing accurate, doubt-free and legally formed will of the parties, in great measure eliminates doubt or possible court litigation regarding the legal and contractual relations. On the other hand, documents of strong evidential power of public notary documents unburdens court proceedings from long-term and expensive litigation where such document is presented as evidential means. Finally, an important role of public notaries lies in delegating of certain actions and proceedings, particularly non-contentious proceedings, i.e. of those not disputed among the parties, from judicial power into their competency. Jointly, all of this leads to a more efficient, effective, and stable judicial system of a country, and much higher legal certainty of the citizens.

3. THE EXAMPLE OF THE REPUBLIC OF SERBIA

As previously stated, the Republic of Serbia has introduced public notary into its legal system only recently, through the Law on Public Notary, adopted in
2011, and which had begun to be applied as of September 1st, 2014.

Passing of this Law, and particularly the beginnings of its application, had caused a tumultuous quake in the justice department of this country. Namely, (primarily) due to the provision that stipulates the exclusive right to create all contracts regarding real estate transfers to the public notaries (introduced by Law on the amendments to the Law on Public Notary, “The Official Gazette of RS” 19/2013), lawyers had completely halted their work. “General strike” of lawyers lasted almost unbelievably long – from the 17th of September, 2014, to the 26th of January of 2015, which lead to a complete collapse in the justice department. It is estimated that due to this strike, in this period, over 200,000 hearings have been postponed (Milojević 2015). In this text, we will not deal with this problem, however, it is important to point out that the strike was intermitted due to an arrangement of the executive power with the advocacy body, in which, among other things, a deal was made stating that the contracts regarding real estate can be made by lawyers as well, (as well as the parties), but that such made contracts must be taken to the notaries public to be verified, i.e. solemnization. Through this arrangement, the only (exclusive) competencies of the notary public was to create public records regarding: 1) contract on disposing of real estate of business incapable persons; 2) agreement on legal support; and 3) mortgage agreement and lien statement if they contain explicit declaration of the obligated person that based on these documents, in order to collect the debt, after the due date of the debt, compulsory execution can be carried out indirectly, whether through litigation or extra-judicial manner.1 Furthermore, a section of the arrangement included that public notaries, apart from paying 20% of AVT from the charged services, are bound to deposit 30% of the charged premium without AVT into an account proscribed for payments of public income, an amount which should be allocated for current expenses of the courts and improvement of the economic position of court employees, as well as for other expenses and investments related to the court.1

Provisions of Art. 15 of the Law on Public Notaries proscribe that the number of public notary offices is determined by the minister, upon acquired opinion of the Notary Public Chamber of Serbia, so that, as a rule, at least one public notary position is designated for the area of one municipality, city or city municipality, and in the areas with a higher concentration of the population and a more intense economic business, the number of public notary positions is determined by designating one public notary office per 25,000 inhabitants. The Regulation on the temporary number of public notary positions (“Official Gazette of RS”, no, 31/2012 and 57/2014) proscribes 371 public notaries in total for the territory of the whole country.

In accordance with the provisions of Art. 16 of the Law, a public notary is designated with an official seat, and they are obliged to run their offices in the same
city as the seat. Apart from the phrase *official seat*, the Law also recognizes *official area* of the public notary, which includes the area of the basic court\(^1\) where the official seat is located. This expression is of particular importance, for the reason that the provisions of Art 4 of the Law on Transfer of Immovable Property (“Official Gazette of RS”, no. 93/2014, 121/2014 and 6/2015) proscribe for the contract on the transfer of immovable property is concluded in the form of a certified (solemnized) public notary document, and this is exclusively in the competency of the public notary in the *area* of whom this immovable property that is the subject of the contract is located. Of course, for the purpose of greater efficiency, the legislator had proscribed an exception from this rule by determining that if the subject of the contract is several immovable properties, which are located in the area of several public notaries, all of those public notaries are competent to verify such a contract.

Currently, in the Republic of Serbia, 174 public notaries are in operation, who cover the areas of all basic courts, apart from the courts in: Brus, Dimitrovgrad, Knjaževac, Majdanpek, Raška, Sjenica, Surdulica, and Trstenik.\(^1\) According to the words of the president of Public Notary Chamber of Serbia, Mr. Miodrag Đukanović, “intense work” (Đukanović 2017) is being done on appointing public notaries for the areas of these eight basic courts. Apart from the public notaries, there are 41 public notary assistants and over 500 public notary trainees in public notary offices.

Until March 1\(^{st}\) of 2017, affairs of signature legalization, transcriptions and manuscripts could also be done in basic courts and municipal bureaus, and since then, these affairs were transferred into the exclusive competency of public notaries.\(^1\) This is precisely the most common reason why the citizens go to public notaries. In terms of these verifications, later on The Public Notary Tariff (“Official Gazette of RS”, no. 91/2014, 103/2014, 138/2014, 12/2016, 17/2017, 67/2017 and 98/2017) was also altered, in order to prevent any losses for the citizens by transferring competencies, so that all legalizations used to the exercise rights guaranteed by mandatory social security and social protection, documents used by the unemployed to enter into workforce, and the documents necessary to become enrolled into higher education institutions, as well as preschools, elementary and high schools, are exempt from paying fees. Therefore, notaries public do not charge for the legalization of these documents, even though they are, so to speak, private businesses who do are not paid through the government budget, but they exclusively make profit from their work.

As previously said, in the Republic of Serbia, contracts regarding the transfer of immovable property are concluded in the form of verified (solemnized) document\(^1\). This form is also necessary for the contracts on mortgage and lien statements if they *not* contain an explicit declaration of the obligated person that...
based on these documents, in order to collect the debt, after the due date of the debt, compulsory execution can be carried out indirectly, whether through litigation or extra-judicial manner.

In this way, the form of legal affairs regarding traffic of immovable property has been changed significantly. Namely, while before, that traffic took place through legalization or so called “simple” authentication of signatures in courts of general jurisdictions, now traffic of immovable property takes place through solemnization of private acts (in a smaller measure through public notary record), which includes checking the legality of such acts. Therefore, in the process of solemnization, the notaries public check all elements of the legal affairs, legal and business capacity of the parties, the subject of the contract, the important fact whether the immovable object that is the subject of the contract has been trafficked before, etc., while according to the previous regulations, the court had only verified the signatures on the contracts, i.e. confirmed that the certain person in the presence of an official of the court had placed their signature on the document. Such verification in court was most frequently done by employees with a high school diploma, while solemnization in a public notary office now includes checking of the entire documentation, determining the will of the parties, explanation of the importance and the essence of the legal affair to the parties and warning of their legal ramifications, which are a mandatory part with solemnization clauses. Therefore, a notary public is responsible for the legality of a legal affair and guarantees that it is in accordance with mandatory regulations, public order and good customs. Finally, it must be emphasized that the notary public guarantees with their property and insurance for any possible damages concurring to the parties during the notary’s operations.

Precisely this aforementioned increase of legal certainty in trafficking of immovable property offered by contract solemnization and writing of public notary record in this matter is, in our opinion, the main and the strongest argument for establishing notary service in Serbia.

However, as we pointed out several times until now, the public notary service is not limited only to that.

Namely, in accordance with the provisions of Art. 92 of the Law on Extra-judicial Proceedings (“Official Gazette of SRS”, no. 25/82 and 48/88 and “Official Gazette of RS”, no. 46/95 – st. law, 18/2005 – st. law, 85/2012, 45/2013 – st. law, 55/2014, 6/2015 and 106/2015 – st. law), when a person is deceased or pronounced deceased, the registrar competent to list the death into the registry of deceased persons is obliged to deliver a copy of the death certificate from the registry to the inheritance court within 30 days after listing the death. After receiving the copy of the registry list, the court makes a decision entrusting the public notary to compose the death deposition. Composing of the death deposition is entrusted to the notary
public competent for the area of the final permanent residence or address of the deceased, and if the deceased did not have a permanent residence, or an address in the Republic of Serbia, composing of the death deposition is entrusted to the notary competent for the area where the inheritance, or a larger part of it, is located. The notary public is obliged to deliver the completed death deposition to the inheritance court within 30 days from the day of receiving the decision entrusting the notary with composing of the death deposition.

Even though, at first, the heads of basic courts were rather “reserved” regarding this issue, now it can be stated that in a large number of cases they use the possibility given to them in Art. 110a of the Law on Extra-Judicial Proceedings, which proposes that if upon receiving the death deposition it is determined that the law of the Republic of Serbia is relevant in the inheritance procedure, the inheritance court can make a decision entrusting the inheritance procedure to the notary public, and (if there are no hindrances), to the notary public that had composed the death deposition act.

The result of this legislative solution is that inheritance procedures are now conducted much more quickly and efficiently. Practice has shown that notaries public complete the inheritance procedure within two months on average (Đukanović 2017). Therefore, the parties can finish this procedure more quickly and simply, with all the comfort of public notary offices. A direct consequence of the aforementioned, apart from satisfaction of the parties, is unburdening of the courts.

Finally, we must point out that the control over the operations of notaries’ public is done by the Ministry of Justice and the Public Notary Chamber of Serbia. For unprofessional operations, the notary public can bear disciplinary, misdemeanor and criminal responsibility, and if it is found that the party was damaged through incompetency of the notary, the party will have the option of addressing the insurance company of the public notary in order to get compensation for the damages.

Considering that this is a relatively new profession in Serbia, which is being developed and perfected, certain problems which could not have been foreseen while passing of the Law on Public Notary, nor in its initial application, are now coming to the surface. Some of them are resolved “on the go”, primarily with the help of the Ministry of Justice and the Public Notary Chamber, while for some, a suitable change of the legislative regulation is needed.

However, it can be said with certainty that with the work done up to now, the notaries public have justified their existence and demonstrated all the advantages due to which the notary service was introduced in the Republic of Serbia.
4. CONCLUSION

From all the aforementioned, it can be concluded that legal certainty of the citizens and unburdening of the courts from certain operations done by now are essentially the strongest trumps of public notary service.

A notary public, before other things, verifies the legality of the affairs they are hired to complete and will not notarize a single document if they have suspicions regarding its legality or that such a notarization would damage any party. A badly composed contract carries a high risk of a future court litigation, which the notary is obliged to prevent.

All individuals and legal entities which, for example, would wish to purchase or sell a certain immovable property, are obliged to notarize their purchase contract at a public notary office. In doing so, the notary must verify that such immovable property can be trafficked, that it is listed in the corresponding registry of immovable property, whether it has already been sold, whether the seller is in fact the owner, whether the buyer can purchase the immovable object, whether the seller can sell it, the notary verifies in detail the competency of the participants in the legal affair, etc. If these and other conditions stipulated by law are not met, the notary public will not compose or verify such a contract. The notary public will place their signatures and seal on the contract only in the case that there are no legal barriers. This, in great measure, contributes to legal certainty and avoidance of unnecessary litigation, and it enables a faster trafficking, and therefore, a more efficient exercising of the rights of the citizens.

Apart from this, considering that public notary offices legalizes signatures, transcripts, manuscripts and photocopies, which would have to be legalized in court if there were no public notaries (and/or in administrative authorities), and considering that public notaries also conduct other operations entrusted by the courts – e.g. in inheritance procedures, we reach the second, but not any less important, positive aspect of public notary service – directly enabling the courts to place exclusive focus on the function of trials.

It is well known in practice that only an “unburdened court is efficient court”.

Finally, in our deep conviction, we would like to second the words of the chairman of Serbian Public Notary Chamber, Mr. Miodrag Đukanović, who during evaluation of justifiability of the existence and work of public notaries in the Republic of Serbia stated a few months ago: “I believe that by introducing the public notary service, the citizens have the most to gain, and indirectly, the courts, governing bodies, and the country as well.” (Đukanović 2017).

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CUSTOMS AND CORRUPTION: THE CASE OF THE REPUBLIC OF MACEDONIA

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Abstract
The risk of corruption in customs exists in all countries around the world. It is evident that this problem is far more prevalent in developing countries. In developing countries, customs are usually among those administrations where corruption is most entrenched.

Customs administrations play a key role in trade facilitation, revenue collection, community protection and national security. The presence of corruption can severely limit Customs capacity to effectively accomplish its mission.

The economy of the Republic of Macedonia is highly depended on international trade, especially imports. That results in a very big percent of businesses having direct encounters with customs officers, which gives the opportunity for corruption.

According to Corruption Perception Index 2016 three out of five Macedonians perceive customs officers as corrupt.

The aim of this paper is to analyze corruption in customs sector and to provide useful conclusions and recommendations in the fight against corruption.

Keywords: Customs, Customs Administration, Integrity, Corruption, Republic of Macedonia

1. INTRODUCTION

Given the vitally important role customs plays in revenue collection, trade facilitation, national security, and the protection of society, the presence of corruption in customs limit economic and social development of the countries. In many developing countries, high levels of corruption drastically reduce the effectiveness of key public sector agencies. Customs administrations are no exception and are frequently cited as among the most corrupt of all government agencies. According to UNODC, 201317 the largest shares of bribes are paid to public officials at the local level (municipal or provincial officers) and to officials in

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17 Business, Corruption and Crime in the Western Balkans: The impact of bribery and other crime on private enterprise, UNODC, 2013, p. 8
the tax and customs administration, which indicates that bribery may be an important factor in tax evasion and thus exerts a negative impact on public finances.

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, constitutes corruption.

To assist Customs authorities to deal with corruption, the World Customs Organization (WCO) has produced a number of helpful tools for use by its members. WCO has spent a considerable amount of time promoting the concept of integrity within Customs. These efforts resulted in the adoption by WCO members of what is now known as revised Arusha Declaration on Integrity in Customs. The Declaration Commits Customs administrations to maintain a high standard of integrity throughout their management and operational spheres by the introduction of national integrity programs. The Arusha Declaration was initially adopted in 1993 in Arusha, Tanzania. On the basis of the ten year experiences it has been revised in 2003. The Revised Arusha Declaration is the focal tool and central feature of 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 programme 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. CORRUPTION IN CUSTOMS-THE CURRENT ENVIRONMENT

Over the past few years, Macedonian customs has seen significant progress, particularly with the introduction of the integrated border management and a separate functional central system of video surveillance at the border crossings and customs checkpoints, which operates continuously. New bylaws were adopted that lay down the standards for conduct of customs officials in different circumstances and a mobile system of internal control was also introduced.

But still there are figures that indicate that the customs remain a high risk area in terms of corruption (the European Commission report on the progress of the Republic of Macedonia of 12 October 2011; Business, corruption and crime in the Western Balkans: The impact of bribery and other crime on private enterprise 2013;
The analyzes presented in the Corruption Assessment Report 2016 show various trends in the indicators of corruption analyzed over the years. Susceptibility to corruption has decreased slightly and corruption pressure and involvement in corruption has increased marginally. Citizen perceptions of corruption have improved significantly compared to 2002. The practical efficiency of corruption goes below the levels of 2001, which implies it has become more uncertain to get involved in corruption (Corruption Assessment Report 2016, p 16).


The Corruption Assessment Report shows that according to the respondents’ perceptions, corruption is most prevalent in the Customs, Courts and Police. Following those is the Ministry of Health and the Ministry of Transport. Close to the top ranking is also the Government, local governments, and the tax office. Similarly, when asked about professions and holders of specific public positions, citizens put on top customs officers, judges, ministers, public prosecutors, tax officers, and political party leaders (Corruption Assessment Report 2016, p 27, 28, 29).
Figure 2: Corruption in state institutions (Source: Corruption Assessment Report for Macedonia 2016, based on Corruption Monitoring System (CMS) 2014)
3. FORMS OF CORRUPTION IN MACEDONIAN CUSTOMS

The customs service’s operating at entry and exit points from and into the Republic of Macedonia which control the passengers, their luggage and various goods transferred through the boundaries of the Republic of Macedonia have been
identified as high-risk points in terms of vulnerability to corruption. Although it is indisputable that most of the customs operations are covered with prescribed procedures, problems still tend to appear during the practical implementation of the procedures. This is especially the case when it comes to allowing entry to the country of heavy vehicles with a load exceeding the statutory maximum, or products with short shelf-life or delicate products that can lose weight during transport.

Cross-frontier goods flows are of three types: imports, exports and transits. All have to comply with customs requirements. Private operators prepare a legal document called the customs declaration in which they customarily give consignment details, including the nature of the goods, their quantity, their origin, their value and their destination. They may also be required to produce a number of documents such as invoices and origin certificates to support this information. The declaration is the key document in customs release and clearance as it establishes a legal relationship between the operator and the customs. The following text concentrates on customs processing of imports, as this is more comprehensive and complex than for export or transit.

There is an impression of inconsistency in terms of implementation of the existing procedures which in itself raises doubts that certain actions are taken by the customs officials to obtain personal gains. There has been a long-standing perception of existence of corruption among the customs officials.

The practices observed in the Republic of 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. 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.

Observing Macedonian customs identified some examples of practices that fall under the category of routine corruption (Annual Reports of the Customs Administration of the Republic of Macedonia 2010-2016). For instance, the initiation or completion of actions by officials will be delayed until a favor is given or promised. Officers use different “techniques” to create these delays: the files of those who have given bribes are attended first; officers turn out being absent or elsewhere when the requested action is much needed; the hearing of seizure cases is prolonged; etc. Another situation of routine corruption is when officers create or threaten to create excessive difficulties in the customs clearance process. Those will conduct examinations in excessive detail, ask for documents difficult to produce, threaten to stop the operations or to send the merchandise for further controls, etc. Situations in which officers threaten to submit exaggerated assessments or audit
findings coupled with recommendation for punitive measures to extort certain sums have also been observed.

- **Fraudulent corruption:** operators try to pay less tax than due or no tax at all, by not accomplishing properly the customs clearance process. They pay bribes to buy customs officers’ blind eye or their active co-operation. Observing Macedonian Customs (Annual Reports of the Customs Administration of the Republic of Macedonia 2010-2016) exposed a number of typical smuggling techniques. The most frequent technique is misdeclaration: importers provide erroneous information on their customs declaration regarding the nature of the merchandise, its quantity, its origin or its value. Operators also try to obtain abusively concessionary or exemptions notifications. As these are much lighter than for commercial operators, smugglers abuse customs procedures for passengers to pass in important quantities of merchandise. Goods are taken out of warehouses without the due accomplishment of customs procedures. Goods meant for transit are dropped in the country, etc.

- **Criminal corruption:** operators pay bribes to permit a totally illegal, lucrative operation (drug trafficking, weapon trafficking, etc.). Corruption also accompanies other illegal activities, such as money laundering, drug trafficking, weapon trafficking etc.

### 4. PROBLEMS AND RISK FACTORS FOR OCCURRENCE OF CORRUPTION IN MACEDONIAN CUSTOMS

The key problems observed in the operation of the customs, which is seen to be vulnerable to various forms are related to:

1. **Consistent compliance with the prescribed procedures and determing the rules for action in specific circumstances such as in cases of passive bribery, collecting relevant evidence of corrupt conduct, self-assessment of high-risk processes.**

The Customs Administration of the Republic of Macedonia has made significant strides in setting the standard operating procedures for the customs offices in all segments under its authority. However, the absence of effective, systemic controls over the strict application of the standardized procedures by the customs officers creates space for corruption.

The lack of firm guarantees for consistent implementation of the operating procedures creates legal and factual uncertainty among the citizens and the customs employees alike. This problem is particularly evident in the cases of disregard of the turnaround time for certain customs procedures, thus creating space for arbitrary decision making. This in itself brings suspicion of existence of corruption, nepotism or any other conflict of interest situation for the purpose of generating illegal personal benefits.
2 Lack of assessment of the risk of corruption in the Customs Administration in all its activities and work processes.

There is no effective system of assessment of the corruption risk points in the operating system of the customs authorities. Such assessments are likely to significantly narrow down the corruption space and allow for introduction of mechanisms for oversight and control for effective prevention, but also detecting of the cases of corruption.

In this respect, institutional and individual integrity must be systematically created, upgraded and monitored as part and parcel of the necessary professional and technical capacities of the customs service. It is therefore essential for the Customs Administration to continuously improve its capacities for monitoring and control over the operation of the customs officers and make the system of integrity effective.

3. Insufficiently developed system of communication and cooperation with the public.

The degree of negative public perception of the customs services is partly a result of the lack of communication with the public, which has to be urgently addressed through various forms of direct and objective information-sharing with the citizens and establishment of effective cooperation with the civil society organizations.

5. MEASURES AND ACTIVITIES TO PREVENT CORRUPTION

To effectively tackle the problem of corruption in customs, a comprehensive and sustainable approach that addresses the underlying causes and consequences is required. A pragmatic and situation-specific approach is necessary—one that draws on the lessons learned from previous efforts around the world and that takes into account the fundamental issues of motive and opportunity. The Arusha Declaration drafted by the World Customs Organization, the International Monetary Fund Integrity Paper and the conclusions of the Working Group on Customs Ethics in Central and Eastern European Countries recommend the following changes in customs administration:

Organization of Customs Operations: define targets and standards of service quality; segregate functions strategically and build checks and balances; frame customs procedures so as to reduce to a minimum the inappropriate exercise of discretion; computerize customs operations; minimize the requirements of information and documentation from traders.

Staff Rules: develop a code of conduct and explain its implications to customs officers; define corruption and related offences in legal texts and in the customs internal rules; set corresponding sanctions at a reasonably dissuasive level (including in internal disciplinary measures the possibility of dismissal).
Internal Culture: promote customs service standards and ideals; develop behavior, based on a sense of loyalty and pride in the customs service.

Obtaining Information and Investigation: give managers the prime responsibility for identifying weaknesses in working methods and in the integrity of the staff; set up internal audit mechanisms; conduct regular external audits; set up an internal affairs unit with the specific task of investigating all cases of suspected malpractice, in complement to internal audit; allocate examinations of customs officers randomly; take measures to allow feedback from private operators; follow the employees' assets, by organizing disclosure.

Human Resource Management: adopt an objective recruitment process, immune from interference, based on knowledge and standards of personal ethics; adopt an objective promotion process, immune from interference, merit-based and jeopardized by inappropriate behavior; relocate regularly the staff; provide professional training to customs officers throughout their careers, including on ethics and integrity issues. provide a remuneration sufficient to afford a decent standard of living, including, in certain circumstances social benefits such as the health care and housing facilities; set up incentive payments.

Relations with Customs Brokers and the Business Community: facilitate access of private operators to information on regulations and procedures; organize liaison committees with the business community; make appealing against customs decisions, with, in the final instance, recourse to independent adjudication, possible.

In addition, all three study papers link the reduction of corruption with broader policy measures, at the national level. Import tariffs should be reduced where possible and the number of rates limited. Administrative regulation of trade should be reduced to an absolute minimum and exemptions to the standard rules should be as few as possible. Additionally, the customs administration should enjoy sufficient autonomy and should notably be insulated from the interference of politicians, whose influence should be limited to definition of the customs mandate. It is important to outline these elements of remedial action, answering to a diagnosis of organizational defects and those characteristics of the broader environment that are conducive to widespread corruption, but much additional information and guidance is required to set up a full-fledged strategy.

The Arusha Declaration and the IMF Paper identify several essential conditions for successful reform. Both stress the importance of “a firm commitment at the highest political and administrative levels” (Arusha Declaration) or in the terms of the IMF Paper “a clear and unequivocal commitment from the Government”. The IMF paper goes further and points out three supplementary conditions: an atmosphere where importers and exporters will come forward and discuss the decisions that are being made and the existence of an independent judiciary and a free press.
Analysis of the Macedonian customs operating environment complements these assertions. In the light of the identified problems and risk factors of corruption there are several activities and measures (Recognized by the State programme for prevention and reduction of corruption and conflict of interests 2011-2015, State Commission for Preventing Corruption) to be taken:

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 the 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 the 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 for 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.

6. CONCLUSION

Customs plays a central role in every international trade transaction and is often the first window through which the world views a country. The implications of corruption in customs on a nation's capacity to benefit from the expansion of the global economy are obvious. The employees of the Customs Administration are obliged to respect and enforce legal regulations and bylaws responsibly and
professionally. Only with professional and ethical treatment the integrity of the customs officials will be strengthened.

Analysis of the Macedonian customs throws up three key conclusions. The first is the need to recognize the main forms of corruption. They are:
- routine corruption, in which private operators pay bribes to obtain a normal or hastened completion of customs operations;
- fraudulent corruption, in which the trader or agent seeks “blind eye” or active, collusive customs treatment in order to reduce fiscal obligations or enlarge external earnings;
- criminal corruption, in which criminal operators pay bribes to permit a totally illegal, lucrative operation (drug trafficking).

The second highlights the need to identify those points in the customs process that afford special opportunities for customs to seek irregular payments and for traders and agents to offer them.

Customs legislation should be clear and precise. Import tariffs should be moderated where possible. The number of duty rates should be limited. Administrative regulation of trade should be reduced to the absolute minimum and there should be as few exemptions to the standard rules as possible. Customs procedures should be simple and consistent. Automation is a powerful tool against corruption, and its utilization should have priority. This is of utmost importance in the international trade environment today and the benefits of a proper system far outweigh the cost of development and installation.

Finally, the analyses of the Macedonian customs underlined several activities and measures to prevent corruption:
- 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;
- Implementing a system for corruption risk assessment in the customs services, with measures to strengthen the individual and institutional integrity;
- Introducing a more efficient system for communication with the public.

Macedonian Customs is constantly taking measures and corruption reduction activities, but the corruption is still present. Corruption discredits Macedonian Customs and destructively affects its overall operations, which in turn leads to a reduction in public confidence.
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MENS REA IN THE CASE - LAW OF INTERNATIONAL CRIMINAL COURTS

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Abstract
The present study aims to analyze, from a jurisprudential perspective, the controversy over the possible forms of subjective adherence to an international crime.
In the absence of explicit provisions, the Ad Hoc International Criminal Tribunals, analyzing the provisions of the civil and common law systems, have attempted to draft a regulation of the mental element of international crimes. Their effort materialized in the delimitation of several forms of guilt, accepted as being capable of attracting international criminal liability, namely dolus directus and dolus eventualis.
The International Criminal Court has taken a firm stance on this issue and adopted, for the first time at an international level, a rule defining the mental element. When interpreting the provisions of Article 30 of the Statute of the International Criminal Court, according to which the material element of international crimes must be committed with “intent and knowledge”, we would be tempted to affirm that this regulation removes dolus eventualis as a form of guilt. This approach, although in total disagreement with the case-law of the Ad Hoc Criminal Tribunals, seems to be universally accepted by the practice of the International Criminal Court.

Key words: International Criminal Court, guilt, mental element, dolus directus, dolus eventualis

1. INTRODUCTION
In the practice of the International Criminal Tribunals, there is no unitary point of view as regards the forms of guilt which may be included within the content of international offenses. The process of identifying a theory concerning the subjective element applicable in an international context has often been sabotaged by the specificity of international crimes, which have a structural connotation of their own, the plurality of subjects being typical of them. In the case of collective offenses, we are witnessing a division of the common will, and so, mainly, one has tried to find solutions that might cover the collective dimension of the criminal act. The effort materialized itself in the transposition of national theoretical concepts, specific to civil law and common law systems, into international law. The effort was sustained, given the linguistic differences existing between the two systems of law.
and, on the other hand, the difficulty of adapting a national concept to an
international context.

In the case of the Ad Hoc International Criminal Tribunals, in the absence
of explicit provisions contained in their Statute, the task of detecting the forms of
guilt which can lead to international criminal liability has been passed to the courts.
Although the Statutes allowed the judges to have a certain margin of appreciation of
the rules, they created new rules through their own law-making mechanisms,
“weighing the multiple values at stake” (Bolognari 2016, 334).

Thus, four forms of guilt have been identified as possible, namely direct
intent, indirect intent, and, by way of exception, guilt with foresight and
recklessness.

Recklessness is a form of guilt specific to the common law system, which
lies between dolus eventualis and conscious fault. Also, the doctrine and judicial
practice, embracing the civil law model, have delimited two forms of direct intent,
namely first-degree direct intent and second degree direct intent. Referring to the
forms of direct intent, the specialized literature (Van der Vyver 2005, 62-63) offers
a terminological alternative, namely dolus directus and dolus indirectus.

The dolus indirectus form, as a terminological variant of the second-degree
direct intent, is very rarely used due to the confusion that might appear with the
term dolus eventualis, which in the civil law system was also given the
denomination of indirect intent (dolus indirectus).

The first degree direct intention is found in the case where the perpetrator
intends to cause the consequence provided for in the rule of incrimination, while in
the case of the second degree intent, the result of the deed is the inevitable
consequence of the way and means of committing the offense, for instance in the
situation of bombarding an edifice which shelters several members of a community,
with the inevitable consequence of the death of some of them.

In another classification (Werle 2009, 142), the possible forms of guilt are:
general intent, specific intent, direct intent and indirect intent.

The general intent is the one that meets the conditions of occurrence for
direct and indirect intent.

The specific intent is a form of direct intent characterized by the provision
in the rule of incrimination of a particular purpose pursued by the perpetrator of the
offense. For example, in the case of genocide, the purpose of the offense was
included as an element of specificity, the act being committed with the intention of
destroying, in whole or in part, a national, ethnic, racial or religious group or, in the
case of a crime of persecution of a group, for political, racial, national, ethnic,
cultural, religious or sexual reasons.

The Statute of the International Criminal Court, unlike the Statutes of the
Ad Hoc Tribunals, explicitly sets out the necessary conditions for the mental
element. Its regulation is meant to remove the difficulties encountered in the practice of the international criminal tribunals regarding the transposition of national concepts into international law.

The Statute of the International Criminal Court regulates in its Article 30 the general mental element of all the crimes falling within the jurisdiction of the Court, stating that “Unless otherwise provided, a person shall be criminally responsible and liable for punishment for a crime within the jurisdiction of the Court only if the material elements are committed with intent and knowledge”. At Article 30 point (2) \(^{18}\) (Rome Statute), the Statute defines these two elements, namely intent and knowledge. The Statute, therefore, envisages two different hypotheses: in a first hypothesis, the offender adopts a particular conduct knowing that it will cause a certain consequence, and in the second hypothesis, the perpetrator adopts a particular conduct being perfectly aware that, given the normal course of events, will cause a certain consequence.

By including the two elements within the definition of the mental element, the doctrine was tempted to believe that the regulation is intended to exclude from the sphere of international criminal offenses the deed committed with indirect intent, all the more so as the theory of the division of the direct intent into first-degree direct intent and second-degree direct intent has taken shape also in the practice of Ad Hoc Tribunals.

In spite of divergent opinions from the specialized literature, the case-law of the Criminal Court, as we will analyze in chapter III herebelow, has understood to interpret the provisions of Article 30 of the Statute in the sense of excluding the indirect intent as a form of guilt capable of entailing criminal liability.

2. **MENS REA IN THE CASE - LAW OF AD HOC CRIMINAL TRIBUNALS**

The lack of regulation of the mental element in the Statutes of Ad Hoc Tribunals, as well as the absence of customary norms defining guilt in international law, generated to the issue of adapting domestic rules to international law. The multitude of sources and references, as well as the linguistic differences between the two systems of law, led to divergent views within both doctrine and case-law. The forms of guilt that were considered as possible included also *dolus eventualis*, conscious fault and recklessness, a form of guilt specific to the *common law* system, considered as a hybrid between *dolus eventualis* and conscious fault. By reducing

\(^{18}\) Article 30 point (2) of the Rome Statute: “For the purposes of this article, a person has intent where: (a) In relation to conduct, that person means to engage in the conduct; (b) In relation to a consequence, that person means to cause that consequence or is aware that it will occur in the ordinary course of events”.

124
the standard of proof, the *Ad Hoc* Criminal Tribunals have thus allowed the accountability for hard to detect facts in the case of mass crimes.

The *Ad Hoc* Criminal Tribunals have encountered difficulties in assessing the form of guilt in the case of superiors, oscillating between *dolus eventualis* and fault. The criterion set by them in relation to *command responsibility* was that of “should have known”. As a consequence, the *Ad Hoc* Criminal Tribunals have considered the role people had in the battle strategy and political and military structure as a sufficient element to demonstrate the guilt of superiors.

In the Blaškic case, the Criminal Tribunal for the former Yugoslavia, when analyzing knowledge as an element of the superior’s liability for the acts committed by their subordinates, considered that the form of guilt necessary for accountability was negligence. If ignorance is the consequence of negligence in the performance of one’s duties, this does not exonerate the person from criminal liability, as long as the latter “had reason to know” (ICTY, Blaškic 2000, 332) but has breached the duty of diligence imposed by the nature of their position. Negligence is therefore considered to be a possible form of guilt in the case of the superior who has the duty to defeat the violation of the law, but ignores his obligation to be informed and to know the actions of his subordinates. A minimum of diligence on his part would have allowed him to know the possible consequences of the actions of his subordinates.

The same arguments have been put forward in the Kayishema case (ICTR, Kayishema 1999, 492), namely that the actions or omissions of the *de facto* superior may entail their individual criminal liability for the acts of their subordinates. Consequently, the influence or authority that the superior can exercise upon the subordinates and, implicitly, the lack of their intervention may constitute a sufficient reason for entailing criminal liability. In the Court’s opinion, in the absence of a concrete intervention, he tacitly accepted the commission of the offense.

Two hypotheses are thus distinguished. A first hypothesis is that of the superior who, knowing the actions of his subordinates did not take the necessary measures to prevent the outcome of their actions. The tacit acceptance of their deeds is circumscribed to the *dolus eventualis*.

In the second hypothesis, the lack of intervention of the superior is due to the lack of knowledge concerning the events, namely the negligence in fulfilling the duty of service of being informed about the activities of the subordinates. In this case, the perpetrator has, by fault, a conduct that is contrary to the duty of diligence. Guilt is attributed to him for the non-observance by fault of the duty of diligence, the standard in this case being “had reason to know”.

125
Another issue intensely discussed in the case law of the Ad Hoc Criminal Tribunals was the identification of the cognitive-representative element of guilt, when the rule of incrimination mandatorily requires such an element.

By interpreting the provisions of Article 30 of the Statute of the International Criminal Court, the result of the deed appears as an almost certain consequence, inevitable in the normal course of events. On the other hand, in the case of the Ad Hoc Criminal Tribunals, the perpetrator’s liability was also attributed when the result of the deed “was a natural and foreseeable consequence” of some collective actions, actions that the perpetrator had become aware of. Through this interpretation, the Ad Hoc Criminal Tribunals do not exclude from the sphere of guilt the mere likelihood of producing the result, namely the indirect intent and fault as possible forms of guilt. We consider that, through this interpretation, the Ad Hoc Criminal Tribunals have understood to apply the criterion “had reason to know” also when they analyzed the cognitive-representative element of guilt.

In the Tadić case, the Criminal Tribunal for the former Yugoslavia states that, in case the element of knowledge is required by the rule of incrimination, “it can be inferred from the circumstances”. The same tribunal shows that it is sufficient for the perpetrator to know the existence of an aggression against the civilian population and the fact that his action supports the collective action, without being necessary “to have a concrete idea of the consequences of the deed” (ICTY, Tadić 1997, 657).

In this case, the form of guilt is dolus eventualis or recklessness. By admitting that these forms of guilt are possible, the Ad Hoc Tribunals admit that the cognitive-representative element, knowledge, can be deduced from objective factual circumstances. The Chamber of Appeal in the Tadić case explicitly states that in the case of a collective action, even if the co-authors did not envisage the same result, “what is required is a state of mind in which a person, although he did not intend to bring about a certain result, was aware that the actions of the group were most likely to lead to that result but nevertheless willingly took that risk” (ICTY, Tadić 1999, 220).

In the absence of explicit regulation, the Ad Hoc Criminal Tribunals have understood that it is appropriate to assess the form of guilt on a case-by-case basis, proposing a “fair” solution for a particular offense committed in a particular social context (Signorato 2017, 418).

Thus, in the Tadić case, the Criminal Tribunal for the former Yugoslavia, when analyzing the mental element, considered that the form of guilt in the case of crimes against humanity can only be direct intent. The actions in the case of these crimes must be committed during an armed conflict. The condition of the existence of an armed conflict appears to be insufficient in the Court’s view, the latter considering that the “actual or constructive” knowledge of the fact that the action
would fulfil a widespread and systematic attack against the civilian population is also necessary (ICTY, Tadić 1997, 659). It is the precise knowledge of the context which qualifies the inhuman act as a crime against humanity. The decision to act in the context of a general aggression, namely the intention to harm not just one person, but a mass of people, denotes the awareness of the consequences of their actions. The same Court considers it necessary for all crimes against humanity to fulfil a further condition, namely the discriminatory intent, despite the fact that the Statute requires this condition only in the case of the offense of persecution on grounds of political, racial or religious affiliation, motivating that the attack, although it must be directed against the civilian population, in genere, is directed only against a part of the civilian population, in this case against the non-Serb population, namely Muslims and Bosnian Croats (ICTY, Tadić 1997, 652).

3. MENS REA IN THE CASE - LAW OF THE INTERNATIONAL CRIMINAL COURT

The regulation of the mental element in the Statute of the Criminal Court was perceived as being capable of removing the divergences of opinion expressed in the case law of the Ad Hoc Criminal Tribunals which, in the absence of express provisions in the Statute, interpreted in a personal manner the necessary conditions for the existence of the mental element of international crimes.

Initially, the provisions of Article 30 of the Statute were interpreted in the specialized literature as being restrictive, in the sense of excluding the indirect intent as a possible form of guilt.

Subsequently, however, there have been voices (Finnin 2012, 340) which revealed that, in the Elements of Crimes, more precisely in the Introduction, two forms of guilt, namely the direct intent and the indirect intent, are enunciated as being possible. Point 2 of the Introduction states that, unless otherwise provided in the Elements of Crimes, i.e. a mental element specific to a particular conduct, the interpretation of the provisions of Article 30 of the Statute “shows that the necessary mental element is intent or knowledge or both”\(^{19}\).

In another opinion (Badar 2008, 475) expressed in the specialized literature, it is appreciated that the moral element is different for each offense and must be interpreted in relation to the material elements of the offense under consideration. According to the same author, the material elements of the offense are provided in Article 30 para.(2) and (3), as the conduct, the consequence and the circumstance.

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\(^{19}\) “Where no reference is made in the Elements of Crimes to a mental element for any particular conduct, consequence or circumstance listed, it is understood that the relevant mental element, i.e., intent, knowledge or both, set out in article 30 applies”.

127
Only the element - consequence requires both moral elements: intent and knowledge (Badar 2008, 477).

Conflicting opinions were also recorded by the members of the Rome Statute drafting Commission. When analyzing the three material elements, they did not reach a consensus that if a crime were to be retained, it would be necessary “to combine the various material elements with both mental elements” or to interpret the material element as “a global action to which a single moral element would be attached: intent or knowledge” (Clark 2001, 302).

This theoretical hypothesis does not seem to rejoice much support in the practice of the courts, as the case law of the International Criminal Court, in the case of the crimes analyzed, calls for – without exception - both moral elements, namely intent and knowledge, which, moreover, are analyzed as a whole. The practice of the International Criminal Court has adopted the theory of the restrictive interpretation of the provisions of Article 30 of the Statute, according to which the perpetrator has to foresee the result of his deed, to pursue it, sense in which he adopts a certain conduct or, although he does not pursue it, he is aware that the result would happen due to the normal course of events.

In the Banda case (ICC, Banda 2011, 106) the International Criminal Court considers that attempting to kill civilians who are not directly involved in hostilities “is an act that brings together all the mental elements, but not all the objective elements of the crime”. The need to reunite both mental elements is stated in the same case with reference to the offense provided in Article 8 point (2) letter (e) (iii) of the Statute. The Court holds in the case of this offense committed with specific intent, it must be established that the perpetrator intended personnel, installations, material, units or vehicles involved in a peacekeeping mission in accordance with the Charter of the UN to be the object of the attack; and that the perpetrator was aware of the factual circumstances that established the protection given to civilians or civilian objects under the international law of armed conflict (ICC, Banda 2011, 65).

Similarly, in the Bemba case, the International Criminal Court emphasizes the need, unless otherwise stated, to apply the provisions of Article 30 of the Statute. Thus, the Court, analyzing the mens rea element in the case of rape, ascertaining the absence of any contrary provisions, considers that the elements provided by Article 30, respectively intent and knowledge, apply. As to the requirement of “intent”, it must be proven that the perpetrator intentionally committed the act of rape. Intent will be established where it is proven that the perpetrator meant to engage in the conduct in order for the penetration to take place. As to the requirement of “knowledge”, it must be proven that the perpetrator was “aware that the act was committed by force, by the threat of force or coercion, by
taking advantage of a coercive environment, or against a person incapable of giving genuine consent” (ICC, Bemba 2016, 112).

In addition, the Court explicitly expressed in its case law the recognition of the direct intent, under both its modalities, as the only form of guilt likely to entail international criminal liability.

In the Bemba case, the International Criminal Court mentions the impossibility of retaining any other form of guilt, such as *dolus eventualis*, recklessness, or any other form of culpability, except for direct, first degree or second degree intent. The Chamber considers that, by way of a literal interpretation, the words “will occur”, read together with the phrase “in the ordinary course of events”, clearly indicate that the required standard of occurrence is close to certainty. In this regard, the Chamber defines this standard as “virtual certainty” or “practical certainty”, namely that the consequence will follow, barring an unforeseen or unexpected intervention that prevent its occurrence. Therefore, the interpretation does not accommodate a lower standard than the one required by *dolus directus* in the second degree (ICC, Bemba 2009, 360-364). The Court adopted the same position in the Lubanga case (ICC, Lubanga 2012, 1275), motivating the existence of the mental element by the fact that the accused “established the circumstances that led to the recruitment of children under 15 in the ordinary course of events, and knew this would occur, or was aware there was a substantial likelihood that the crimes would occur.” Even though the Court did not explicitly express itself in all cases as regards the exclusion of indirect intent as a possible form of guilt, by using the phrase “a substantial likelihood” in assessing the degree of production of the outcome, it merely circumscribes the scope of the possible forms of guilt, since only in the case of indirect intent the result is a mere eventuality.

We note that the terms of general intent and specific intent were not included in the Rome Statute. Professor Roger S. Clark, as a member of the Statute drafting Committee, confirms in his paper that this issue had been addressed, but, after long debates, the drafters decided not to include them in the Statute, as “their use is not very helpful” (Clark 2001, 302). The specific or qualified intent is a form of direct intent, and the enumeration of all secondary forms of guilt would be superfluous.

The case law of the Criminal Court also holds, in the Ahmad Al Mahdi case (ICC, Faqi al Mahdi 2016, 12) the specific intent as form of guilt in the crime of intentionally directing attacks against buildings dedicated to religion, education, art, science or charitable purposes, historic monuments. The criminal court indicates this form of guilt, despite the fact that the content of the rule of incrimination does not include a special purpose, corroborating the material elements of the offense, namely the conduct and the consequences of the deed, with the mental element.
Despite the fact that the Statute did not provide as purpose of the deed of destruction of religious monuments the religious discrimination, the court held this aspect as being the purpose of the voluntary destruction of the 10 mausoleums and mosques, monuments of religious and historical character in the city of Tombouctou. These monuments were an integral part of the religious life of the Islamic population, and the deliberate attack on them was qualified by the International Criminal Court as a clear insult to its fundamental values.

Like in the case of Ad Hoc Criminal Tribunals, the practice of case-by-case analysis of the mental element was taken over by the International Criminal Court as well. The Court held that certain offenses, due to the circumstances of the deed and the purpose pursued, can only be committed with a direct, first-degree intent.

Thus, in the Bahar Idriss Abu Garda case (ICC, Abu Garda 2010, 93), with the reasoning being reiterated in the Katanga and Ngudjolo case, it is shown that, in the case of a war crime in the form of an attack against civilians who are not actively participating in hostilities or the civilian population, the only possible form of guilt is “direct first-degree intent”.

4. CONCLUSION

Analyzing the efforts of the Ad Hoc Criminal Tribunals to transpose the national theoretical concepts into an external and collective context, it seems that they have failed to find their matrix in the international law order. The somewhat natural process of development of the international criminal liability, given the relatively rich practice of the Ad Hoc Criminal Tribunals, led the legislator of the International Criminal Court Statute to take a firm stance regarding this issue and to adopt, for the first time at an international level, a rule which defines the mental element. Beyond the existing criticisms, the practice of the International Criminal Court is faithful to a strict interpretation of the provisions of the Statute, in the sense of accepting only one form of guilt, namely the direct intent, in its specific modalities, obviously. If in the practice of the Ad Hoc Tribunals, the “have reason to know” criterion has become a standard criterion for proving the mental element knowledge, the International Criminal Court excludes the possibility of interpreting knowledge as implicit or constructive. The definition of the crime itself “requires a positive and current knowledge of the relevant circumstances” (Finnin 2012, 350).

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As regards the decisions of the International Criminal Courts, I have consulted their French version.
LAW REGULATION FOR ELECTRONIC TRADE IN THE REPUBLIC OF MACEDONIA AS AN INSTRUMENT FOR FUTURE ECONOMIC DEVELOPMENT

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Abstract
The aim of this paper is to analyze the legal regulation for Electronic trade, e-trade in the Republic of Macedonia, expressed by the Law on Electronic trade in the Republic of Macedonia, which regulates and enables this activity, which is used and has been very popular in the Republic of Macedonia, on the other side in the world it is already a trend that has appeared a decade ago. Certain conditions which have to be fulfilled by an ordinary trade entity are not required for e-trade entities in terms of minimum technical conditions and standards for space, a larger number of employees and fiscal equipment.

E-trade is a process of buying, transferring, or exchanging products, services or information through computer networks, including the Internet. It takes a big swing in exchange of different stakeholders, but it still distrusts them. Managing e-trade security is a multifaceted challenge and requires the coordination of business policy and appropriate technology. In order to gain consumer confidence, the owner of the e-business should facilitate the protection of personal data of its consumers. The success of e-trade depends primarily on protecting the owner's own servers from various unwanted programs and malicious codes and computer attacks. This way of trading should be used, with its good and bad sides, but legal regulation must be transformed and adapted in accordance with the recent development of technology, so it can follow that modern trend.

Key words: e-trade; legal regulation; contracts in electronic form; services of informatics society; commercial communication
1. INTRODUCTION

Electronic trade is a process of buying, transferring, or exchanging products, services, or information through computer networks, including the Internet. The electronic, i.e. Internet trade worldwide, has its own phenomenon in the middle of 90s if 20th century, and its real development is in the beginning of the 21st century. This phenomenon is interdisciplinary and may and should be considered from various aspects. From an Information Technology point of view, the success of e-trade depends primarily on protecting the owner's own servers from various unwanted programs and malicious codes. Security computing solutions, such as hardware, and of course software, can partially, but not fully protect e-trade, and that's a very important chain throughout the process. From a legal point of view, the regulation is important in this area. In the Republic of Macedonia in 2007 the Law on Electronic trade was adopted as the first in this area, which means that besides other field, also from the legal point of view the modern trends affecting the social life are followed. Law frame is expressed also with other laws which are related to this issue. [4,5,6,7,8,9] Legislation does not pose a problem for the establishment and entry into operation of a commercial entity, as it does not contain specific requirements and conditions for performing such activity. Even certain conditions to be met by an offline or “regular” store are not required for the online store such as: minimum technical conditions and space standards, bigger number of employees and fiscal equipment. Compulsory extension and explanation of the rules and policies for privacy, delivery and refund of funds that guarantee the safety of consumers is intended for the financial entities through which payment is made in this way of trade. [1, 2, 3]

This paper will provide an analysis of the provisions of the Law on Electronic Trade as a very important instrument for the legal regulation of this segment in the Macedonian society.

2. BASIC OBJECTIVES, SUBJECT AND APPLICATION OF THE LAW ON ELECTRONIC TRADE

The legal regulation for e-trade in the Republic of Macedonia is expressed through the Law on Electronic trade [4, 10, 11, 12, 13], which was adopted in 2007, and was amended in 2011 and 2015. This law is structurally divided into 9 chapters:

I. GENERAL PROVISIONS
   I-a FREEDOM TO PROVIDE INFORMATION SOCIETY SERVICES
II. INFORMATION AND COMMERCIAL COMMUNICATION
III. CONTRACTS CONCLUDED BY ELECTRONIC MODE
IV. RESPONSIBILITY OF THE RECIPIENT AND THE PROVIDER OF INFORMATION SOCIETY SERVICES
   IV-a COOPERATION AND CODE OF GOOD PRACTICE
V. SUPERVISION AND INSPECTION SUPERVISION

VI. TORT PROVISIONS AND EXTRACOURT RESOLUTION OF DISPUTES - ARBITRATION

VII. TRANSITION AND FINAL PROVISION

The Law regulates services of an information society related to e-trade, responsibilities of information society service providers, commercial communication, and rules regarding the conclusion of contracts in electronic form.

The provisions of this Law shall not apply to:

• Taxation;
• Protection of personal data;
• Notary activity or similar professions which are involving a direct and special relationship between the user and the appropriate competent authority of the state administration;
• Advocating a user and defending his interests in court and
• Lucky games with monetary investments, including lotteries and betting transactions in accordance with the provisions of the regulations governing this area.

The provisions of this law shall not apply in the following areas:

• Copyright and related rights and industrial property rights,
• Emission of electronic money;
• Activities of insurance companies;
• The freedom of the parties to choose the law of the state that will apply to their contract;
• Contractual obligations regarding consumer contracts;
• The validity of contracts for the creation or transfer of real estate rights; and
• The eligibility of unsolicited commercial communication via e-mail.

In the Law on Electronic trade certain terms significant for this area are defined:

1. Information society services shall mean services provided for remuneration via distance, by electronic means and by the personal request of the recipient of the service. "Via distance" means that the service is provided without simultaneous presence on both sides. "Via electronic means" means that the service is sent from the source to the source point and is received at the final destination via electronic processing equipment (including digital compression) and data storage, and is sent, transferred and received in full by cable, radio waves, optical means or other electromagnetic means.
Information society services contain in particular the sale of products and services, services for accessing information or advertisements over the Internet and access to public communications network services, data transmission or storage of recipient's data in the public communications network;

2. "Service Provider" is a domestic and foreign individual or legal person providing information society services, and "Service recipient" means any individual or legal person which, for professional or other reasons, uses information society services in order to ask for information or make it available; and "Consumer" means any physical person which uses information society services for purposes outside its trade activity or profession;

3. "Electronic signature" means a series of data in electronic form that are contained or logically related to other data in electronic form and is intended for determining the authenticity of the data and for establishing the identity of the signatory;

4. "Commercial communication" means a form of communication designed to promote, directly or indirectly, products, services or reputation of the trade company or of a person which performs a trade or craft activity;

5. "Contracts in electronic form" are contracts that the legal entities or individuals, in whole or in part, conclude, send, receive, terminate, cancel, accede to and display electronically, using electronic, optical or similar means, including, but not limited to Internet transmission;

6. "Coordinated area" means the requirements determined in the legal system of EU Member States relating to information society service providers or information society services, whether they are of a general nature or specially designed for them

2.1. Freedom to provide information society services

The information society service provider in the Republic of Macedonia is obliged to act and provide services in accordance with the laws and other regulations of the Republic of Macedonia. The provision of information society services does not require a special permit, approval or concession. Regarding the restriction of the provision of information society services, the legal provisions regulate that at the request of individual or legal person whose rights are violated by a certain information society service, the Ministry of Economy, the Ministry competent for matters in the field of electronic communications, that is, the Ministry of Transport and Communications, the Agency for Electronic Communications-AEC, as competent authorities, or the court when it should take measures for limiting the freedom of providing information society services, to service providers which cause or may cause damage if measures are needed because of:
• Public interest, in particular protection, research, detection of criminal offenses and initiating proceedings, including the protection of kids and the fight against any kind of incitement to hatred based on race, gender, religion or nationality, and violations of human dignity about individuals;
• Protection of public health, public security, including the protection of national security and defense; and
• Consumer protection, including investors.

Information society services provided by a provider established in a Member State of the European Union-EU shall not be limited for reasons that are situated within the coordinated area, unless otherwise is specified. The provisions of the Law are in accordance with EU legislation in this sphere, and it contains appropriate provisions for limiting the provision of information society services to entities registered in EU Member States, but in the transitional and final provisions of the Law, it is stated that these provisions will apply in legal force after the accession of the Republic of Macedonia to the EU. These provisions also state that measures restricting the freedom to provide information society services should be abolished immediately after the cessation of the existence of the cause for which it was undertaken, on the basis of a request from the individual or legal person whose rights are violated, with the request of the European Commission.

2.2. Informing and commercial communication

The information society service provider to the recipient of services and the competent bodies of the state administration in the Republic of Macedonia it is obliged to make easily, directly and permanently accessible at least the following information:

• Name, firm of the service provider;
• The seat of the legal entity, or address if it is a natural person;
• Data for the service provider on the basis of which the recipient of the service can contact it in a direct and effective manner, including the electronic address;
• The trade register in which the provider of services is entered and the number of its registration or the equivalent means of identification;
• Data from the competent authority, if the service provider is subject to an obligation to issue licenses or other type of approvals; and
• Tax number of the service provider.

In addition of these informations, the service provider shall be obliged to make available information about:

• Data for the institution where the service provider is registered;
• The professional title and the country in which that title is acquired;
• Reference to the professional rules in the country in which the activity is
performed and the manner of access to them.

If the service provider lists the prices of the products and services because of its business policy, this should be made clear and unambiguous, particular whether costs of delivery, taxes and manipulation costs that affect the stated price are included.

2.2.1. Commercial communication and unsolicited commercial communication

The service provider is obliged to ensure that the data from the commercial communication that is the part of the information society services are in accordance with at least the following conditions:

• Possibility for clear identification at the moment when the user receives it;
• A clear determination of the individual or legal person in whose name the commercial communication is done; and
• Any promotional offer from commercial communication, including discounts and gifts, with regard to the conditions which should be met for the purpose of offering such a bid and its clear and unambiguous presentation.

The use of electronic mail for the purpose of delivering unsolicited commercial communication is allowed only with the prior acceptance by the user to whom this type of communication has been addressed.

2.3. Contracts concluded via electronically mode

The contracts can be concluded via electronically mode or electronically form. The offer and its acceptance can also be made in an electronic form. When a person's signature is required for validity and conclusion of the contract, that condition will be considered as fulfilled by an electronic message signed with an electronic signature. Such provisions aren’t apply to contracts regulated by provisions for:

• Family and inheritance that create or transfer rights to real estate, with the exception of lease rights;
• For whom according to the law there is a need for involvement of courts, notaries or other similar professions;
• For a given garancy for additional security by persons acting for purposes outside their trade, work or professional engagement.

The recipient of the service when make an order via electronically mode is obliged to ask the service provider to submit a receipt for the acceptance of the order to the recipient with a special electronic message without delay and via
electronically mode.

The service provider is make available to the recipient, appropriate, efficient and accessible technical means that enable him to identify and correct the incorrectly entered data before making the order, unless in the case when parties that are not consumers are otherwise agreed. The order and the certification of receipt are considered received when they are available to parties to which they are addressed. The contract in electronic form is deemed to be concluded at the moment when the provider receives an electronic message containing a statement from the recipient that accepts the content of the contract. The offer and acceptance of the offer are deemed to have been received when they are available to the parties to which they are addressed.

2.3.1. Information which should be provided for the conclusion of contracts and subsidiary application

Regarding subsidiarity, in the Law itself it is envisaged that if it is not otherwise determined, on the contractual-legal relations that arise or are related to contracts concluded electronically or in an electronic form, the provisions of the Law on Obligatory Relations-LOR, which means that LOR is lex generalis, and the Law on Electronic Trade is lex specialis.

The information society service provider is obliged to provide the recipient of services with the following information before a contract is concluded in a clear and understandable way:

• Different technical procedures to be followed to conclude a contract;
• Contents of the contract;
• General operating conditions if they are an integral part of the contract;
• Whether for the concluded contract, service provider will archived it, and whether it will be available;
• Technical means for identifying and correcting incorrectly entered data before ordering;
• The languages offered for concluding the contract.

The provider should enter all relevant codes of good practice and information on how codes can be used electronically.
2.4. Responsibility and obligation of the recipient and information society service provider

When information society services are provided, and when its consist of the transmission of information provided by the recipient of services through a communication network or by providing access to the communications network, the service provider is not responsible for the information transmitted, in condition provider:
• Not to initiate the transfer;
• Not to select the recipient of the transmission and
• Not to choose or not to change the information contained in the transmission.

The transmission itself and the provision of access include automatic, intermediate and transitional storage of the transmitted information if this is done for the sole purpose of carrying out transmission over a communication network and when the information is not stored longer than is necessary to transmit it.

2.4.1. Automatic, intermediary and temporary storage and links

The service provider when providing information society services consisting of the transmission of information provided by the recipient of the services through the communication network, is not responsible for the automatic, intermediate and temporary storage of that information, performed with the sole aim for more efficient further transfer of information to other recipients of the services, at its request, with condition that the provider:
• Does not change the information;
• Meets the requirements for access to information;
• Respects the rules regarding the updating of the information;
• Does not interfere with the legal use of technology which is used in order to obtain data on the use of information and
• Acts quickly to remove or disable access to the information it has stored after it finds out that the information in its original source of transmission has been removed from the network or the access was denied to it, or that a court or other competent authority has ordered that removal or disabling.

The Information Society Service Provider, which stores the data provided by the recipient of the service, is not responsible for the content of the data stored at the request of the recipient of the services, in condition that:
• The provider does not know about the illegal activity or data;
• Not being aware of facts or circumstances under which the illegal activity or data was noticed or
• The provider, as soon as it finds out, to act promptly in order to remove or disable access to data.
The service provider which, by electronic means, opens up access to other data is not responsible for that information if:
• There was no knowledge nor could know about the illegal activities of the recipient of the service or the content of the data in that information and
• as soon as it finds out that it is illegal activity or data to remove or disable access to them.

In certain justified cases, courts and other competent authorities and institutions in the Republic of Macedonia, in accordance with the laws of the Republic of Macedonia, upon the request of the authorized persons, instruct providers of information society services and their recipients to remove and prevent the violation of the positive regulations and on the basis of it to take other measures in accordance with law.

2.4.2. Obligations of an information society service provider

The service provider when providing information society services is not obliged to check data that he has stored, transmitted or made available, that, to examine circumstances referring to the illegal activities of the recipient of the services. He is obliged to inform the competent bodies of the state administration if he determines that:
• There is reasonable suspicion that the recipient of the service when using its services undertakes illegal activities and
• There is a reasonable suspicion that the recipient of its services will give unauthorized data.

The information society service provider is obliged, as soon as possible, to submit to the competent state administration bodies at their request, information that enables the identification of the recipients of services with which they have storage contracts.

2.5. Cooperation and Code of Good Practice

The competent authorities perform the function of the point of contact, the function of international cooperation and information and the activity of encouragement and advisory activities. They establish one or more contact points and submit contact details to an EU Member State, as well as to the European Commission. The contact point should be continuously available in electronic form and provide providers and information society services recipients to obtain general information for contractual rights and obligations, as well as on mechanisms of complaint and compensation which are available in case of disputes including and the practical aspects involved in the use of those mechanisms, to get data for the authorities. The competent authorities initiate to the state administration to develop
a code of good practice for trade, professional and user associations or organizations, to develop a code of good practice regarding the protection of juveniles, protection of the rights of persons with special needs and protection of human dignity, ensuring the availability of these codes of good practice via electronically mode in accordance with the regulations that determine the right of access to information. The competent authorities shall notify the European Commission of any significant administrative or judicial decisions regarding service-disputes and information society practices, using the e-trade habits.

2.6. Supervision and inspection supervision

Supervision over the implementation of this law is performed by the Ministry of Economy, the Ministry competent for affairs in the field of electronic communications, that is, the Ministry of Transport and Communications, AEC, in accordance with their competences determined by law.

Inspection supervision over the implementation of this law for certain provisions is carried out by AEC, and for certain provisions such supervision is carried out by the State Market Inspectorate.

In the process of the inspection, service providers are obliged to allow the inspectors access to electronic equipment and devices and without delay provide the necessary data and documentation regarding the subject of the inspection, and the inspection bodies make quarterly reports for the supervision itself.

2.7. Tort provisions and extracourt resolution of disputes – arbitration

The tort procedure is conducted for the determined violations determined by the law, by the competent court, and it pronounces a tort sanction. The amount of fines varies in the amount of 4000-5000 € in mkd denars counter-value, for a tort to the legal entity, and for a sole proprietor of services, and 400-750 € for the individual person providing information society services. The information society service provider and the recipient of services for resolving mutual disputes may agree on the competence of arbitration. Regulations concerning these areas are apply to an Arbitration or other authority for the extra-court resolution of disputes.
3. CONCLUSION

On the basis of everything analyzed above, it can be concluded that:

1. The essence of e-trade is based on the use of the Internet as a means through which the buyer and the seller communicate and conclude the purchase contract, and the ordering and payment of the products and services are made. For making an order, web-based software applications are used, also known as consumer baskets, while a special web portal is used for payment needs. More and more subjects engage in e-trade regarding the fact that the Internet is a global trading opportunity that is conducive to low-cost information transfer. Any information that is transmitted over the network is valuable and therefore it is important to protect it. The indisputable fact is that trust is the key to the success of e-business, and lack of confidence is a problem on the road to success, and it is therefore necessary for both parties to feel the trust that should be established and present constantly in the execution of transactions.

2. The legal regulation in the Republic of Macedonia is appropriate and its solutions are in accordance with the global and European practice in this field. Opportunities should be used, and also all the new technological advances using for facilitation the trade, either at the micro level, and of course at the global level.

3. In the Republic of Macedonia, this type of trading is increasing, because there are many advantages, which are certainly for the benefit of consumers, on the other hand, it saves time and resources for reviewing global offers, and of course getting the best value for money. But, on the other hand, the limiting factors of this type of trading must be taken into account, such as: the physical absence in the conclusion of the contracts, the lack of direct visual contact and the connection with the product, which may have limited aspects, and of course the removal of the appropriate legal and material defects of the items, which are subjects of relevant contracts, and the manner of resolving possible disputes between the entities, especially if it has a foreign element, which are absolutely aggravating circumstances that must be taking into account.

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PRINCIPLES OF THE INTERNATIONAL AGREEMENTS ON INVESTMENTS

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Abstract
The international agreement on investments in the legal systems is also known as the Contract for the delivery of investment equipment. Due to its scope and importance, it is a particularly serious activity in the part of International Trading, which is regulated by the provisions of the European Economic Commission at the UN.

According to international and national regulations, a written form is provided for its validity as a compulsory way of concluding the contract. Typical clauses, adopted by the European Economic Commission, the UNCITRAL Working Group, and the Congress of the International Chamber of Commerce play an important role for this type of contracts.

According to the law of the Republic of Macedonia this type of contracts is regulated by the Law on Obligatory Relations (Construction Contract) and the Law on Construction of Investment Facilities.

Key words: Investments, UNICITRAL, International Agreement, World Trade Organization

1. INTRODUCTION

According to the modern concept, investment regimes must define their scope ratione materiae. Today's agreements do not reflect the classical formula of "real rights and interests", which can be found in traditional agreements, friendship, trade and shipping agreements, as well as agreements to resolve lawsuits after the end of hostilities and human rights documents. (R. Dolzer 1985, 157-163).

Instead they are built on the narrower term "Investment". This change is now fully accepted, although the phrase "rights and interests" has acquired a significant degree to a significant extent, and the term "investment" has its origins in the economic terminology and should be understood and defined as a legal concept applicable to investment agreements.
Typical clauses, adopted by the European Economic Commission, the UNCITRAL Working Group, and the Congress of the International Chamber of Commerce play a significant role for this type of contracts.

According to the law of the Republic of Macedonia, this type of an agreement is regulated by the Law on Obligatory Relations (Construction Contract) and the Law on Construction of Investment Facilities. An investment construction contract is concluded in writing and is of a formal legal nature.

2. HISTORICAL DEVELOPMENT AND GOALS

The roots of the rules of today's Foreign Investment Agreements can be found in 1778 when the United States and France concluded their first trade agreement, after which in the nineteenth century they followed up with agreements between the United States and their European allies, and later with the newly created Latin American states. (R. Wilson 1960, 2)

These first contracts mainly dealt with trade issues, but they also included rules that were setting out the requirement for compensation in case of expropriation. After 1919, the United States conducted negotiations on a series of "Friendship, Trade and Navigation" (FCN) agreements, followed by another series of 21 agreements between 1945 and 1966. (KJ Vandelvelde 1988, 207 – 208)

The investment rules were never prominent or particularly visible in these agreements for friendship, trade and navigation, although contracts concluded before 1945 included not only compensation clauses, but also provisions for the rule to form certain types of businesses in the partner-country. After 1945, trade issues were regulated in separate agreements, while friendship, trade and navigation agreements contained more details on foreign investment. The vacuum in the United States contractual practice between 1966 and 1982 must be explained by the resistance of the developing countries to the conclusion of new agreements in the traditional manner. (JW Salacuse 2004, 51, 56)

In 1977, the US State Department launched an initiative to join the European practice over the previous two decades and to only conclude agreements aimed at addressing issues at the part of investment clients, mainly in order to protect the investments of their own nationals abroad.

The era of modern investment agreements actually begins in 1959 when Germany and Pakistan concluded a bilateral agreement that came into force in 1962. The then German negotiator, Herman Josef Abbs, made enormous efforts towards a new initiative to protect foreign investment, with his Swiss counterpart Hartley Shokors, and with the mediation of the Organization for Economic Co-operation and Development (OECD) along with the Forum of the Exporting States of Capital, to prepare a multilateral agreement. (GA van Hacke,1964, 68) The second such draft agreement was introduced in 1967.
As a part of the United Nations after 2000, an initiative has been launched to develop an approach to investment issues, using human rights as a starting point. The goal is to reach a consensus on norms pertaining to the responsibilities of transnational corporations. (D Weissbrodt and M Kruger, 2003, 97)

3. ESSENCE AND CONTRACTUAL PRINCIPLES

Investments on a large scale can last for decades. They are concerned with the interests of the investor, as well as the public interests of the host country. The legal structure of each investment should be adjusted to the specifics and complexity of that particular investment. The investment agreement reflects the power to negotiate between the two parties within the circumstances of the individual project.

This agreement, as a rule, accompanies a separate Contract (sub-contract) for specialization and training of the professional staff, ie contract for installation of investment equipment. Due to its scope and importance, it is a particularly serious activity from the part of the International Trading, which is regulated by the provisions of the European Economic Commission at the UN, as follows: General - Geneva Conditions for the Purchase of Investment Equipment in the Export; General conditions for procurement and installation of investment equipment; Project on general conditions for installation of investment equipment abroad;

According to international and national regulations, a written form is prescribed for its validity as a compulsory way of concluding the contract. This includes: a firm bid, a definite deadline for acceptance, and its acceptance by the buyer before the expiration of that given period.

The subject of the contract is purchase and sale of investment equipment, so-called unspent items, specially ordered and made items;

Characteristics of the Agreement for International Purchase of Investment represent the length of the negotiations, the preparation of documentation, such as: projects, elaborates and technical documentation - which is a prerequisite for signing the contract.

The responsibility and the liability for defects in the supplied equipment is called: the manufacturer's warranty for the proper functioning of the equipment. The manufacturer's responsibility is limited only to the normal operation of the equipment.

According to the Uniform Law on International Sale of Moving Goods: the buyer may request the removal of the flaws of the items if the subject of the contract for international trading with investment equipment is an item manufactured by the manufacturer.

The General Geneva Terms provide an obligation for the seller that any fault that may arise due to an error in the project, material or work be removed
within a specified warranty period. To protect the price of the contract there are three types of protective - monetary clauses: a golden clause; clause in foreign currency; a commodity clause

Due to the significant importance of the investments themselves and the value of their objects of bargaining in international trading, special legal protection is envisaged. In this regard, the protection of collection primarily uses common legal remedies such as mortgages, guarantees from banks or funds, and even state guarantees.

This type of international trade agreement refers to the construction of investment facilities, which usually have great value and great significance for the foreign trade balance of the country that carries out this construction.

According to the definition under an investment object it is considered a construction object, a construction facility with built-in device installations and equipment that serve for the purpose of the investment. By its legal nature, the contract for the construction of an investment facility constitutes a type of the contract for a deed. (Дукоски.С.2014,140)

Under the contract for investment construction in international commercial law, it is understood that in such a contract the one entity contractor (developer), undertakes to construct a construction facility or to perform certain construction works of another person and in another country, called investor (commissioner), or on the existing object in order to correct or adapt, and the other party (investor) undertakes to pay the appropriate price (financial value). (М.Срдић, В. Јовановић 2006,148)

According to the law of the Republic of Macedonia this type of contract is regulated by the Law on Obligations (contract for construction) and the Law on Investment Structure Construction. An investment construction contract is concluded in writing and is of a formal legal nature.

When concluding the contract, the parties, and in particular the investor, should undertake certain actions regarding the implementation of the international auction for devolving an investment object, carrying out investment activities, publishing a list of eligible bidders, selecting a contractor;

In the general terms for concluding this type of contract an interpretation is given for: investor, contractor, supervisory body, subject of the contract, price of prepared works, projects, construction site, auction day, rights and obligations of the supervisory body. (Д-р Ио Андрјанић 2001, 733)

In special terms for concluding the contract are envisaged, the rights and obligations of the supervisory body, the rules for control of the projects, the manner of obtaining appropriate approvals, engaging under contractors, extending deadlines, etc.
When it comes to the investment construction, the most commonly used term is the "Engineering Agreement", which is an agreement by which one side the engineering organization is obligated to prepare and deliver an investment program and technical documentation, transferring the right to use the technical knowledge and experience, organizing and at the same time, managing the realization, putting into operation (commissioning) with the aim of orderly taking over the investment object. On the other hand, the investor is obligated to pay a certain amount of compensation. (М.Срдић, В. Јовановић 2006, 204)

There are: pure (clean) and complete engineering. Companies that operate on the principle of "Clean Engineering", undertake to develop only investment projects with all the construction - technical and technological details for the agreed object. Such engineering companies prepare an economic study of the justification and economic ability to pay and prepare technical documentation.

The contract for building called "Turnkey" - is a special form of an engineering agreement with which the contractor undertakes in addition to making all the construction - technical and technological details for the contracted object to build it, to perform trial production and to hand over the keys to the investor, for which the developer in turn is obliged to pay a fixed price. (Д-р Иво Андрјанић 2001, 571)

4. SOLVING INVESTMENT DISPUTES

All disputes in regarding with investment contracts are entrusted to well-known and recognized international arbitration tribunals.

The most common investment protection practices applied by states today are the bilateral agreements concluded by the States that are concerned. The Republic of Macedonia has signed several such bilateral agreements.

Possible investment disputes between parties of the dispute can settle amicably, i.e. through ad-hoc or institutional arbitration courts or through the International Center for the settlement of investment disputes between states and citizens of other countries, which was opened for signing 1965, in the case that they are signatories to that convention.

According to the Convention on the settlement of investment disputes between the members of the International Bank and the citizens of other member states (1966), the establishment of a special center for reconciliation and arbitration is envisaged.

The Convention for the settlement of investment disputes was signed on March 18, 1965 in Washington, for which in the legal practice it is known as the Washington Convention.
The Convention has several annexes such as Regulations pertaining to the financial and administrative area, as well as rules governing the procedure for resolving investment disputes.

The Convention provides for the establishment of an International Center for the Settlement of Investments Disputes (ICSID), its competencies and functioning, as well as the manner of dispute resolution. (Д-р Мирослав Милосављевић, 2010, 154)

The Center has a reputation of an international arbitration institution of a universal character, located exclusively on an international (supranational) basis, in which the elements of public and legal and private - legal arbitration are sublimated. (Дескоски Тони 2009, 9)

5. CONCLUSION

International investment contracts, due to their scope and importance, constitute a particularly serious segment in the part of International Trading, which is regulated by the provisions of the European Economic Commission at the UN. The roots of the rules of today's Contracts can be found in 1778 when the United States and France concluded their first trade agreement, after which in the nineteenth century they followed up with agreements between the United States and their European allies, and later with the newly created Latin American states. According to the modern concept, investment regimes must define their scope ratione materiae.

According to international and national regulations, a written form is required for its validity as a compulsory way of concluding the contract. This includes: a firm bid, a definite deadline for acceptance, and its acceptance by the buyer before the expiration of that period.

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Abstract
In 2015, the Commission on the Status of Women of the United Nations has conducted the comprehensive review of the implementation of the Beijing Declaration and Platform for Action, 20 years after its adoption. The United Nations Economic and Social Council has invited the state parties to undertake comprehensive national-level reviews of the progress made and challenges encountered, that affect full implementation of the gender equality policy and women empowerment. The subject research of this paper is analyses of the implementation of the Beijing Declaration and Platform for Action in Serbia since its ratification in 1995, based on twelve critical areas of concern defined in the convention. The goal of this research is scientific description of the gender equality concept and progress in setting the theme to a substantial place in the global agenda after the adoption of the Beijing Declaration and Platform for Action, with a specific focus on gender equality policy in the Republic of Serbia. The conclusion: United Nations programmes in the area of Gender Equality have achieved the significant, visible and measurable results in the promotion of Gender Equality and the prevention of the discrimination against women. The Serbia’s national policy enhance gender equality and sanctions gender-based discrimination, however the achievement of the full gender equality in practice is a long-term process.

Key words: United Nations, gender equality, discrimination.

1. INTRODUCTION
In order to examine the basic problems that arise in the application of legal regulations in the field of gender equality in the Republic of Serbia, we used the
case study as a methodological framework. The case study will indicate the degree of ensuring the conditions for the implementation of gender equality policy in Serbia through the analysis of a) existing legislation and b) relevant reports.

The promotion of gender equality through national legislation and the efforts to establish a gender perspective by legal solutions and institutional mechanisms is a cornerstone of the protection and affirmation of human equality. Numerous international documents offer standards and procedures for the establishment of gender equality. It is in the interests of the member states to comply with international legal and political documents. According to Seli Engle (2006) "Human rights represent international civilization standards that determine what it means to be a civilized nation and a respected member of the international community." (Mary, Seli Engle 2006,73).

2. FRAMEWORK FOR ESTABLISHING THE GENDER EQUALITY

Some of the most important international documents that serve as a framework for the establishment of national gender equality frameworks are:

* Universal Declaration of Human Rights (UN, General Assembly 1948)
* Convention on the Political Rights of Women (Convention on the Political Rights of Women
  New York, 31 March 1953)
* Declaration on the Protection of Women and Children in Emergency and Armed Conflict (Declaration on the Protection of Women and Children in Emergency and Armed Conflict Proclaimed by General Assembly resolution 3318 (XXIX) of 14 December 1974)


The Republic of Serbia has established an institutional framework for the implementation of a national gender equality policy at all levels of government.

At the level of National Government and Parliamentary Institutions, these are:

* The Coordination Body for Gender Equality of the Government of the Republic of Serbia
• Committee for Human and Minority Rights and Gender Equality of the National Assembly of the Republic of Serbia;
• Commissioner for the Protection of Equality.

At the level of the Autonomous Province of Vojvodina:
• Provincial Department for Social Policy, Demography and Gender Equality
• Committee for Gender Equality of the Assembly of Vojvodina.

At the local level, institutional mechanisms are represented by bodies (commissions / committees / offices) for gender equality under the authority of local self-government and they have been established in 129 municipalities in Serbia, aiming to integrate the principle of gender equality into policies and programs at the local level.

The basic strategic document adopted by the Republic of Serbia for the purpose of promoting gender equality is the National Strategy for Gender Equality for the period 2016-2020 and its Action Plan (Official Gazette RS, No. 4/2016.). It is important to note that the objectives of the new National Strategy for Gender Equality 2016-2020 include strategic goals set out by the Council of Europe's Gender Equality Strategy 2014-2017:

1. eliminating gender stereotypes and sexism,
2. preventing and combating violence against women,
3. ensuring equal access to justice by women,
4. achieving a balanced participation of women and men in political and public decision-making,
5. achieving gender equality in all policies and measures.

Controlling, independent mechanisms for achieving gender equality have been established in Serbia, such as: Ombudsman (Parliamentary Commissioner for Administration) and Deputy Provincial Ombudsman for gender equality.

2.1. Legislative framework for the promotion of gender equality in Serbia

In the Republic of Serbia, the legislative framework for the implementation of the Principles of Gender Equality consists of: The Constitution of the Republic of Serbia (Official Gazette RS, No. 98/06), the Law on the Prohibition of Discrimination (Official Gazette RS, No. 22/2009) and the Gender Equality Law (Official Gazette RS, No 104/2009).

The improvement of the position of women in different areas is partially regulated by other laws: The Law on the election of deputies, the Law on Local Self-Government, the Labor Law, the Pension and Disability Insurance Act, the Criminal Code, the Family Law, the Law on Professional Rehabilitation and Employment of Persons with Disability Act, the Law on Health Care, the Law on
the Foundations of the Education System, the Law on Patients' Rights and other laws.

### 2.1.1. Constitution of the Republic of Serbia

The Constitution of the Republic of Serbia guarantees gender equality and proclaims a policy of equal opportunities whilst prohibiting discrimination on any ground. The Constitution indicates the measures or obligations that the State should undertake to achieve full equality. According to Pajvancic, these provisions on measures of affirmative action, which the State has at its disposal in implementing a Policy of Equal Opportunities, have been incorporated in the Constitution "under the influence of international human rights documents ... in particular the Convention on the Elimination of All Forms of Discrimination" (Пајванчић 2013, 27).

Constitutional provisions that directly enable the achievement of gender equality are contained in the Chapter on Human and Minority Rights, in the part dealing with individual rights and freedoms. The Constitution guarantees respect for basic individual rights and freedoms, recognizes differences between people and prohibits hatred based on the individual's personal characteristics. In the provisions of the Constitution which lists the individual characteristics of the individual ("ethnic, cultural, linguistic and religious"), gender is not considered as a personal property, which according to Pajvančić (2013) means that the Constitution is in conflict with the constitutional provisions on the prohibition of discrimination (Pajvančić 2013, 28). In the analysis of constitutional provisions related to gender equality, the same author points to the lack of guarantees contained in international treaties, which are not in the Constitution of Serbia, which are equal to the compensation for work of equal value and evaluation of home work.

### 2.1.2. The Law on the Prohibition of Discrimination

Prior to the adoption of the Law on the Prohibition of Discrimination, the legal system was very ineffective in this part, and there was not a single law defining the concepts of discrimination. The adoption of this law establishes a consistent legal framework for regulating the field of discrimination.

The Law on the Prohibition of Discrimination consists of 63 Acts grouped into nine parts: The Basic Provisions; General Ban and Forms of Discrimination; Special Cases of Discrimination; The Trustee for the Protection of Equality; Procedure before the Trustee; Judicial Protection; Supervision; Penal Provisions and Transitional and Final Provisions.

Discrimination is defined by this law through seven forms: direct, indirect, violation of the principle of equal rights and obligations, recourse to responsibility, association for the purpose of discrimination, hate speech, harassment and
degrading treatment (Law on the Prohibition of Discrimination, Articles 5.,6.,7.,8.,9.,10 and 11).

Sex discrimination is determined by this law as a specific type of discrimination (Article 20).

The fact that this Law defines the establishment of a separate, independent body - the Trustee for the Protection of Equality, whose role is to ensure effective prevention, prohibition and fight against all forms, types and cases of discrimination is of particular importance.

2.1.3. Gender Equality Law

The Gender Equality Law also belongs to a group of anti-discrimination laws and regulates areas of special importance for the achievement of gender equality and prescribes protection instruments and procedures, as well as special measures for achieving equality, ie eliminating gender-based discrimination. On the other hand, this is the first law in the Serbian legal system that regulates the right to gender equality and explicitly prohibits discrimination on grounds of sex and gender. This law regulates the creation of equal opportunities for exercising rights and obligations, taking special measures to prevent and eliminate discrimination based on sex and gender, and the procedure for the legal protection of persons exposed to discrimination.

Under the concept of the gender equality, the Law implies: "Equal participation of women and men in all areas of the public and private sector, in accordance with the generally accepted rules of international law, ratified by international treaties, by the Constitution of the Republic of Serbia and Laws, and everyone is obliged to respect it" (Art.2 the Gender Equality Law, Official Gazette RS, No. 104/2009).

The Gender Equality Law more closely defines the realization of human rights in the following areas: employment, social and health protection; family relations; education, culture and sport; political and public life; court protection. The main objectives of this law are:

- To ensure equal treatment of both male and female in the field of work;
- To ensure gender equality in the field of social protection;
- To ensure the equal rights of women and men in exercising the right to health care;
- To guarantee to all members of the family equality in the exercise of the right to protection from violence;
• To regulate the right of women and men to political organization and participation in the work of political parties under equal conditions;
• That all statistical data must be sex-disaggregated;

Due to insufficient compliance between the provisions of this law with the international legal documents, the drafting of the new Law on Gender Equality began in Serbia in 2014. When the text of the proposal was completed, there came a renaming of the title of the Law on Gender Equality into the Law on Equality between Women and Men. The Chairwoman of the Coordination Body explained this procedure by the fact that the Constitution of the Republic of Serbia does not recognize the term gender equality, but the term equality of women and men. This Proposal has been withdrawn from the parliamentary procedure and has not yet been adopted. It has been addressed with numerous complaints about changing the name through inadequate and inconsistent members of the law to procedural mistakes.

3. APPLICATION OF LEGISLATION

From the current review of the relevant legal regulations, it can be said that the level of protection of basic women's human rights and the manner of their implementation is set at a relatively satisfactory level. However, in spite of the fact that the Republic of Serbia has adopted laws dealing with equal opportunities for both women and men, equality does not necessarily mean that equality de jure is always equality de facto. There are numerous problems, primarily in the field of application of regulations, which is why these legally guaranteed rights are often not realized.

This is indicated by the opinions and reports of independent bodies (Ombudsman), government bodies (Coordinating Body for Gender Equality, Trustee for the Protection of Equality), international organizations, civil society organizations. The reports mainly point to the need for further harmonization of laws with international anti-discrimination regulations and standards.

In addition to reviewing the legislative framework in the field of gender equality for analyzing the progress of implementation of the gender equality policy in Serbia, it is important to show to what extent this policy is being implemented as well as what obstacles and problems the Republic of Serbia comes across whilst fulfilling its international commitments arising from the adopted and ratified conventions. Significant reports of independent institutions such as the Protector of Citizens and the Trustee for the Protection of Equality, as well as the government body for gender equality - Coordination Body for Gender Equality, are particularly important for this analysis.
3.1. Protector of Citizens (Ombudsman)

The Protector of Citizens of the Republic of Serbia is an independent and autonomous state body that has been a part of the legal order of the Republic of Serbia from 2005, passing the Law on the Protector of Citizens (Official Gazette RS, No. 79/2005 and 54/2007). Within its jurisdiction, the Ombudsman acts upon complaints of citizens. According to the Annual Report of the Protector of Citizens in 2016, the highest number of complaints received by the Protector of Citizens concerned violations of special rights in the field of gender equality. In the field dealing with gender equality issues, 142 cases were examined, of which 138 were citizens' complaints and 4 citizens' protector initiatives. The largest number of complaints was related to violations of special rights in the area of gender equality (see the table below).

Table 1. Special rights in the field of gender equality in relation to recorded violations of these rights.

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<th>Number</th>
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<tr>
<td>39</td>
<td>41,05</td>
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<td>36</td>
<td>37,89</td>
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<td>17</td>
<td>17,89</td>
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<td>2</td>
<td>2,11</td>
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<td>1</td>
<td>1,05</td>
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<td>95</td>
<td>100</td>
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</table>

Source: Annual Report of the Ombudsman for the year 2016

In its Annual Reports, the Protector of Citizens outlines the achievements and deficiencies of state bodies in the area of gender equality. A detailed analysis of the last two Annual Reports (for 2015 and 2016) indicates that state authorities do not act sufficiently (and in some cases do not act at all) following recommendations from the Ombudsman's report.

State-level shortcomings in the field of gender equality:

- No law that adequately regulates the field of gender equality has been adopted by the State.

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• The protection of women from domestic and gender-based violence is not effective enough.
• Gender Equality Law is not applied equally in local self-government units.
• Health services are not sufficiently available to all women, in particular Romani women, women living in rural areas and women with disabilities.
• The right of people of different sexual orientation and gender identity are insufficiently protected.
• The Criminal Code is not fully compliant with the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence.
• The number of the protection of women against domestic and partnership violence trainings has not been provided to the state professionals responsible for the prevention, suppression and protection of women against violence.

We can conclude that there is insufficient recognition of violence against women by the state authorities, insufficient information on this problem, misunderstanding about the situation of the women victims of violence, lack of adequate records of cases of violence, as well as inadequate cooperation between the state authorities on this issue. In 2014, the Protector of Citizens developed a Special Report on the situation of domestic violence against women in Serbia. This 29-point report provides an assessment of the situation in the field of violence against women and gives concrete recommendations to the competent state authorities in order to improve the realization of women's rights to protection against domestic violence and partnership violence.

3.2. The Trustee for the Protection of Equality

The Trustee for the Protection of Equality, as an independent and autonomous state body, was established by the Law on the Prohibition of Discrimination to contribute to the suppression of all forms and means of discrimination and the elimination of the consequences of discrimination and the achievement and protection of equality in all spheres of society. The competence of the Trustee relates to decision-making on complaints of citizens that are filed in cases of violation of the rights covered by this Law. By analyzing the Trustee's Reports on the protection of equality, the trend of an increase in the number of cases in which the Trustee has acted was noted. For example, compared to 2014, when the Trustee has acted in 884 cases, in 2014 - 1040 cases were acted upon, which is about 20% of an increase in the number of cases. However, it should be said that this increase in the number of complaints is not a sign of increase in discrimination within our society, but the sign that the Trustee for the Protection of Equality has

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become more visible to the general public and, on the other hand, that discrimination as a phenomenon is becoming more and more recognized. The Trustee for the Protection of Equality addressed special attention to the problem of violence against women and called on the competent state institutions to harmonize the legislative framework with the ratified Istanbul Convention as soon as possible and to introduce urgent protection measures in order to protect women victims of violence in the most efficient way.

3.3. Coordination Body for Gender Equality

As it has already been mentioned, the Coordination Body for Gender Equality was established to coordinate the work of administration bodies of the state in relation to gender equality. The strategic goal of this body is to promote gender equality in Serbia, so it is not surprising that the Coordination Body has initiated the creation of a new National Strategy on Gender Equality 2015-2020.

The Coordination Body for Gender Equality was established after the abolition of the Gender Equality Administration, which functioned within the Ministry of Labor and Social Affairs, which was estimated by some NGOs and civil society organizations as a wrong move. Namely, there is an initiative by the Academy of Women's Leadership that instead of the Coordination Body for Gender Equality, more adequate bodies such as the Office for Gender Equality and the Government's Council for the Promotion of Gender Equality should be formed. According to Pajvancic, the arguments for such a request lie in the fact that the Coordinating Body does not have political power for achieving the set goals of gender equality, that is, it is legally poorly defined and has little authority.

4. RECOMMENDATIONS AND REPORTS OF THE INTERNATIONAL ORGANISATIONS

4.1. The Recommendations of the UN Committee

Out of the 139 accepted UN Human Rights Recommendations (after the Republic of Serbia passed through the second cycle of the universal periodic review on 30 January 2013), ten recommendations relate to gender equality and fifteen on the prevention of domestic violence. These recommendations are embedded in the new Strategy on Gender Equality, whereby the Republic of Serbia, as United Nations member, fulfills its obligation to implement policies of equal opportunities and provides equal access to the enjoyment and protection of all human rights by the male and female citizens, based on the principles of equality and non-discrimination.

In its Concluding Observations on the Second and Third Periodic Reports on the Application of the Convention on the Elimination of All Forms of
Discrimination Against Women (CEDAW / C / SRB / 2-3), the UN Committee on the Elimination of Discrimination Against Women has sent a total of 24 recommendations to the Republic of Serbia. According to these recommendations, the Republic of Serbia needs to improve the legal and institutional framework for the prohibition of discrimination and the promotion of equality and to provide adequate and sustainable budget and human resources for the implementation of all strategies and measures taken to eliminate discrimination against women, and especially members of vulnerable groups. The recommendations were mainly related to the introduction of the principle of multiple-discrimination in the legislation; to taking the necessary measures to adopt the draft of the law on free legal aid for women, to taking measures to increase women's awareness of their rights and the functions of existing appeals mechanisms. The Committee also requested the State of Serbia to encourage women to report domestic and sexual violence by raising awareness of the criminal nature of these acts, and also to ensure effective investigations into cases of violence against women, as well as punishing perpetrators of such acts crime by the sanctions proportionate to the gravity of the crime.

4.2. Recommendations on Anti-Discrimination Policy in the Report of the European Commission

In the Chapter 23 of the Report of the European Commission on the progress of the Republic of Serbia for the period 2014-2015, the Recommendations on Anti-discrimination Policy contain measures and activities aimed at combating discrimination and promoting gender equality (European Commision, Brussels, 10.11.2015, SWD (2015)). The recommendations indicate the need to ensure the establishment of a sustainable institution for the promotion of gender equality, which consist of adequate financial and human resources. It is also necessary to strengthen the institutional measures for the protection of women from all forms of violence and to improve mechanisms for coordinating, collecting and exchanging information on all forms of violence against women, between all relevant actors within the system. Recommendation also refers to the low participation of women in the private sector and the political sphere. Revision of the key public policies is simply necessary for the elimination of the structural, deeply socially and culturally rooted discrimination.

The Commission concludes in its Report that the legal and institutional framework used for the protection of women and children has been improved in Serbia, but measures to combat domestic violence and gender inequality within the workplace have yet to yield effective results. The Serbian Gender Equity Index shows that Serbia lags behind the countries of the European Union in terms of gender equality. It was concluded that the protection of women from all forms of
violence should be strengthened and the mechanisms for coordinating the accumulation and sharing of data between all relevant actors within the system need to be improved. In accordance with numerous international documents calling for the end of violence against women, the Government of the Republic of Serbia, drafted and adopted the National Strategy for the Prevention and Suppression of Violence against Women and Domestic Violence and Partnership Relations in 2011. The framework for this Strategy is the conclusions of the National Conference on Combating Violence against Women held in 2007 as part of the Campaign of the European Council to combat all forms of violence against women. According to research, the most common form of violence against women in Serbia is domestic or partnership violence.

5. CONCLUSION
Some progress in achieving gender equality and sanctioning gender discrimination has been noted in Serbia. However, the process of achieving full gender equality in practice is evidently a long-lasting process, which must be dealt with globally and structurally, by all state and private institutions, and above all, by waking consciousness of the citizens’ awareness of equality.

Our analysis and evaluation of the existing action plans in the field of equality between women and men has shown that the recommendations of the Beijing Declaration as well as of other international documents guaranteeing women’s rights have so far been implemented both insufficiently and very slowly.

We expect that the results of our research will be the guidelines for future researches of the important issues in the field of gender equality.

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SECURITY POLICY OF THE REPUBLIC OF MACEDONIA AND ITS CONTRIBUTION TO THE NATIONAL, REGIONAL AND GLOBAL SECURITY

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Abstract

Peace and stability are the basis for sustainable development, globalization and integration are imperative to the modern world. European integration is the best alternative for the future of the Republic of Macedonia and the Balkans. Membership in NATO and the European Union is its strategic goal. Within the framework of this paper, the author will elaborate the security policy of the Republic of Macedonia, which includes the following contents: Respect for human rights, economic prosperity, social stability, the development of democracy and the rule of law, pro-European foreign policy and the promotion of relations and cooperation with influential subjects in the international community, with neighboring and other countries in the region.

In order to achieve the fundamental values such as the rule of law, promoting democracy and respecting the generally accepted norms of international law, the author will elaborate the first chapter of the national conception of security and defense, entitled "Interests of the Republic of Macedonia". At the end of the paper, the author will analyze some security issues related to the reform process in the country's security system.

The subject of research is the security policy of the Republic of Macedonia and its contribution to the construction and promotion of national, regional and global security.

The purpose of this paper is to approach the meaning of the notion of security policy to the professional and scientific community.

Keywords: security policy, interests of the state, lasting interest, vital interest, important interests

1. INTRODUCTION

Respect for human rights, economic prosperity, social stability, the development of democracy and the rule of law, pro-European foreign policy and the promotion of relations and cooperation with the most influential entities in the international community, with neighboring and other countries in the region cost the basic view of the National Policy security of the Republic of Macedonia. According
to Constitution of the Republic of Macedonia: with the amendments to the Constitution I-XXXII, the Republic of Macedonia is a sovereign, independent, democratic and social state. Article 8 of the Constitution determines the fundamental values of the constitutional order of the Republic of Macedonia: - the basic freedoms and rights of the individual and the citizen recognized by the international law and determined by the Constitution; - the free expression of national affiliation; - the rule of law; - the division of the state power into legislative, executive and judicial; - political pluralism and free direct and democratic elections; - legal protection of property; - freedom of the market and entrepreneurship; - humanism, social justice and solidarity; - local self-government; - the organization and humanization of space and the protection and promotion of the environment and nature; and - respect for the generally accepted norms of international law.

The Republic of Macedonia as a state advocates the promotion of general democratic values, international law and respect for one's own state tradition. With its national policy and strategy, the Republic of Macedonia expresses its willingness to contribute to the construction and improvement of its own, regional and global security within the UN, European and other international organizations and regional structures.

With the European Security Strategy, adopted on 12.12.2003 under the title "Secure Europe in a Better World", principles have been established for the first time and the goals for advancing European security interests have been defined. The strategy is organized in three chapters: the first is an analysis of the security environment, that is, the global challenges and key threats to European security are presented; further in the second chapter are defined the three strategic goals, one of which is aimed precisely at the fight against the mentioned threats; While the third part assessed the political implications for Europe. As global challenges in the EU's 2003 strategy, poverty, disease, migration, environmental problems, competition for natural resources, in particular water, energy dependence and others are highlighted as the main threats: terrorism, proliferation of weapons of mass destruction, regional clashes, the failure of states and organized crime. The main feature of this strategy is to give preference to non-military means to resolve conflicts as a way to ensure security over a longer period of time. In order to prevent the threats it identifies, the European Union has set itself a goal for itself to develop. "Strategic culture". The content of this strategy is embedded in the National Concept for Security and Defense of the Republic of Macedonia (Gerginova 2015, 162).

According to the European Security Strategy of 2003 in all countries of former Yugoslavia is determined security policy which is based on an assessment of the international environment and the geographical location of these countries and assessment of threats to their security. For this purpose each of these countries
builds policy and strategy of national security. The policy and the strategy of national security determines national values and interests of the state, security objectives, the strategic orientations of the country in safety, security risks and threats, security capabilities and resources of the state to respond to those risks and threats, and define the structure of the national security system, principles of operation and responsibilities within the security system.

On June 28, a new Global Strategy of the EU in the field of foreign and security policy was adopted. Also in December 2016, an Implementation Plan was adopted, which actually presents a proposal for the implementation of the EU's Global Strategy in the field of security and defense. In the introduction to the strategy it is determined that today we need a strong Europe, because the region has become unstable and unsafe. However, the potentials of the European Union are not yet fully used. Most EU citizens understand that it is necessary to collectively take responsibility for the EU's role in the world. The Strategy nurtures the ambition of strategic autonomy for the European Union. It is necessary to promote the common interests of EU citizens, as well as common European principles and values. The EU's foreign and security policy must be tackled with global pressures and local dynamics. The European Union will continue to deepen trans-Atlantic ties and partnership with NATO, but at the same time we will connect with new players and explore new formats. Also, the strategy will promote reformed global governance, one that can meet the challenges of the 21st century.

First, the strategy determines common interests and principles. It is determined that the EU will promote peace and guarantee the realization of the security of its citizens and the security of the territories. Internal and external security is mutually intertwined: internal security also depends on peace beyond national borders. The EU aims to promote the prosperity of its citizens that needs to be shared and demands that the goals of sustainable development around the world, including Europe, be met. A prosperous Union also relies on an open and fair international economic system and a sustainable approach to global goods. The European Union aims at respecting common values and determining external credibility and influences.

In order to promote the safety and prosperity of citizens, the EU will be guided by the principle of responsibility. The Union will engage all over Europe and the surrounding regions of the East and the South. The Union will act globally in order to reject the root causes of conflict and poverty and to promote human rights. The EU will be responsible global actor, but responsibility must be shared. Responsibility is required to be achieved through the modernization of external partnerships.
The section on the international environment and the position of the Republic of Macedonia are incorporated certain parts of the European Security Strategy of 2003 and determined that today's world is characterized by rapid and dynamic changes that bring with them new and often unpredictable risks and threats to the security of states. Republic of Macedonia is aware that the new environment offers many opportunities but also many new challenges, risks and dangers. Therefore, new challenges, risks and threats require new answers that despite the efforts of the Republic of Macedonia are only possible in cooperation with all countries in the region, Europe and the world.

The National Concept for Security and Defense is the basic document of the Republic of Macedonia in the area of security and defense, and it is based on:

- the assessment of the threats to its security and on that basis,
- harmonized objectives and guidelines for keeping the national security policy as well
- on the assessment of the international environment and position of the Republic of Macedonia.

This concept has its roots in respecting the Constitution and laws, in the national values and the emerging interests of the Republic of Macedonia, the equality of all citizens regardless of their ethnicity the democratic basis of the state, the rule of law, respect for human rights and freedoms, market economy, social justice and respect for international law and international treaties and agreements.

The realization of the above views and views of the concept should provide a better security situation in the country and protection of the fundamental values and the emerging interests of the Republic of Macedonia, as well as deepening the paths of progress, peaceful development of the country, development of democracy, respect for the human dignity in every respect and with all his rights.

The first chapter of the National Concept for Security and Defense of the Republic of Macedonia is entitled "Interests of the Republic of Macedonia".

The interests of the Republic of Macedonia are based on the long-term needs of the Macedonian society that are crucial for the life and safety of citizens, but also for the stability, functioning and continuity of the state. These interests arise from the highest fundamental values determined by the Constitution of the Republic of Macedonia in which, basically, are:

- the fundamental freedoms and rights of man and citizen, the free expression of national affiliation, democracy, the rule of law and respect for generally accepted international norms;
- integrating and equitable representation of citizens belonging to all communities in the organs of state power and other public institutions at all levels;
- protection of property, market freedom and entrepreneurship, humanism, social justice and solidarity;
the guaranteeing, promotion and development of the local self-
government;
- Protection and improvement of the environment.

The continued interest of the Republic of Macedonia is the preservation and 
promotion of the her state identity with the free expression of the ethnic identity of 
all citizens of the Republic of Macedonia, as well as the protection of independence 
and territorial integrity.

Vital interests that enhance the security situation and who they are create 
conditions for a better life of the citizens and the functioning of the state and society 
are:
- political-defense integration in NATO, political, economic and 
security integration in the European Union, as well as in other systems for collective 
security;
- protection and promotion of peace and security, life, health, 
property and personal security of the citizens of the Republic of Macedonia;
- protection and promotion of the democratic foundations of the rule 
of law - political pluralism, parliamentary democracy, separation of powers and 
democratic and fair elections, rule of law, consistent respect for human rights and 
freedoms, as well as the rights and freedoms of citizens belonging to all 
communities and continuous maintenance and improvement of the overall internal 
security of society and the state;
- development of a multiethnic society based on mutual trust, joint 
efforts and aspirations of all ethnic communities for the stability and all-round 
progress of the state;
- Economic development based on the principles of market economy, 
private ownership, as well as the protection of the vital infrastructure and resources 
of the Republic of Macedonia.

Important interests for the Republic of Macedonia, which are prerequisites 
for creating and realizing the permanent and vital interests of the Republic of 
Macedonia are:
- building and developing all forms of cooperation with the 
neighbors, and in the interest of the peace, security and development of the 
Republic of Macedonia and its neighbors;
- own contribution to the preservation and promotion of peace and 
stability in SEE due to the strengthening of the zone of democracy, security and 
prosperity of all countries in the region;
- participation in the construction of peace and stability in the region, 
Europe and the world, as well as the prevention and construction of instruments for 
early warning of tensions and crises in order to timely and efficient peaceful 
settlement;
preservation and progress of the international order based on fairness, mutual respect for the international order established in international law, as well as the political and economic equality of the states;
- Providing conditions and promoting internal political stability and opportunities due to an equal right to participation which should include a generally accepted consensus on issues of lasting, vital and important interest of the country.
- creating conditions for the promotion of the security culture,
- building a just, social state with equal opportunities for all citizens, regardless of their gender, racial, religious, political, social, cultural and other belongings;
- creating conditions for building a society with communications and relationships that will develop common values and a culture of living, especially in the young generation in the spirit of tolerance, fostering democratic values and respecting personal integrity, grounded in the European democratic tradition, without Considering the ethnic, religious or other belonging;
- Conservation and protection of the environment in the country in cooperation with wider surroundings.

The Republic of Macedonia will realize its interests with a consistent respect for human rights and freedoms, democratic principles and respect for the international law which will, for its part, enable solving peaceful disputes, promoting peace and stability and strengthening the reputation of the Republic of Macedonia in the democratic world. Within the framework of democratic norms and principles and respect for international law, the Republic of Macedonia is ready to participate in the prevention and resolution of crises alone and in cooperation with the International Community. The Republic of Macedonia is prepared within the international law alone, but in cooperation with partners and friends, and in order to protect its interests, take all measures and engage all resources. In order to protect its enduring interest and in accordance with international law and the Charter of the United Nations, the Republic of Macedonia is ready to use armed force.

Due to the realization of "interests", "lasting interests", "vital interests" and "important interests", the Republic of Macedonia is pursuing a security policy and perfecting the security system in order to be capable, efficient and credible to meet the security challenges of this century.

2. THE REPUBLIC OF MACEDONIA IN CONTEMPORARY GLOBAL CONDITIONS

The Republic of Macedonia sees its future integrated into NATO and the EU. Peace and stability are the basis for sustainable development, globalization and integration are imperative to the modern world. In this respect, European integration
is the best alternative for the future of the Republic of Macedonia and the Balkans, NATO and the EU is our strategic priority. Macedonia is aware of the impact of global strategic changes and irrationality and lack of efficiency of an isolated system security. Defensive systems to small and insufficiently powerful economic countries becomes even more sensitive to global change. Because Macedonia is even more committed to building a system of mutual values and participation in cooperative activities and forms of collective security systems with the ultimate goal - membership in NATO and the EU (Gerginova 2015, 182).

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

The Republic of Macedonia will implement the following contents of the Global Strategy of the European Union from 2016:


- With global EU strategy from 2016 stipulates that the purpose of achieving the objectives necessary for countries to collectively invest in credible, proactive and related Union.
- With global EU strategy from 2016 and defines the priorities of EU foreign policy: The security of European Union; Security and defense; Counter-terrorism; Cyber Security; Energy security and Strategic Communications.
- The main objective of the EU member states should be the realization of mutual assistance and solidarity as an integral part of the agreements for their establishment. The EU will increase its contribution to the collective security of Europe, achieving close cooperation with its partners, starting with NATO.
- The EU is committed to the global order based on international law which ensures human rights, sustainable development and lasting access to global resources. This commitment will become an aspiration in order to transform the existing system, not just to preserve it. The EU will advocate a strong United Nations as a pillar of a multilateral order based on rules, and developing a global coordinated response in cooperation with international and regional organizations, states and non-governmental actors.

The basic values of the EU are an integral part of the interests. Peace and security, prosperity, democracy and a rules-based global order are the vital interests

**Peace and Security**

The European Union will promote peace and guarantee the security of its citizens and territory. This means that Europeans, working with partners, must have the necessary capabilities to defend themselves and live up to their commitments to mutual assistance and solidarity enshrined in the Treaties. Internal and external security are ever more intertwined. It implies a broader interest in preventing conflict, promoting human security, addressing the root causes of instability and working towards a safer world.

**Prosperity**

The EU will advance the prosperity of its people. This means promoting growth, jobs, equality, and a safe and healthy environment. While a prosperous Union is the basis for a stronger Europe in the world, prosperity must be shared and requires fulfilling the Sustainable Development Goals (SDGs) worldwide, including in Europe. Furthermore, with most world growth expected to take place outside the EU in near future, trade and investment will increasingly underpin prosperity: a prosperous Union hinges on a strong internal market and an open international economic system. We have an interest in fair and open markets, in shaping global economic and environmental rules, and in sustainable access to the global commons through open sea, land, air and space routes. In view of the digital revolution, EU progress depends on prosperity also depends on the free flow of information and global value chains facilitated by a free and secure Internet.

**Democracy**

The EU will foster the resilience of its democracies, and live up to the values that have inspired its creation and development. These include respect for and promotion of human rights, fundamental freedoms and the rule of law. They encompass justice, solidarity, equality, nondiscrimination, pluralism, and respect for diversity. Living up consistently to the values internally will determine our external credibility and influence. To preserve the quality of democracy, countries are obliged to respect domestic, European and international law across all spheres, from migration and asylum to energy, counter-terrorism and trade. Remaining true to our values is a matter of law as well as of ethics and identity.

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

In support of national security, the defense system of the Republic of Macedonia is trained to support and fulfill the following strategic missions: (Gerginova 2015, 182)

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

National security objectives of the Republic of Macedonia require effective organization of the national security system and represent a practical basis for inter-institutional coordination and joint actions. The development and maintenance of the national defense system as an instrument of national security policy is a continuous obligation of all state institutions. To this end, government continually enhance capacities and capabilities:

- Development and implementation of effective tools and methods for collecting data and information vital to the security, quality expert analysis of the security environment and effective international cooperation;
- Compatibility of national defense capabilities in accordance with NATO and EU standards;
- Running a comprehensive foreign policy on implementation of national interests and objectives in accordance with international legal standards, building and strengthening of multilateral and bilateral relations with international actors;
- Dealing with transnational organized crime in all its forms, terrorism and corruption;
- Participation in international operations to preserve world peace and security led by the UN, NATO and the EU;
- Keeping an active neighborhood policy and participation in promoting regional cooperation.

Democratic change in SEE countries and the support of NATO and the EU, have increased influence in the Euro-Atlantic integration processes. These positive changes create contemporary political and security landscape of the Western Balkans where peace, cooperation, economic and democratic development between countries visibly improve and contribute to the progress of the entire region, as well as the progress of the Republic of Macedonia. The region, which includes our country is still fraught with unresolved issues and faces complex security risks (Gerginova 2015, 184)
Membership in NATO and the EU is a strong motivating factor for comprehensive national security reforms in the country. Macedonia is completely ready to assume the obligations and responsibilities as a member of NATO and starting accession negotiations for EU membership. Seen from the perspective of the Republic of Macedonia, NATO is a key pillar of contemporary Euro-Atlantic security architecture, while the EU is seen as a major driving force for democratic, economic and social development of the whole European continent. When all the countries of this region will be integrated into the Euro-Atlantic family can speak of a united Europe, free and democratic community of states.

3. CONCLUSION

The Republic of Macedonia is determined to realize its interests and to create a security environment with active and continuous participation in the international community and international relations.

In the modern world for the realization of national security, every state is building policy and national security strategy. National security policy and strategy for national security shall be determined in accordance with the general approach and the realization of the protection of national interests, and in accordance with actual and estimated challenges, risks and threats to security. It is based on modern theoretical knowledge in the field of security, national experience and security needs of society as well as the experiences of other countries in the creation of the national security system and addressing the risks and threats to security.

Due to the dynamic changes in international relations, indicating that despite the existing, will arise new challenges, risks and threats to security, it is necessary to react on time, and for security policy and national strategy to adapt timely to the conditions in which they are implemented, for the purpose of protecting the national interests.

The Republic of Macedonia sees its future integrated into NATO and the EU. Peace and stability are the basis for sustainable development, globalization and integration are imperative to the modern world. In this respect, European integration is the best alternative for the future of the Republic of Macedonia and the Balkans, NATO and the EU is our strategic priority. Macedonia is aware of the impact of global strategic changes and therefore the Republic of Macedonia is even more committed to building a system of mutual values and participation in cooperative activities and forms of collective security systems with the ultimate goal - membership in NATO and the EU. Today the Republic of Macedonia is ready to face the threats to its national security and will continuously monitor the global trends and opportunities for development and improvement of the necessary defense and security capabilities and capacities.
Important issues related to the security of the Republic of Macedonia in contemporary global circumstances are:

- Issues of safety and security challenges especially in the period when the Republic of Macedonia and upcoming reform process of the security system and become part of Euro-Atlantic integration, (security system integration of of the Republic of Macedonia; NATO integration as an indicator of the degree of acceptance of Euro-Atlantic values and standards);
- Analyze and evaluate the experiences of the strategic partnership with the United States;
- Analyze and evaluate the challenges of a dispute over the name dispute with southern neighbor, the need of re-reading of history, the existence of language, canonical problems with the northern neighbor and host conditions that require thinking and building strategies of action of public authorities;
- The processes of globalization and the challenges of the Republic of Macedonia;
- The reform and restructuring of the security sector in the Republic of Macedonia through perspectives of the Atlantic and European integration processes (clearly expressed will and energy of dedicated institutions on the Republic of Macedonia to implement reforms in the spirit of Euro-Atlantic values and standards);
- Security and dealing with crime;
- Compatibility of national defense capabilities in accordance with NATO and EU standards;
- Keeping an active neighborhood policy and participation in promoting regional cooperation;
- Participation in peacekeeping missions, dealing with conflict through diplomatic channels; Europe and security (Europe today faces security threats and challenges). European need to take responsibility for global security and in building a better world (The growing interest of European harmony and the strengthening of mutual solidarity within the European Union, makes a credible and effective actor).

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AN INHERITANCE AGREEMENT IN HEREDITARY - LEGAL SCIENCE

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Abstract
This paper discusses the notion, the phenomenon, the historical development of the inheritance agreement, the characteristics of the inheritance agreement, but also a comparison of the legislation of Europe and the former Yugoslavia is made. It is also given a critical stance on (in) the justification of the prohibition of the inheritance agreement in the Republic of Macedonia. In the hereditary right of certain legislations, besides the law and the will, there is a third legal basis for invoking the inheritance agreement. By its legal force it is the strongest legal basis that has priority over the will and the law. In our hereditary right, unlike from other inherited rights, the inheritance agreement has been banned and nullified for more than seven decades. A contract for lifelong support has been introduced to him, which since the introduction has so far been followed by abuses and dilemmas.

Key words: inheritance; agreement; hereditary; law; will; legislation

1. NOTION OF AGREEMENT ON INHERITANCE

In the hereditary right of certain legislations, besides the law and the will, there is also a third legal basis for invoking the inheritance-succession agreement. By its legal force it represents the strongest legal basis which takes precedence over the will and law. In our hereditary right, unlike other hereditary rights, the inheritance agreement is banned and nullified for more than seven decades. A place for him was introduced to the lifelong support agreement, which from the introduction to this day has been followed by abuses and dilemmas.

To come to inheritance in a particular case, i.e. to get to the transfer of assets to an individual who died of his successors need to be met certain basic assumptions or conditions, and it is there testator, legacy and successors. A person to be able to appear as the heir to the legacy of a certain person (the testator), there should be a legal basis on which it will become the successor of the property left at death of the testator. Hence, the fourth assumption for the occurrence of inheritance is the legal basis for inheritance. In the past, and in some countries today, as a basis
for calling the inheritance, besides the law and the will, there is an agreement on inheritance. By his legal power, he is a stronger legal basis, unlike the will and the law. It is therefore a priority in front of them. The inheritance agreement is primarily a double-sided legal act that can not be unilaterally revoked, so that the testator, until his death, is obliged to respect the pre-arranged schedule of his property.

Given the specificity of the succession agreement, as well as the characteristics that characterize it, there are no harmonized definitions in the theory with which it is determined. The succession agreement, according to Vladislav Djordjevic, "is a two-way legal act where the negotiators, the two or only one of them, deploy their property in case of death."(V. Djordjevic, 1997, p. 369) In the opinion of Oliver Antic and Zoran Balinovac, "the inheritance agreement is a one-sided irrevocable, double-sided legal act, which does not draw the legal effect only from the will of the testator, but from the will of the other contracting party."(O. Antic, 5/1986, p. 512) Natasa Stojanovic for an inheritance agreement says that "it is a legal basis with which the contracting parties have their own legacy."(N. Stojanovic, 10/2003, p. 163) Having in mind the above-mentioned determinations, I am inclined to the opinion of the authors that the inheritance agreement is a contract by which one person disposes of all or part of his legacy in case of death.

2. APPEARANCE AND HISTORICAL DEVELOPMENT OF THE SUCCESSION AGREEMENT

The succession agreement, even though it had its "true renaissance" in the Middle Ages, dates back a long time ago. Namely, according to some historical findings, this agreement has drawn its roots from the old Egyptian and Greek law. According to others, the inheritance agreement existed in the law of ancient Babylon, and it was allowed to dispose of the property of a death event during life. A third group of authors finds that "the origin of the inheritance agreement is not known"(A. Ristov, 2011, p. 3). In the early Middle Ages, the conclusion of special agreements (inheritance agreements) began to be practiced, or with a final will in the form of a will, or in the framework of an agreement for the transfer of property, a contract for lifelong support, a marriage contract and similar. In the succession contracts, "clauses for a lifelong support agreement" were introduced which have been widely used since the early Middle Ages-XIV and XVIII.(D. Manchev, 1997, p. 19)

Contemporary succession agreements lead directly to Prussian and German medieval law. Most of the modern hereditary rights forbid the succession agreement.
2.1. Agreement on inheritance according to the Federal Law of Succession of 1955

According to Blagojevich and Antic: "The foundations of the new modern hereditary right in the wider region, including the Republic of Macedonia, were set after the end of the Second World War, that is, with the adoption of the Law on Inheritance, from 1955 (" Official Gazette of the FPRY No. 20/1955). The principles proclaiming this law for the first time in this region have survived the legal regulations of the former Yugoslav republics, including the Republic of Macedonia, but they persist even today.(Antic, Blagoevic, p.514) The succession law of 1955 was based on the following principles:

- unique editing of the inheritance;
- equality of citizens in the inheritance;
- determining the law and the will as grounds for invoking inheritance, which ruled out the possibility of inheritance on the basis of an agreement;
- retroactive validity of the inheritance law;
- the inheritance procedure was an integral part of the inheritance law.

In our country, in some periods, some hereditary-legal agreements were also known to be later banned, depending on the socio-economic and political development of the country, as well as from the position of the social environment for the permissibility and morality of each of them. The most famous and commonly practiced agreement in post-war Yugoslavia, even in our country, was the succession agreement, which was abolished by the Law on Inheritance of 1955.(Spirović Trpenovska 2009, p.227) Initially, the legal continuity of a succession agreement interrupts judicial practice through its decisions. Later, this case-law which does not accept the contract of inheritance was supported by the legislator and the Federal law on succession of 1955 which legitimized jurisprudence. Thus the principle of the prohibition of agreements underlying the inheritance and today is present in all of our republic and provincial laws on inheritance. Starting from this principle, the inheritance in our country is transferred to the heirs of the deceased person solely on the basis of a law and on the basis of a will. In Article 6 of the Federal Law on Inheritance, since 1955, it is stated: "To inherit may be based on law and will."( Official Gazette of the FPRY, No. 9, April 25, 1955).
2.2. The Inheritance Agreement under the Succession Act of 1973

With the adoption of the 1971 Constitutional Amendments, the normative jurisdiction over the substantive legal issues of inheritance law was transferred from the federation of the republics and provinces. The first Macedonian Republican Law on Inheritance was adopted in 1973, at the then SR Macedonia, and until its entry into force, the Federal Law on Inheritance was applied since 1955. An exception to this was the inherited legislation of BIH, which provided for specific rules regarding the inheritance of the copyright of the testator, which could only be inherited by a narrow circle of legal heirs. Such a procedure proved to be justified, since this law contained contemporary solutions that in their application in practice showed very positive results. (J. Vidic, p.30) This abolished the principle of unity in inheritance and restored particularism within the hereditary-legal regime.

2.3. The Inheritance Agreement under the 1996 Legislation Act

The Law on Inheritance, adopted by the Parliament of the Republic of Macedonia in September 1996, was built on the same principles as the previous law on succession from 1973 ("Official Gazette of SRM", No. 35/73, 27/78), ie the 1955 Legislation Law ("Official Gazette of SFRY" No. 20/55, 12/65), whose consolidated text was published in 1965 ("Official Gazette of SFRY No. 42/65"). The Law on the Legacy of 1996 in the Republic of Macedonia is in force today.

The Law on Inheritance ("Official Gazette of the Republic of Macedonia" No. 47/96) in its 15 years of existence is one of the few laws that has not undergone changes and amendments, which points to the fact that it is a law that corresponds to the socio-economic editing. However, after seeing its weaknesses, appropriate changes and amendments should be followed, especially if the reforms in the hereditary legislation of a number of hereditary legal systems are taken into account.

In terms of contract inheritance Inheritance Law of 1996 prescribes nullity (Article 7). The contract, as the basis for referring to a legacy in which the two contracting parties agree that the one who is outliving the other becomes his successor, with all the consequences associated with the transfer of the inheritance that is arranged in this way, is not only excluded as a basis for reference of inheritance, but in many places in the law, his nullity is specifically withdrawn. (M. Hadzi Vasilev, p. 87)

3. FEATURES OF CONTRACT INHERITANCE

The inheritance agreement is a legal act by which the parties to the agreement have their own legacy. In the case where the parties to each other are appointed as successors, there is a mutual succession agreement. If only one
contracting party determines the other for a universal successor, then there is a one-sided succession agreement. When the two contracting parties name a third-party heir, this is a two-pronged succession agreement." (N. Stojanovic, 10/2003, p. 163)

In the opinion of prof. Antic "... regardless of which modality it is, this legal basis draws the legal action from the will of the testator, but from the other contractual side. Each of the negotiators is authorized to freely dispose of their property until death. "The death of one of the negotiators is a condition for acquiring the inheritance rights of the other contracting party. However, the succession agreement is usually considered an alteratory agreement so that the surviving party becomes the successor of the opposite contracting party." (Z.M. Balinovac, O. Antic, 1996, p.477) This agreement is one of the grounds for calling the inheritance. In the legal systems in which an inheritance agreement is recognized, it is the strongest legal basis for invoking inheritance, but in terms of applying it in practice it comes only after the will and the law. The inheritance agreement is a legal basis that can only arise with consent, with a statement in which the contracting parties express their will. Specifically, the testator can not with his own will unilaterally withdraw the validity, that is, to terminate such an agreement.

An inheritance agreement is a two-pronged legal agreement in which negotiators, both or just one of them, have their own legacy in case of death. As a legal act, the succession agreement appears as a way of deviation from the inheritance lines provided for in the law and the regulation of a new succession schedule similar to the schedule that can be based on the will. In some of the rights, there is still a succession agreement as the basis for calling the inheritance. It is a big difference between which persons can be concluded such contracts (between all persons or only between spouses). There is a difference in terms of the abilities of the negotiators (in terms of general civic-legal capacity and testimonial capability), in terms of the content of the agreement, with regard to the possibility of appointing third parties, and not only the successors to the inheritance, in terms of the joint declaration by the contracting parties in respect of the form of the contract in respect of the part of the inheritance which may be covered by the contract in respect of the possibility of termination of the contract during the life of the negotiators as well as with regard to the joint conditional clauses in the event of the death of one of the negotiators. (B.T. Blagoevic, 1983, p. 304)

The inheritance agreement is concluded by an adult with full legal capacity, or a person with limited legal capacity, with the consent of a legal representative and a competent authority. As a party to the succession agreement, any person may appear, but in most countries as a party the contract was allowed to appear exclusively by spouses. (M. Hadzi Vasilev, p.282) Agreement on Succession, as a future testator can conclude a rule only person who is an adult and has a full legal capacity.
Deviation from this rule we have the people with limited legal capacity, however, it is necessary consent of the legal representative and the competent authority, but this agreement can not be concluded through a proxy. The inheritance agreement may also be concluded for the benefit of a third party. In such a case, this agreement has no similarity to the contract concluded for the benefit of third parties (inter vivos), between living persons. In the first case the third party only expected inheritance-legal authority by opening the legacy of contracting testator, unlike the second situation in which certain omission under this agreement are carried out during the life of the parties. Contracting successor in this agreement practically accepts the possibility of inheriting contracting testator. By opening the inheritance, he can, like any other successor, accept the inheritance with the privilege of the previously signed succession agreement or deny the inheritance. (N. Stojanovic, 10/2003, p. 166) In terms of form, the succession agreement is a strictly formal agreement. Conclusion of this agreement requires appropriate conditions. In some countries, a notary is required as well as two witnesses, and in some countries this agreement is concluded in the form of a public document.

3.1. Subject and content

The object of the succession agreement is determined by the contracting parties, and the content of the contract may refer to all property that exists at the time of conclusion, but the contract may include the property that is yet to be acquired. The inheritance agreement for an object may have the entire herd or a specific part. The freedom of the testator to dispose of his inheritance has certain limitations. The restrictions primarily refer to the necessary part, as well as to the protection of the necessary heirs. According to Natasa Stojanovic, regarding the effects of the agreement on succession, "... if this agreement lapse, disposals made before or after hereof shall remain in force." The law on inheritance does not give the right in any way to secure hereditary legal authority. Contracting testator with this Agreement may undertake not to dispose of certain goods from the legacy. If he violates this promise, he is obliged to compensate the contractual heir. Also, the persons in whose favor certain goods are determined are an additional guarantee in respect of compensation.

This agreement, in principle, ceases to have effect when the contractual successor dies before the testator. The contractual heir can not acquire the part of the legacy and in case it is incapable or unsuitable for inheritance or if it is denied by inheritance. The agreement on inheritance in favor of a third party may be terminated by the contracting parties without the consent of the beneficiary. For the validity of such termination of the contract it is necessary to do the same in the form prescribed in the inheritance agreement. In the case of double-sided succession agreements, as well as for mutual agreements, the rule of an consistent character is
in force, which practically means that the termination of the agreement regarding the disposal of the legacy of one of the contractual parties conditioned the withdrawal and the termination of the importance of disposal of the left and the other party. (N. Stojanovic, 10/2003, p. 172)

4. THE INHERITANCE TREATY IN THE REPUBLIC OF MACEDONIA

The Law on the Succession of the Republic of Macedonia stipulates that the contract with which someone leaves his or her legal successor or part of his co-contractor or a third party is prescribed (Article 7). In addition, the future inheritance or legacy contract (Article 8 of the Inheritance Law) is null and void, as is the agreement on the content of the will (Article 10 of the Inheritance Law). (Official Gazette of the Republic of Macedonia, p. 2708-nr. 47)

A succession agreement is null and void when it is concluded for the benefit of either party or mutually in favor of either party, or for the benefit of a third party. Such an agreement is null and void because it contradicts the freedom of disposal in case of death. Having in mind his characteristic of irrevocability, the testator, until his death, is in principle tied to the agreed schedule of his property. In our hereditary right, the inheritance agreement, because it is null and void, does not produce any legal effect. Accordingly, there is no need to have a dispute to determine its nullity, and the court, or in any other procedure, will consider it. The statement of disposal of the inheritance contained in such a contract can not be considered by way of conversion (Article 106 of the ZOO), nor as a declaration of the will of the will contained in the will. Such a nullity of this agreement also applies in the event that a legate is appointed with it. The nullity of the inheritance agreement does not apply to heredity-legal contracts, i.e. of contracts that have the character of legal acts among the living (inter vivos), but of a certain inheritance-legal effect, such as, for example, the contract for the deviation of the property during lifetime and the contract for lifelong support. (K. Chavdar, p.22.)

4.1. Anticipated renunciation of hereditary right

If a person, while the testator was alive, declared that he does not want to be the heir to the testator after his death, a question arises whether that person is entitled to the inherited right? The anticipated renunciation of hereditary right, that is, the renunciation of inheritance that is not open, has no legal effect, it is null and void, and does not prevent the person who has previously given up after the testator death to acquire hereditary right. The person who has given a negative heir declaration is considered to have never been an heir, it is considered that that person never existed. In this sense, Article 8 paragraph 1 of the ZN stipulates that "giving
up inheritance that is not open has no legal effect”. As a result, in our inheritance law it is stipulated that the contract with which someone alienates the legacy he hopes is null and void, as well as any third-party consignment agreement that is still alive. (Official Gazette of the Republic of Macedonia, p. 2708-no. 47, 12/1996) Null will be, too, and each contract for legate or any other benefit to which a contractor hopes of a legacy that has not been opened (Article 8, para. 2 ZN). In the last two agreements on future inheritance or future legate, it is essential that as one of the contracting parties, as an importer, a person who expects to become an heir is yet to appear, appears in this case as a presumptive heir, which in fact makes this contract null and void. (N. Stojanovic, 10/2003, p. 172)

5. THE INHERITANCE AGREEMENT IN THE COMPARATIVE HEREDITARY RIGHT: INHERITANCE AGREEMENTS IN EUROPE

The succession treaties, as a result of the legal tradition, are most widely accepted in German law. The inheritance treaty in German law is regulated in the fourth part of the German Civil Code (2274-2303). The German Civil Code provides for all three forms of inheritance agreement: the inheritance agreement in the narrow sense, the contractual legat and the negative inheritance agreement. Under the influence of German law, the Code of Civil Suisse of 1907 foresees the succession agreement as a legal basis. The Austrian General Civil Code (Allgemeins burgerliches Gesetzbuch-ABGB) - 1811 - provides for a succession agreement. In Austrian law, the inheritance agreement is valid only between spouses who with this contract can only dispose of ¾ of the property, and for ¼ they can make a will. (Spirović Trpenovska, Misković, Ristov, p. 377) In France, under the provisions of Code Civil, contractual inheritance is permitted only between spouses.

Inheritance contract in France is a mechanism by which the spouses mutually able to dispose of their disposable part in the event of death, through revocable contract in the practice known as "donation au dernier vivant", or as a gift for the benefit of the surviving spouse.

6. HEREDITARY - LEGAL AGREEMENTS IN EX YUGOSLAVIA

All republic and provincial inheritance laws contained the same title of chapters that regulate contracts that have hereditary-legal consequences. In all laws, chapter four carries the title Hereditary-legal contracts, except in the law of inheritance of Montenegro where heredity-legal contracts are in chapter five.

Nullity of succession agreements is provided for in the following laws:

- Law on Inheritance of the Republic of Serbia, since 1995;
- The Inheritance Act of Slovenia, 1976;
7. THE JUSTIFICATION OR UNJUSTIFIABILITY FOR BANNING AN INHERITANCE AGREEMENT INTO OUR RIGHT TODAY

The legal continuity of the succession agreement in our region is terminated by the Federal Law on Inheritance, prescribing its nullity. However, it is not so easy to break with this legal act, it also points to the definition of a lifelong support agreement, where practically, but indirectly, the inheritance agreement exists in reality. In the field of inheritance, the negative criticism of the succession agreement remained valid since the adoption of the Federal Law on Inheritance. It is said that, in essence, the succession agreement is of speculative nature, that its application would lead to numerous disputes among the heirs and that it leads to complicating the cases of allocation of the legacy. The first expressed opinion is that the succession agreement, because of its feudal character, is an institution that today has no place in the legislation and practice. This fact, according to legal experts, is unacceptable, and this position is supported by the fact that the French, Austrian, German and Swiss law have accepted the agreement on succession as a basis for calling the Heritage. (N. Stojanovic, 10/2003, p. 173)

The inheritance agreement is the legal basis of the mortis causa, which suggests that one must not ignore the fact that the contractual abstinent remains the freedom of disposal for life of what was subject to the inheritance agreement. If the speculative character is attributed to the succession agreement, it is precisely because of this that the agreement is on the so-called blacklist, then why the Lifetime Support Agreement, which has many drawbacks, has been in practice for decades, at the expense of the inheritance agreement. According to Natasa Stojanovic "when the contract of succession would be allowed legal basis in this case, its application would protect the heirs of contracting testator would protect creditors of contracting the testator."(N. Stojanovic, 10/2003, p. 173) Because of its advantages, the succession agreement should be recognized as a basis for inheritance, so that, as a legal basis for our territory, we can, to a large extent, achieve freedom in regulating legal relations to the needs and opportunities of legal entities, thereby achieving a greater degree of legal certainty. The unwritten rule is that our distribution of the inheritance of a deceased regularly monitor disputes between heirs. Whether the inheritance treaty in our law further complicates the allocation of the legacy of a particular testator or not, can not be known beforehand. The answer can also lead to both directions, depending on the particular case. After all, not the other contracts with which the legacy is allocated (for example, the lifelong support agreement) are not flawless in that direction, but in reality they do not call into question their existence.
The legal conclusion that the inheritance agreement limits the freedom to dispose of the good mortis causa is well-known and justified, but it can, to a significant extent, be regulated by the regulation of laws that will apply to the rights of the contracting parties in the contract to foresee the possibility of terminating the contract with a unilateral declaration of will of the contractor has left the contract to be terminated on the basis of a law because of the failure to fulfill the contractual obligations of the contractual heir, or due to the existence of reasons for exclusion from inheritance or deprivation of the necessary part.

8. CONCLUSION

In modern hereditary rights one of the basics for calling of inheritance, besides the will and the law, is the contract for inheritance. In hereditary systems that provide for this agreement (Germany, Austria, Switzerland, France, etc.), according to its law force it represents the strongest legal basis and has a priority in the application before the will and the law. Starting from the problems in practice, as well as from the characteristics of the succession agreement, it is my opinion that the inheritance agreement should be introduced in our inherited right. The basic argument for proposing this solution is the fact that the succession agreement has better features than the lifelong support agreement.

By foreseeing the inheritance agreement, the necessary heirs of the contractual remedy would be protected, because with the succession agreement he can not dispose of the necessary part. This is not the case with the lifelong support agreement, which, if all the property is covered, the necessary heirs can not exercise their right to the necessary part. Further, the next good feature of the contract for inheritance consists in being with him to a great extent protected and creditors of the testator, which is not the case with contract for lifelong support, because the provider of support does not fit for the debts of the recipient of the support. My opinion is that by recognizing the inheritance agreement, the freedom to regulate legal relations can be largely realized in accordance with the needs and opportunities of citizens and that a greater degree of legal certainty can be achieved. As for the issue between entities that contract inheritance should be permitted, I would have offered it to provide only for the benefit of the spouses, that signing a contract for life support will be prohibited.

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SECURITY RISKS OF GLOBALIZATION

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Abstract
Globalization dates from the earliest periods of the history of human society, from the moment people began to spread their knowledge and skills about the cognitions and phenomena that surround them. Today, when globalization enters in almost all segments of social phenomena, contemporary society is preoccupied with the research of the risk of globalization. Risk research is aimed at overcoming the hazards that affect the security of the state, society and individuals, that is, on security in the widest sense.
The conceptual definition of the notion of globalization, from the perspective of certain theoreticians, has been carried out in this paper. The risks were identified and their classification was noted. The paper deals with the economic consequences of globalization, through inequalities in economic growth and the development of economy and poverty in the world. As a consequence of the activities of globalization on human society, cultural homogenization has also been studied.

Key words: globalization, security risks, state, individual, poverty

1. INTRODUCTION
The recognized and valid definition of globalization does not exist, but it is essentially an increasingly intensified connection and interdependence between states, economies and societies. This is achieved primarily through developed information and communication technologies, markets and capital, and under the patronage of the most powerful countries in the world and international institutions. At the end of the 20th and the beginning of the 21st century, globalization is the most important trend.

Globalization as a term "... is in most cases not an innocent or neutral case and often serves to replace older discourses such as imperialism or modernization and to
divert attention from social content which includes the notion of imperialism, that is, to embellish the reality which is implied by the concept of modernization" (Vidojević, 2005:13). It can initially be understood as "spreading, deepening and accelerating global interdependence in all aspects of modern social life, from culture to crime, from finances to spirituality." (Held, 2003:48).

A number of different theoretical approaches to the problem of globalization point to the fact that it is difficult to come to the definition of globalization that could be universally accepted. Thus, according to Martin Albrou, "globalization refers to all the processes by which people of the whole world are incorporated into the world, that is, into a global society". Anthony Giddens defines globalization as "an intensification of social relations on a world scale that connects distant places so that local events shape events that have taken place at a great distance" (Stojanović 2009, 14-15).

Thanks to globalization, relations between people and countries are becoming more and more intense, and people begin to think globally and the world as a whole to understand differently. Today’s world is increasingly "opening" and "decreasing" and hence a well-known reference to the world as a "global village" has been created.

Globalization also describes the increased mobility of goods, services, labor, technology and capital around the world, which in itself brings prosperity to society, but inevitably carries with it risks (Katalinić, 2009). It, as a complete social change, involves a complete social reality, with all its contradictions. On the one hand, these are positive consequences that are becoming increasingly apparent, and on the other hand, these are increasingly difficult to predict and control risks. (Tadic, 2005,191) While the positive aspects of globalization are difficult to quantify, risks can be divided into: socioeconomic, ecological and military, as well as: technological and political risks. (Tadic 2005,191) In addition to the above, the following are often emphasized: geographical, urban, migratory and, in particular, ideological risks. (Tadic, 2005,193)

Namely, in all historical types of societies there was an experience of danger, but the risks associated with the deterritorialized space that arise in the process of globalization are becoming less national, and increasingly global phenomenon. In fact, Beck concludes: "The risks of modernization have an immanent tendency toward globalization." (Beck, 2001,55) Modern risks differ from previous risks not only in terms of their globality, but also due to contemporary reasons, which Beck finds, in the first place, in the industrial and post-industrial model of production and distribution of manufactured goods. (Stojanović, 2009, 109)
2. SOCIO-ECONOMIC RISKS OF GLOBALIZATION

The socioeconomic dimension of globalization encompasses, on the one hand, the economy and all its spheres - trade, finance and production, and, on the other hand, man as a reasonable being around which everything is happening and which affects everything (Tadić, 2005, 1991).

2.1. Economic inequality and poverty

The essence of economic relations should first of all be sought in challenging and multiplying social inequalities. Such relationships cause extreme inequalities and unevenness, as they lead to asymmetries in life opportunities. Many of the advocates of this process, who argue that globalization is too heavy, too intrusive, too unfair to a large number of people, is too dehumanizing, is not disputed by the asocial trends of globalization (Pejčulić, 2003). In such a social environment, the benefits of globalization are those peoples and states that are able to take advantage of technological advancement. At the same time, they do harm to those who are technologically less prepared, because the aggressive economy, as a rule, strong and capable, makes it even more capable, and weaker and weaker, and hence the attitude that in the process of globalization, as well as in war, or killing, or you were killed (Stojanović, 2009, 104).

The consequences of the globalization of economic flows are most clearly seen in the exploitation of cheap labor and cheap raw materials. As a result there is an enormous increase in the wealth of the few elite of the most powerful and the globalization of the poverty of giant proportions, creating a new social map of the world.

There is a multiple gap, but not only between the rich and the poor, but between: scientifically and technically super-developed and undeveloped, comfortably populated and overpopulated, highly educated and uneducated. The poorest countries usually have the highest natural increase, it is not difficult to conclude that increasing the gap between the rich and the poor poses a risk to security and fosters economic migration.

Also, economic inequality and an increase in the gap between the rich and the poor can be seen through an unbalanced rate of investment in economic development. Namely, the high interest loans of the IMF and the World Bank, as well as the offensive appearance of multinational companies in the world capital market, lead the underdeveloped countries and developing countries, which do not have adequate capacities and adequate infrastructure, into a sort of colonial position (Stojanović, 2009, 113). These are underdeveloped and developing countries are even more subdued.
2.2. Growth of the global population and demography

The enormous growth of the world's population strengthens the intensity of tension and split and seriously threatens the future of the world. What brings uncertainty is the growing disproportion between the increase in the world's population and the limitations of natural resources. In other words, the accelerated and uneven growth of the world's population is the basis for the emergence of an increasing demographic and economic imbalance between the rich and the poor, the growing lack of basic foodstuffs, the numerous and uneven migrations of the population and the emergence of new diseases as a consequence of accelerated and unplanned urbanization. The estimates of demographic growth and the consequences it causes indicate that this is one of the most significant security risks in this millennium. What is particularly worrying is the tendency of global population growth. In the opinion of Miodrag Ilić "... taking into account the trend of global population growth of 1.5 percent annually, it can be expected that by the year 2050, around 15 billion people will live on Earth. That number would not be alarming if demographers and economists did not warn that "there are places and conditions for the survival of up to 14 billion people on Earth"(Ilić,2000,251).

Accelerated population growth and other complex demographic processes in some regions of the world can also cause some new problems, such as the lack of water and basic foodstuffs, and ultimately hunger, then the rapid consumption of traditional energy sources, as well as the economic stagnation of many underdeveloped countries and entire regions.

According to the UN, by 2025, the most significant increase in the human population will occur in the equatorial area and the tropical belts of the planet, which at the same time are the poorest regions (Stojanović, 2009,122). Due to this tendency, there is a further deepening of the gap between the poor and overpopulated Third World countries and developed postindustrial states. Namely, a technological explosion occurs in economically prosperous societies, and a demographic explosion in countries with limited technological resources, indicating a strong connection between economic, technological and demographic trends in the modern world and threats to security. (Stojanović, 2009, 113).

2.3. Migration of population

Other important processes, such as violent and non-violent migrations, are accompanied by the rapid growth of the population. For non-violent migrations, Tomas Maltus predicted that population growth would affect the deterioration of the human species, with the widening gap between the holders and the lacking and increased pressure on the two dominant resources - land and water.

The basic form of migration of the population is caused by the change of a traditional agricultural society into an urban society. Consequently, an influx of
people from rural areas to enormous and uncontrolled cities in multi-million cities has resulted. There is a gloomy vision of new megalopolises overpopulated and powerless to provide their people with the basic conditions of life, the cities where the gangs of the poor and troublemakers care. Also, the accelerated dynamics of urbanization of poor societies is illustrated by the fact that in the 1960s the inhabitants of cities made less than a quarter of the population of the less developed world. (Huntington, 1999,9)

The most important reasons for the large migrations of the population are economic decline, but also various ethnic and religious conflicts, disputes and wars (Stojanović, 2009, 127). In other words, endangered security in the country or region drives millions of poor, disenfranchised and vulnerable, to leave their countries of origin in search of optimal and safe living conditions.

Lately we were witnessing a large number of economic migrants from the African and Middle Eastern countries in the rich countries of Western, Central and Northern Europe. These migrations have become so extensive that it could be said that they have taken on the scope of "people's emigration". Also, a large part of the economic success of the Emirate, one of the world's richest economies, lies on the back of an enormous number of cheap labor. The bulk of the workforce is made up of immigrants who have been trying to escape poverty in their own countries, so there are about 1.75 million Indians and 1.25 million Pakistanis among the largest working population (Advance, 2015).

The enormous increase in the number of refugees in the world has been caused primarily by numerous civil, ethnic, religious and racial conflicts and the collapse of some states. Most of the population seek refuge outside the conflict zone and leave their homes in order to secure the most basic existence. According to a report by the United Nations High Commissioner for Refugees, it is estimated that around 26 million refugees and around 1.3 million asylum seekers were present in the world in 2013 (UNHCR,2013).

2.4. Drug dealers

Along with the development of civilization, there was uncontrolled use of narcotic drugs, which escalated over time to a great extent, resulting in the destruction of human personality in its psychophysical structure. Therefore, as the consequences of the use of narcotic drugs are catastrophic not only for man as an individual, but for mankind as a whole, their production, trafficking, spread and abuse have been placed under the control of the international community, and therefore the competent authorities and institutions of each state in particular.

Efforts to reduce breeding and production of basic drugs on the plant base have been compounded by complementing the rise in synthetic drug production levels, including a significant increase in the production and consumption of
psychoactive substances that are not under international control (Bjelajac, 2013, 163).

2.5. Illegal trafficking in weapons, radioactive and other dangerous substances

Trade in weapons belongs to the traditional forms of the classic form of criminal organized crime business. In addition to the legal form of arms trafficking, there is also illegal arms trade, especially firearms, which provide paramilitary formations, terrorist organizations and other criminal organizations. Three ways of dealing with weapons are generally known: legal and open trade with other countries according to established rules and procedures; secret and illegal trade with other countries through a third state and the secret supply of non-state entities through intermediaries on the black market.

The arms trade is rapidly developing after the Second World War as a profession that brings extremely high profits, by establishing a large number of factories for the production of weapons and military equipment, and the United States is the world's largest arms exporter (SIRPI, 2015). Given that the only country that developed economically during the Second World War, they were allowed to become the dominant trading power in the world after the war.

One of the biggest threats to international security is the danger that organized crime groups, criminals, terrorists, come into possession of nuclear materials. Therefore, one of the most important goals, in addition to nuclear weapons, the stopping of nuclear proliferation and the peaceful use of nuclear energy, and the resolution of the issue of nuclear safety. This must be a common goal, since the strengthening of nuclear safety also reduces the threat of nuclear terrorism, which implies responsible actions at the national level and sustainable and efficient international cooperation. Namely, unsafe nuclear materials, highly enriched uranium and pluton require special precautions, as a means of preventing and responding to smuggling cases (Bjelajac, 2013, 252).

2.6. Cyber crime and internet pedophilia

It is evident that new technologies bring significant benefits to the people and numerous challenges that can and must be addressed by creative intelligence. On the other hand, the Internet carries with it numerous dangers, which are especially exposed to young people. Scientific and technological development, along with the launch of the forces that integrate our planet, in order to improve the quality of life of its inhabitants, has made it possible for those who want to use certain innovations for the purpose of committing criminal activities. Positive and useful novelties of modern information and computer technologies have brought a
number of problems related to the emergence and expansion of various forms and forms of computer crime. New forms of value, concentration of data, new methods and techniques of operation in a different environment, and narrowing of the time scale of operations, elimination of the limit on spatial limitation of operation, along with dynamism, mobility, inventiveness and stability of risks, are the determinants in which they fit and managed by individuals and criminal organizations are prone to various forms of abuse.

Internet pedophilia is a particularly specific type of computer crime, because pedophiles are roaming more and more electronically and looking for victims. The Internet has actually become a new "playground" more accessible to pedophiles, where children are permanently exposed to inappropriate sexual content and disturbing and hostile messages, which has a devastating effect on their physical and mental structure, or psycho-physical development, which can be decisive for their future biopsychological status (Zirojević, 2014, 95).

3. ECOLOGICAL RISKS

At the present time, environmental problems are ranked as one of the first-class security risks, which makes the world a place of general risk - the risks have spilled overtime and time constraints. Namely, the process of globalization and interdependence in the economy and other spheres of life increasingly gives a global dimension to all environmental problems (Stojanović, 2009, 155)

3.1. Environmental pollution and global warming

The consequences of the transformation of the Earth by human activity are numerous: acid rain, ozone depletion, climate change and the greenhouse effect, whose effect is directed at the overall wildlife on the planet. The destruction of the ozone layer, air-warming, depletion of biodiversity, the disappearance of the enormous expansion of forest areas and desert area have become a global risk. However, the effect of contemporary risks is not only the consequences that have arisen, but also the effects that are threatening to occur. Namely, many hazards and destruction are already real today: polluted waters and destruction of the living world in them, destruction of forests, new diseases, etc.

As a result of the greenhouse effect, there is global warming, which is causing extreme climatic changes in short time intervals. This is particularly characteristic of a large amount of precipitation in a short period of time, extremely dry and extremely rainy periods, extremely high and extremely low temperatures. Experts warn that a period of storms and climates occurred, suggesting that the number of strong hurricanes - the fourth and fifth degrees - increased from 11 in the
last decade from the 1980s to 1990s, to 18, as recorded in the last the decade of the 20th century (Stojanović, 2009, 160).

As an attempt to limit the level of release of harmful substances into the air, a Kyoto Protocol was established that has not yet entered into force due to the refusal of some countries to verify it. Among them is America, although it is the largest pollutant of the Earth's atmospheric coat. The United States, with its economy and population, is one of the largest greenhouse gases emitters, and refuses to sign the agreement. The US Senate has not ratified this agreement on the grounds that it will not do so until other countries take part in the allocation of costs associated with resolving global warming. Mandelbaum justifies the US stance, "in terms of global warming, the United States does not want to be an international leader, or bearer of the highest costs" (Mandelbaum, 2004, 303).

The latest events say that the world's leading leaders have realized that for the sake of preserving the planet, they must be seriously tackled with climate change. From November 30th to December 11th, 2015, in Paris, France hosts the 21st International Conference of the Parties to the United Nations Framework Convention on Climate Change - COP 21 (COP21). The aim of the conference is to achieve a global climate change reduction agreement that would be binding on all countries, which would involve countries in the process of energy transition in order to gradually reduce greenhouse gas emissions. The biggest significance of this event is that it is envisaged that the agreement be signed by America, thus completing the process of binding limitation of the emptying of harmful substances in the air.

The problems arising from this perception of things clearly make it clear that irrational and increased spending of resources can lead to conflicts of wider scale. The only solution for replacing the largest production and consumption of fossil fuels is the development and reorientation of the "clean energy" expanse.

4. MILITARY RISKS

Terrorism, ethnic and religious extremism, proliferation of weapons of mass destruction, military interventionism and regional conflicts are the core of security tensions around the world, with the tendency of creating an instability of the international security system and an increase in unsafeness. The risks mentioned in combination with the ethnic and historical component and other social and economic differences can pose risks with high potential that can be directed towards destabilizing widespread space and the escalation of conflicts with the use of armed violence.
4.1. Militarization of the world

With the dissolution of a Warsaw Treaty and the end of the Cold War, it was expected that the role of the military force would be marginalized. The paradox is that militarization has been intensifying since then. The most powerful countries in the world, above all the US, through militarism, express their political, economic and other pretensions in the world.

Global military spending has increased in relation to the situation in the mid-nineties of the 20th century. The increase in military expenditures in 2012 reached $1,756 billion and is 67% higher than in 1996 (Global Issues). In Central and South Asia, North America, Oceania and Western and Central Europe there has been an increase in military spending in the period 2003-2009. year, and then a decrease in the period 2009-2012 (SIPRI). In contrast, the accelerated growth rate is in the Middle East and North Africa, which can point to where the greatest clashes can be expected.

Worldwide arms trade increased by 16 percent between 2005-2009 and 2010-14, and the five largest arms exporters in the period 2010-2014. The United States, Russia, China, Germany and France account for 74% of the total global arms exports, although the US and Russia are absolute leaders (Trends In International Arms Transfers, 2014). Also, it is notable that among the seven largest arms importers of the three countries belong to the flammable region of the Middle and Middle East: Saudi Arabia, United Arab Emirates and Turkey. In addition, seven terrorist groups that imported weapons in a total percentage of 0.02 percent were recorded (Trends In International Arms Transfers, 2014). In the current situation, and given the methods and procedures of terrorists, and such a small percentage can pose a great risk to global security.

4.2. Proliferation of Weapons of Mass Destruction and Global Terrorism

Trade in weapons of mass destruction is potentially the biggest possible threat to security, despite the fact that international treaties and controls on exports and imports proliferation of such weapons is mainly put under control. Regardless of the control regime and the ever-increasing control of transfers of technological weapons, unlike the Cold War period, when nuclear weapons control was based on a multitude of multilateral and bilateral treaties, the 20th and the beginning of the 21st century was characterized by the massive and uncontrolled expansion of these weapons (Stojanović, 2009, 206).

The collapse of the Warsaw Treaty created a real danger that a certain amount of weapons of mass destruction would come to the hands of destructive forces that they would use to achieve their own political, religious or other goals. Increasing
availability of raw materials for the production of atomic, biological and chemical devices and transmission systems for its possible use, as well as the high sophistication of the organizational structures of modern terrorist groups are further uncertainty. Increasing the possibility of procuring arms for mass destruction increases the degree of risk of its use, which further limits the possibilities of prevention. Today terrorist groups are highly sophisticated organizational structures that increasingly surpass the power of the countries and governments against which they are directed by their inventiveness, elasticity and considerable flexibility.

There are no parameters for measuring the level of fear, but some of the consequences of the operation of terrorists are clearly visible and measurable. There is a general consensus that terrorist attacks have caused financial difficulties to air companies, primarily because of fears of passengers that an airplane might be abducted, be used as a missile or simply crushed. Thanks to terrorism, security guarantees have become one of the main items in the tourist offer. If terrorists intended to strike a Western economy, the demolition of the WTC in New York certainly shows it, then they have succeeded in doing so, and with minimal invested resources inflicted damage that can be measured by billions of dollars (Beriša, 2014, 141-145).

On the other hand, the new terrorist organizations are able to directly influence political developments with their acts, and even the attitudes of the states on specific issues. The result of the elections in Spain was largely determined by the terrorist attack in Madrid, which followed in response to the participation of military units in this country in Iraq. After this, Spain was forced to withdraw its troops from Iraq, although this was an open concession to terrorists. Spain was followed by many other countries, as well as economic companies that are involved in the stabilization and reconstruction of Iraq (similar to humanitarian organizations that left Iraq and Afghanistan under the pressure of terrorism) (Nacional and global security 2004, 2).

Also, terrorist actions can directly affect the electorate and form executive power. Lately, under the pressure of terrorism and fear of their own survival, in the elections in many European countries, the polling station is slowly opting for the right-wing parties, which are "undermined" intolerance towards members of other nations. For now, this is a moderate right but the intensification of terrorist attacks and the spread across Western Europe, the moderate right may become extreme, as is the case with the recently held regional elections in France. Namely, according to world media reports, the party of the extreme right-wing National Front, led by Marine Le Pen, won in the first round on December 6th 2015 almost a third of the votes and became the leading party in France. Bearing in mind the presence of a significant part of the Islamic world population in the countries of Western Europe,
the intensification of right-wing forces and the radicalization of ideas can lead to conflicts of unimaginable proportions.

The success of the new global terrorism can also be measured by efficiency. Due to the use of modern technologies, suicides as direct perpetrators, extraordinary flexibility in performance, choice of goal, ruthlessness and fanaticism, the possible effects of an attack are terrifying and obvious. Their actions have a great impact on public opinion, a wider state of insecurity and fear, which in essence is also the main goal of terrorists.

By stepping up the activities of terrorists and spreading its actions both by volume and intensity, it is quite clear that this is a global threat and that it can only be won by the engagement of all relevant factors in the field of world security. Great forces must unite, stop sharing terrorists "good" and "bad", but the only indicator of terrorism is to be a terrorist act against the innocent population. The latest events show that the creation of a possible coalition that would jointly engage in the fight against the so-called Islamic states, since it is designated as "the main threat" to world security. In this war, its breakdown is likely to occur, but the crucial question is whether it is the "center of power" or the network is so widespread that there are still many "centers of power" in the world that can be activated at any time? Time will show...?!

5. CONCLUSION

As shown in the work of globalization, the inevitable world process in itself contains duality, a world-wide progress that permits the advancement of human society and the risks that retrograde world powers use to satisfy their own interests. It carries inequality in most social phenomena, which is frustration and discontent around the world. These negativities can take on huge and uncontrollable forms of violence, conflict and suppression of the feeling of planetary unity. Therefore, it is very important to permanently monitor and correctly evaluate all security risks in order to take adequate measures and responses to them.

Economics is a sphere of social life that has brought great advantages, but also a sphere where security risks are encountered. The gap between the rich and the poor has increased, and the world came from colonial times to neo-colonial times, which in many ways coincides with colonialism. Increasing inequalities between rich and poor countries is the basis for many risks and violence, because it is inevitable that an unequal society turns into a society that becomes increasingly unsafe. The increase in the population in undeveloped countries leads to the conclusion that regional inequalities will further deepen. In such circumstances, migration is inevitable, in order to prevent social collapse, mass unemployment and mass hunger. An increase in the impact of globalization has also led to the escalation of organized crime, and lately is leading illegal trafficking and
uncontrolled use of narcotic drugs and increasingly cyber crime. The trafficking of narcotic drugs, encourages and produces a general crisis in the society, destabilizing largely its developmental capacities. Technological development has also led to high-tech crime, and cybercrime, through various internet looting and fraud, and especially dangerous Internet pedophilia, has taken on global circumstances, which carry very high risks with unimaginable outcomes.

Globalization has also led to serious environmental problems. First of all, uncontrolled exploitation of natural resources and insufficient care of the environment led to massive extinction and the fastest extermination of living beings in the recent history of the Earth. Climate change, pollution of water, air, soil and food, mass destruction of forests, increased radioactivity, as well as other ecological problems that man faces today, show that "the country becomes uncomfortable for human life" and therefore, the non-taking of urgent and concrete measures can "surely have a fatal ending."

Although the possibility of using nuclear weapons and causing a war of global proportions seems to be very small, in the present situation, the world is increasingly facing the threat of a rearmament in arming, more ubiquitous asymmetric wars and the growth of terrorism to global proportions. The questions of new conflicts, wars, nationalist and secessionist movements and terrorism are flourishing, and the task of the world's leading powers is to agree, and with the help of globalization, the world returns to the path of prosperity and progress.

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THE PRINCIPLE OF LEGALITY ACCORDING TO THE EUROMPEAN CONVENTION ON HUMAN RIGHTS

Reflection on the Landmark Case Law

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Abstract
Most of the European states have stipulated, through their Constitutions, the importance of the principle of legality and rule of law, but also the prohibition of retroactive law application. Even though certain states within Europe rest on different legal procedures, the relation of criminal law and human rights towards the principle of legality has a similar purpose across various legal systems. Harmonization of domestic law is challenging process for many legal systems in transition towards the democratic governance. A comprehension of certain legal tradition is solely based on its political, economic, social, cultural, and generally historical background. Considering that not every legal system is transparent, due to a long-lasting violations and abuses of human rights that were admitted as such, it was inevitable to establish a unified international norms and standards. The substantive and procedural examples that are going to be presented herein refer to the effectiveness of the European Convention of Human Rights and the principle of legality.

Hence, the present discussion will focus on analysis of human rights within criminal proceedings, including a legal practice of retroactive law application, with inclusion of relevant primary sources and case law.

Key Words: Rule of law, European Convention of Human Rights, European Court of Human Rights, Principle of legality, Human rights

1. INTRODUCTION
Most of the states have adopted law and rules that no one should be punished unreasonable or cruel, without fair trial, or without definition of a crime. The meaning of the principle of legality actually refers to a legal definition of crime and punishment whereby legal systems are obliged to enact standards for protection of human rights within criminal law proceedings. Furthermore, after the European Convention of Human Rights and Fundamental Freedoms was ratified and drafted in 1950, many states within the European Union were bound by the prohibition of passing the ex post facto laws, or retroactive law making, which was assured under the Article 7. Thereon, Constitutions within the states of the European Union, but also non-member states, were many times challenged whereby Article 7 was used in
conjunction with Article 6, as well as with Article 15 before the European Court for Human Rights (ECtHR) in order to infer the legal basis for protection of human rights.

2. NULLUM CRIMEN, NULLA POENA SINE LEGE

The Principle of Legality in continental European legal tradition originated from the Roman law where the very first retroactive laws and penalties were applicable, and where laws interfered with human fundamental freedoms and fair trial proceedings. The legality of institutions of justice and jurisprudence depends on whether they can be established to represent the authority which is able to implement the rule of law in fair manners. The principle of legality is based on a definition that there is ‘no crime, no punishment without a previous penal law’ and it has the duty to protect citizens, their rights, and freedoms provided in a particular Constitution. Nullum crimen, nulla poena sine praevia lege poenali has the intent to prevent penalties which are arbitrary, subjective, or even unlawful, and it means that penal law cannot be enacted or passed retroactively (https://www.law.cornell.edu/wex/nullum_crimen_sine_lege).

Nullum crimen sine lege is an important part of principle of legality which requires that each state must define and prescribe the crime through its legislation, as well as the enactment process, so that certain punishment and penalty can be imposed if the crime occurs. The law has obligation to define the crime strictly because citizens must be clearly informed about prohibited acts, or under which circumstances the crime can occur. Another part of the principle of legality is also expressed in a definition ‘no penalty without law’- nulla poena sine lege; it refers to unusual, cruel, and prohibited punishments and penalties (Ibid). However, these maxims were also written in Bavarian Criminal Code in 1813, and since then, they have affected legal proceedings and decision-making process throughout entire Europe. Feuerbach, using as his chief weapon the Revision der Grundbegriffe (1799; “Revision of the Basic Assumption”), achieved the recognition of the principle of nullum crimen, nulla poena sine lege (“no crime and no punishment unless provided by [statutory] law”), by which the power of German judges was curtailed (Britannica). The principle of legality is a standard and legal requirement for the courts to have fair and reasonable examination of case, as well as to follow the guidelines of human rights. It implies that even though certain criminals, who are yet to be convicted or penalized, are able to rely on a reasonable and objective process no matter what their position is in the eyes of a society. This principle consists of four major statements which have defined the usage of the law and complete meaning of legality:

- Principle that law should be written (nullum crimen sine lege scripta),
- Prohibition of analogy (nullum crimen sine lege stricta),
The request of determination of legal regulations (nullum crimen sine lege certa) and,

Prohibition of retroactive effect of punishment (nullum crimen sine lege praevia)

(http://encyclopedia.thefreedictionary.com/Nulla+poena+sine+lege)

The concept of protecting human rights in criminal cases is briefly explained in principle that law should be written, which is actually the characteristic of most written legislations and Constitutions; thereon, it is used as a crucial factor in rendering decisions by the court that is responsible to remain as much as objective. The European Court for Human Rights endeavours for written law that is able to prescribe a crime if it exists and to define possible penalty, but also to declare human rights of each person involved into a proceeding. Hence, if there are no written laws, then there is no punishment, and there is no specific explanation of an action that could be performed as a crime- a logical implication is that human rights are automatically disregarded. Prohibition of analogy refers to certain protections of a perpetrator. An unreasonable connection of his unlawful acts with irrelevant laws is a serious violation of human rights and it can be detected during the rigged trials. Prohibition of analogy has the purpose to define that a perpetrator must be penalized or punished for his or her crime under a specific (existing) law, which has actually prescribed actions similar to his or her. According to the case, Welch v The United Kingdom, the Court has examined the meaning of a penalty and protection of perpetrator by the British government. Mr. Welch was convicted for drug offences whereby he argued that charges against him were based on retroactive criminal penalty (Welch v. the United Kingdom). However, Welch’s property and assets were seizure and British government claimed that his actions were determined for a criminal penalty because Mr. Welch was concerned with future drug trafficking. In its judgment, the ECtHR has stated: “The concept of a penalty is, like the notion of 'civil rights and obligations' and 'criminal charge' in Article 6, paragraph 1, an autonomous Convention concept to render the protection offered by Article 7 effective, the Court must remain free to go behind appearances and assess for itself whether a particular measure amounts in substance to a penalty.” Murphy (2010:5)

After completing the whole discussion on violation of Mr. Welch's rights within criminal proceeding, the Court awarded a certain amount for costs and expenses and found the violation of Article 7-1 as valid. Third principle that has influenced further interpretation of the legality in ECtHR is the request of determination of a legal regulation. This principle requires from legal system to interpret and to define laws concerning the crime, but without vagueness, inaccuracy, or to determine very precise all applicable laws so that judge can use or examine them in a specific case. The last principle is prohibition of retroactive
effect of a punishment, also known as *ex post facto laws*. International institutions for supervision of human rights can significantly regulate retroactive application of law and prevent the usage of invalid or irrelevant domestic laws of a particular state. Therefore, those human rights can be considered as justiciable, directly applicable, in order to protect individuals from state power or judicial abuses in a criminal proceeding. Ex post facto laws attempt to retroactively change the rules of evidence in criminal cases, to define retroactively a crime, and to retroactively increase punishment for a criminal act or a conduct. The principle of retroactive law application can also be related to laws that were previously used by the legal system whereby there is an attempt to revive the same law in order to prescribe the punishment or define law, which can be inconsistent with universality or equality of human rights standards. Analysing comparative approach, *ex post facto laws* in common law systems are considered as an attempt to deprive persons from fundamental rights. The first prohibition of *ex post facto laws* originated from colonial America; their legal system explained these laws in three parts:

- It criminalizes an act that was innocent when it was committed,
- It increases the punishment for a crime after the crime was committed, and
- It takes away a defence that was available to a defendant when the crime was committed. (Samaha, 2010:41)

The principle of *ex post facto laws* and retroactive law making has also often interfered with rights and freedoms of individuals in legal systems of states within the European Union. The ECtHR has examined many times different issues related to this principle. Nevertheless, the European Convention on Human Rights has adopted and ratified articles which have function to protect citizens of different states against cruel punishment. A topic of cruel punishment divides many respective legal scholar’s opinions worldwide. It directly confronts with legal systems wherein a death penalty is still applicable as means of punishment. This is mainly an ongoing discussion in the United States since there are 50 penal codes and each state imposes different penalties in a criminal proceeding. In Europe, however, a death penalty is abolished by almost every state, except one- Belarus. Articles 6, 7, and 15 have provided these protections and they represent basics for principle of legality in the ECtHR.

3. **ARTICLE 6, 7, AND 15 OF THE EUROPEAN CONVENTION**

From the period when Roman law was in power, up until nowadays, the states among the continental Europe have passed through various modifications of legal systems and legal procedures. The principle of legality has absolutely gained more efficiency along with certain kinds of authority, which is protected with the European Convention on Human Rights. Article 6 of the Convention has improved the position of legality within the European states; it has defined the importance of
fair trial, as well as publicly performed judgment. Furthermore, Article 6 follows the statement that ‘everyone is innocent until the Court proves that someone is guilty’ or that everyone must be properly informed about charges or accusation:

1. In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Judgment shall be pronounced publicly by the press and public may be excluded from all or part of the trial in the interest of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice.

2. Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law.

3. Everyone charged with a criminal offence has the following minimum rights:
   a) to be informed promptly, in a language which he understands and in detail, of the nature and cause of the accusation against him;
   b) to have adequate time and the facilities for the preparation of his defence;
   c) to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require;
   d) to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;
   e) To have the free assistance of an interpreter if he cannot understand or speak the language used in court (ECHR, art.6).

In case of John Murray v United Kingdom, the applicant was arrested in Belfast because of the Prevention of Terrorism Act. Hence, he was interviewed over twelve times, twenty-one hour for two days, but he refused to answer on any question. The applicant was found guilty of aiding the false imprisonment of a police informer and sentenced to eight years of imprisonment. Mr. Murray appealed to the Court of Appeals in Northern Ireland and lost in 1992. Mr. Murray’s complaint was also on the ECtHR in 1994, and first time heard in 1995. He complained that his rights were violated under the Article 6-1, 6-2, and 6-3c because of their interference with his right to silence, as well as the lack of access to
a lawyer. The Court found that restriction or repeal of silence under the Article 6 was not absolute, but they stated that his silence was not contempt of the court. However, the ECtHR found only violation of Article 6-3c because the applicant did not have access to a lawyer in first 48 hours of interrogation. This case has raised two issues: firstly, it is controversial how the police can control or assign human rights or freedoms during the interrogation, thereon manipulate with individuals; the second concern is whether the authority of international supervising institutions is respected while domestic institutions constantly violate and repeal individual’s rights in such cases. Furthermore, Article 7 is the main part related to principle of legality and it has defined the principle of ‘no penalty without law’:

1. No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence under national or international law at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the criminal offence was committed.

2. This article shall not prejudice the trial and punishment of any person for any act or omission which, at the time when it was committed, was criminal according the general principles of law recognized by civilized nations (ECHR, art.7).

In case of Maktouf and Damjanović vs. Bosnia and Herzegovina, the applicants Abduladhim Maktouf and Goran Damjanović were convicted for domestic war crimes from period of 1992-1995 by the State Court (Council of Europe, 2012). The main issue was related to the State Court’s application of Criminal Code from 2003, which was contrary to the Entity/District court’s application of 1976 Criminal Code from the Socialist Federal Republic of Yugoslavia, with much lighter sentences and penalties. This case is definitely a landmark approach towards the principle of legality and human rights protection within inadequate criminal proceedings, but also the entire legal system of Bosnia and Herzegovina. However, considering the complexity of war crime cases, it was crucial to adopt and harmonize domestic criminal code with the international norms, such as Geneva Conventions from 1949 and Rome Statute. Thus, war crime trials must be coherent with the rights of an individual who is indicted for a serious crimes or crimes against humanity and genocide. In cases where the abovementioned crimes were committed and proven a long-term imprisonment cannot be considered as cruel or harsh. This means that the principle of proportionality is fulfilled. Another example of human rights dereliction can be found in case of Korbely v Hungary, where the ECtHR had found the violation of Article 7. The applicant was charged in 1995 by the Military Bench of the Budapest Regional Court for his orders in year 1956 to shot certain civilians during the revolution. The applicant argued that he had been convicted for a crime against
humanity and sentenced for a five years imprisonment regarding to an act which has not constituted a criminal offence at the time it was committed. The possibility of derogation from human rights or freedoms can be considered as a legal or persistent during the *time of emergency*, which is defined by Article 15 of the Convention and as a part of principle of legality within ECtHR: “In time of war or other public emergency threatening the life of the nation, any High Contracting Party may take measures derogating from its obligations under this Convention to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with its other obligations under international law.” (ECHR, art.15). However, international law intents to protect individuals or even states to retain the peaceful conduct of sovereignty and integrity without which human rights would not be valid or applicable. Regarding the work and function of ECtHR, this Court has initiated and protected ‘revolution’ of human rights through its legal instruments, whereby the Court imposed obligations on states to ratify and legislate new norms and standards, consistent with the European Convention.

4. THE ASPECT OF HUMAN RIGHTS

The principle of reciprocity and direct application of the European Convention, as a core guideline for human rights, is actually reflection of progress of domestic law and legal systems of a particular state. The overview of the ECHR can be considered as a positive approach towards the application of human rights which otherwise are violated, inadequate, or simply do not exist. The principle of legality is the basis for proceedings of ECtHR, but domestic courts as well, in order to establish the system of state’s obligation and remedies for individuals who suffered from human rights violations. ECtHR offers transparent process in which the individual is able to challenge domestic laws. According to such tradition, ECHR enabled to each individual to file an application once when all domestic instances have been exhausted. The principle of legality, with all supporting principles, is adopted by the Court with the aim to prove state’s faults during the criminal proceedings. The aspect of human rights is expressed in Article 17 of the European Convention: “Nothing in this Convention may be interpreted as implying for any State, group or person any right to engage in any activity or perform any act aimed at the destruction of any of the rights and freedoms set forth herein or at their limitation to a greater extent than is provided for in the Convention.” (ECHR, art.17). Hence, the analysis by ECtHR, as supervising institution, is crucial for detection of universal standards. Precedents in case law set a legal guidelines and instruments for imposition of fundamental rights. In his analysis of human rights within criminal proceedings, Mr. Bassiouni concluded that the value of international law has broken into a sovereignty of national legal systems in order to improve and reform domestic law: “International human rights law, which has traditionally been
referred to as the international law of peace, has also influenced the erosion of
national sovereignty with respect to practices within the context of the
administration of criminal justice. There are a number of instruments which identify
certain rights, but which differ as to their binding legal effect. They must therefore
be considered individually, as well as cumulatively to determine whether there is an
obligation by a state to conform to the requirements of those rights.” Bassiouni
(1992:241)

Accordingly, in these years of security risks and frequent cases of terrorism
acts, many democratic states have confronted radical individuals and non-
transparently examined such acts. Nevertheless, international norms and standards
must be a product of a consensus rather than rigid imposition by the international
community. International human rights intend to harmonize and reform some more
conservative legal systems where individuals or citizens are facing a constant
violation of their rights and freedoms.

5. CONCLUSION

Article 7 is a trademark of the principle of legality according to the
European Convention and within the ECtHR and it has provided many protections,
but also it has emphasized that law itself can always contain certain gaps or vague
terms whereby it can be hardly understood or even misused. The law itself is not
always equivalent to justice. Therefore, the ECtHR and the European Convention
were ratified and created to represent principles of fair and objective trials, as well
as lawsuit processes or criminal proceedings within domestic legal systems.
However, the legality is crucial for protection of human rights by the ECtHR, which
has emerged from the authority of international law and principles of universality
and conditionality. The principle of legality has definitely improved human rights
protections within the states of Europe and has contributed to higher amount of
respect for justice, human liberty and dignity, which derived from three generations
of human rights. Regarding this particular issue of criminal proceeding, ECtHR
defined that states have the obligation to ensure the rights to individuals, but also to
respect the same. Criminal law principles can be affected by the application of
human rights, which must serve as a guideline to safeguard the proceedings within
domestic and international institutions, such as ECtHR. However, there will be for a
certain period dissenting approaches within isolated and traditional legal systems
which are current discrepancy in international law.
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PRACTICAL PROBLEMS AND SOLUTIONS FOR DRUG ABUSE IN THE REPUBLIC OF MACEDONIA

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Abstract
Drug abuse is a phenomenon that needs to be treated from different aspects in order to protect the life and health of people and society as a whole. In the Criminal Code of the Republic of Macedonia, drug abuse is incriminated as inadmissible in two criminal acts under Articles 215 and 216, which refer to unauthorized production and release of narcotic drugs, psychotropic substances and precursors and the enabling of the use of narcotic drugs. The paper will cover several acts regulating segments related to drug abuse that will be subject to analysis. Based on the analysis of the existing legal acts, an interview with people directly affected by the abuse of drugs (police officers, public prosecutors, lawyers, social workers, medical staff, etc.), in this paper, we will emphasize legal disadvantages related to drug abuse, the practical problems and disadvantages faced by the criminal prosecution authorities and other institutions that face the problem of drug abuse in their day-to-day work. On the basis of the obtained results, we will offer optimal solutions and recommendations for overcoming the legal disadvantages and the real problems faced by the authorities in the field of drug abuse. In this way, we will get a complete picture of the drug abuse in the Republic of Macedonia, with all the deficiencies in the legal, security and social aspect and with the given solutions and recommendations will contribute to the effective fight against this social evil.

Keywords: drugs, abuse, laws, problems, solutions, Criminal Code.

1. INTRODUCTION
Consuming and drug-dealing it’s not a phenomenon of modern times. Drugs throughout history until today were used as medicines, which is why their use in the pharmacy and drug industry is big. It was also used for religious purposes, and of course for own enjoyment. Unfortunately, drugs create addiction. This leads to improper use of drugs that turns into abuse, in other words, it is not used as a medicine, but as a means for mental dismissal i.e. solving difficult life problems. Such misuse creates addiction which makes the person disoriented from the society, thereby violating a lot of customs, and legal norms that lead him on the
path of ruin, insanity and death. (Галевски 2009). According the scientific revelations and practical experiences of the negative and harmful effect drugs have on the person’s psychosomatic structure, and her behavior in the group and the wider community for inexpedient use, the society establishes norms, which regulate the ways of production and trafficking drugs. (Сулехманов 2003, 741). In order to protect the health of the people and the well-being of the society as a whole, the legislator placed the use of drugs in normative framework, thus regulating precisely determined the conditions of production, import-export, and drug use. The term “drug abuse” is hard to define due to a lot of reasons (Буџакоски 2002, 15-16):

1) Seizes a whole range of different types of drugs that are classified differently;
2) Drugs are misused in various ways in order to achieve periodic or chronic intoxication, caused by occasional or constant drug use;
3) Different countries around the globe treat this differently;

Drug abuse can be defined by different aspects depending on the subject of interest, but in essence, it is using illegal drugs, contrary to the normative acts that regulate this issue (Богданова-Смилевска 2017, 41). Drug abuse is a socio-pathological phenomenon that causes physical and physiological addiction, which leads to continuous consuming, often involving them into crime and ruin.

2. CRIMINAL - LEGAL DETERMINATION ON THE DRUG ABUSE IN THE REPUBLIC OF MACEDONIA

In order to protect the life and health of people from drug abuse and hence the entire society and its order from this social disease, the Criminal Code of Republic of Macedonia provided provisions to incriminate such behavior as criminal, or illegal, providing with appropriate criminal sanction for it. By foreseeing these provisions, the legislator understood the severity of this acts and the negative influences they have on people’s health, and the economy of our country, as well as the international character of it, therefore the sanctions are suitable for the severity of the act. Crimes related with drug abuse are given in the twenty-first chapter by the title “Crimes against people’s health” in the Republic of Macedonia Criminal Code (Criminal Code of R. M. 1996-2005). The object of protection for these crimes (Камбовски 2003, 247-271), generically is identical to the crime against the life and body, however this crime takes the concern of these goods from a different aspect, because the state in relation with its social function seeks to protect the health of the population from various risk factors that exist in the modern society. The subject of interest in this paper, are the two criminal acts incriminated in the sphere of narcotics like: Art.215 from the Republic of Macedonia Criminal Code, “Unauthorized production and release for trade narcotic drugs, psychotropic substances and precursors” and Art.216 from the Republic of
Macedonia Criminal Code “Enabling the use of narcotic drugs”. It meant for the offences of abstract endangerment. The endangerment here is abstract, general, and it refers to people in general, it’s not specific nor does it apply only to people with specific dynamics and characteristics. Using the Art.215 from the Criminal Code of R.M. “Unauthorized production and release for trade narcotic drugs, psychotropic substances and precursors” the legislator incriminated unauthorized production, processing, sale, offering for sale, or purchasing in order to sale, possessing, mediation on sales and purchases, or otherwise unauthorized release of narcotic drugs, psychotropic substances and precursors into circulation. The perpetrator on the basic form of this act can be any person, since on the beginning of the article, legislator used the term “he who”. The initial criminal sentence set for the perpetrator if the legal existence of the act was fulfilled was 1-10 years in prison. However, the legislator understood the severity of this criminal act, and with the September 2009 amendments the 1-10 years’ prison sentence was changed with imprisonment in duration of 3-10 years, raising the minimal threshold in imposing this sentence. If the act is done with narcotic drugs, psychotropic substances and precursors, of a smaller quantity, in that case, for the perpetrator is given a smaller sentence- imprisonment of 6 months to 3 years. The legislator gave prison sentence in duration of 1 to 5 years, for he who without authorization makes, acquires, mediates or gives to use equipment, materials or substances which he knew was intended into production of narcotic drugs, psychotropic substances and precursors.

In the other hand it is characteristic that for this crime that a legal entity may also appear as a perpetrator for whom the sentence is a fine. A more difficult form exists in a case of organization and complicity if the act is committed by more people or the perpetrator of this act created a network of dealers and intermediates, for which the offender will be sentenced with imprisonment of minimum 5 years. The legal entity of Art.216 from the Republic of Macedonia Criminal Code “Enabling the use of narcotic drugs” consists from more acts of doing: providing for another’s personal enjoyment of narcotic drugs or precursors, giving narcotic drugs, psychotropic substances and precursors for enjoying or placing available premises for the enjoyment of narcotic drugs, psychotropic substances or otherwise enabling others to enjoy narcotic drugs, psychotropic substances and precursors. The sentence given for this form of crime is imprisonment of 1-5 years. A more severe form of this crime is done to a minor or to multiple people or if it caused greater consequences, in which case for the offender is given a prison sentence of 1-10 years. With the changes made in 2009 the legislator predicted also a fine as form of sentence for the legal entity involved in the crime.

It is characteristic the fact that in theory of the criminal law, there are still some open questions around the act of narcotics (production, circulation, enabling and own enjoyment) which to be sanctioned. Of all of them the problem is put on
the incrimination of the enjoyment of the narcotic drug, together with the reason that would justify it and the effect that could have. By the criminal acts given in the Republic of Macedonia Criminal Code, it can be concluded that the legislator in our country has decided not to incriminate the enjoyment of the narcotic drug considering the social, individual and psychological determination of this phenomenon. (Богданова-Смилевска 2017, 55).

This issue is regulated by the Law of control on narcotic drugs and psychotropic substances, who replaced the Law of production and trade with narcotic drugs. Also involving the drug abuse misdemeanors are given in the Law of misdemeanors against the public order and peace, the Law for road traffic safety and the Law of production and trade with narcotic drugs. The following acts are of great importance in the solving of the drug abuse problem: Law on precursors, the Law on determining the institutions responsible for implementing activities in the field of production and supply of narcotic drugs, the Law on medicines, additional medicinal products and medical devices, the Decision for determining the list of narcotic drugs, Decision on acceptance of a list of narcotic drugs allowed for trade for medical and veterinary purposes, Law on enforcement of sanctions, Law on criminal procedure, Customs Law, Decision on allocation of the goods in form of import/export, the Law on prevention of corruption, the Law on health care, the Law on social protection, the Law on health insurance, the Rulebook on the detailed spatial conditions, the equipment and the personnel for establishment and operation of the healthcare institutions, etc. In 2007, the National Drug Strategy of Republic of Macedonia and the Drug Control action plan were adopted in two parts: pre-implementation (for one year) and implemented for the period 2008-2012. The National Drugs Strategy of Republic of Macedonia for the period 2014-2020 is currently in force.

In the Law of misdemeanors against public order and peace (Law of misdemeanors against public order and peace 2007-2015) there is provided misdemeanor provision under the Art.20 referring to the enjoyment of narcotic drugs, psychotropic substances and precursors followed by fine from 200 to 500 Euros in denary counter value.

In the Law for road traffic safety (Law for road traffic safety 2007-2014) provides misdemeanor provision under Art.233 according to which, the driver shouldn’t drive the vehicle in traffic, nor is he allowed to start driving the vehicle under the influence of narcotic drugs or psychotropic substances. It is considered that the driver is under the influence of narcotic drugs or psychotropic substances if by blood and urine or some other method of analysis, these substances are found in his organism. With this provision despite the driver the legal entity and the responsible person in the legal entity who will order or allow the operation of a vehicle under the influence of narcotic drugs and psychotropic substances will be

213
fined. The driver beside the fine, will also be imposed a misdemeanor a ban from driving a vehicle. Art.170 from the Law for road traffic safety also prohibits a person who is obviously under the influence of drugs or other psychotropic substances to be transported in a passenger car on the front seat.

In the Law on Control of Narcotic Drugs and Psychotropic Substances (Law on Control of Narcotic Drugs and Psychotropic Substances 2008-2016) foresees misdemeanor under Art.92 according to which, a person or a legal entity will be fined for violations of the provisions from this law on various grounds: if the person possesses narcotic drugs without authorization or permit competent authority, and if it produces opium by incision poppy’s capsules, raises coca plants, produces products with psychoactive action from the cannabis plant and produces and imports other prohibited narcotic drugs, etc.

3. RESEARCH AND DETECTION OF PROBLEMS

For the needs of this paper an interview was conducted with experts (police officers, public prosecutors, social workers) who are daily facing the problems with drug abuse and shared their experience in this field. The interview was conducted in order to investigate the overall situation (social, security, health) in the country regarding drug abuse in order to highlight the gaps, shortcomings and current problems in the work of the above mentioned authorities, analogously also giving appropriate recommendations for overcoming them. In analyzing the answers received from the respondents, although we were confronted with conflicting opinions, the most common practical problems we noticed are:

- In the Republic of Macedonia, Drug Addiction Treatment Centers are limited and do not meet the needs of the addicts at the national level;
- Obsolete methods for treating drug addicts;
- Legal shortcomings and contradictions in relation to Article 215 of the Republic of Macedonia Criminal Codes;
- Most of the respondents indicated that the members of the Police and members of the Public Prosecutor's Office are not sufficiently prepared, skilled and capable of effectively combating criminal acts related to drug abuse, which contributes to errors in the conduction of an investigation, the collecting and providing of traces and evidence that further in high intensity reduces their evidentiary force in a court proceedings;
- Most of the respondents consider that there is a connection between the authorities of the criminal prosecution and the perpetrators of the criminal acts related to drug abuse, where in such cases they have made corrupt deals and abuse of the official position caused by the need for money, quick and easy wealth, greed for money, insufficient pay of members of criminal prosecution etc.
- Not confidential work of the operative-tactical activity in the discovery of criminal acts related to drug abuse, since they only reveal drug users and small drug dealers, and they do not pay attention to the conspiracy of the actions, so they do not follow the traces in order to discover them the larger dealers and drug bosses, which leads them to the conclusion that "someone" protects the big "players" in the drug-underworld;

- Incompetence in employment, based on political influence;

- Deficiency of technical equipment for daily operations, which makes it difficult to apply police-investigative methods and techniques;

- The lack of inter-institutional cooperation, as well as the reduced level of cooperation between the citizens and the police, as a result of the low confidence of the citizens in the institutions for combating this type of criminality;

- A large number of rejected criminal charges by the Basic Public Prosecutor's Office in conjunction with Article 215 of the Republic of Macedonia Criminal Code;

- The punishment policy doesn’t correspond with the gravity of the crime according to Article 215 of the Republic of Macedonia Criminal Code;

- The frequency of new psychoactive drugs that have been anonymous for our territory so far.

The respondents emphasize the above listed problems as urgent for solving and alluded to taking measures that will overcome them and enable effective fight against drug abuse in every field.

4. CONCLUSIONS AND RECOMMENDATIONS

On the basis of the presented practical problems of drug abuse, from a social point of view, more information about the problem is necessary, better treatment with drug addicts, measures for their reintegration in the social environment and workplaces, measures for reducing the supply of drugs, reduction of drug production and processing, precursors control, rapid recognition and timely intervention, promotion of drug detection and identification measures, measures to reduce recidivism, etc. Drug prevention strategies should include the promotion of genuine life styles, that is, life without drugs, also there must be a link between adults and the younger population, and a clear message about the harmful effects of the drug must be sent so that the prevention could protect all socio-economic groups. Prevention can and must not be held in a vacuum, and in order to be successful, it must have equal access to society and to families between parents and schools. Control is very important, in other words, it is not possible to have a successful prevention if the drug is available and cheaper and is accepted by society.
For the purpose of more efficient and effective prevention, detection and proving of criminal acts related to drug abuse, certain shortcomings regarding the legal regulation of drug abuse should be recognized. It is necessary to add a supplement to Article 215 of the Republic of Macedonia Criminal Code in relation to paragraph 2, that is, to explain the term “of smaller quantity”, which the Basic Public Prosecutor’s Office of Republic of Macedonia has defined with a legal act as, “every up to five grams for herbaceous matter and up to two grams of powdered matter is considered a smaller quantity” no taking into consideration the fact that the ecstasy or MDMA (tablets), methadone (as a liquid substance) enter the lists of drugs, psychotropic substances and precursors defined by The Ministry of Health and are punishable by law.

Investigation showed that most often the Basic Public Prosecutor’s Office rejects criminal charges filed by the Ministry of Interior of Republic of Macedonia for the existence of a reasonable suspicion of committing a criminal offense under Art. 215 of the Republic of Macedonia Criminal Code with the conclusion that the narcotic drug is for the personal use of the perpetrator (most often it is a crime punishable under Article 215 paragraph 2 of the Criminal Code of the Republic of Macedonia) even though the use of narcotic drugs is punishable by all laws in which this matter is regulated (Criminal Code of the Republic of Macedonia, Law on Control of Narcotic Drugs and Psychotropic Substances). For the above listed reasons, it is necessary to make a supplement to Art. 215 which will help define the term “personal use”.

Regarding the Law on control of narcotic drugs, psychotropic substances and precursors, for the Art.24 of the same law, although it also applies to every person, the law doesn’t state any sanction for the individual as a perpetrator, for which in practice the court calls upon the fact that there isn’t any sanction for the Art. 24 and only rules a decision to revoke the subject matter. To exclude contradiction in respect of Art. 24 of this law, it is necessary to supplement with an appropriate sanction.

The results of the conducted interview should be taken into consideration and with particular attention when constructing a concept for increasing the

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23 Paragraph.2 from Art.215 of the Criminal Code of Republic of Macedonia: “If the act from paragraph 1 of this Article is done with narcotic drugs, psychotropic substances and precursors of smaller quantity the perpetrator will be sentenced from 6 months to 3 years imprisonment.”


Prohibition on narcotic drugs, psychotropic substances and plants classified in the List I

“It is prohibited to bred, produce, release into circulation possession and use of substances and plants classified in the List I and their preparations except for medical or scientific researches, or in the court-medical, teaching or police uses, as determined by law.

In exception on the paragraph 1 of this Article is the bred of opium poppy which is allowed for the purposes and by conditions established by this law.”
efficiency of criminal prosecution authorities in dealing with drug abuse related crime, mainly because the respondents are experts competent in this area who have worked, or still do on this issue. Summarized their suggestions in the direction of improving the situations in this area are:

- The need for continuous training and additional specialization of the staff working on the issues of detecting, clarifying, proving and preventing crime related to drug abuse, in order to raise the level of their competence and expertise, by organizing trainings, courses, workshops, specialized;

- Precise selection and employment of the criminal prosecution authorities working on this issue through previously determined criteria, in order to properly, professionally, correctly conducting the procedures for dealing with this type of crime;

- Co-operation of the criminal prosecution authorities with the perpetrators of criminal acts is necessary in the direction of obtaining data, information and notifications;

- Raising the level of conspiracy of the operative-tactical actions of the criminal prosecution authorities for the detection of criminal acts related to drug abuse;

- The necessity in following the traces in the process of detecting this type of criminality, in order to discover the major dealers and drug bosses who lead organized smuggling groups;

- Straining the penal policy for criminal cases related to drug abuse, especially against the organizers of the crime, as well as against the officials who were participants in the act of such crimes;

- Increasing the intensity of the general and special prevention involving various social entities for the purpose of raising the populations awareness about the danger of drug abuse as a negative phenomenon, as well as the commission of crimes related to drug abuse;

- Frequent application of the measure for confiscation of money and property acquired in a criminal way, in order to deter criminals from committing criminal acts in the future, which certainly would act on a preventive plan;

- Improvement and strengthening of the process of re-socialization and re-adaptation for the convicted persons of criminal acts related to drug abuse through the application of active measures aimed at achieving positive changes into their awareness and social behavior after the liberation;

- Increasing the preventive activities such as campaigns, workshops, forums, tribunes, educational materials, meetings with citizens' advisory groups, etc., by the police in cooperation with certain state institutions in order to contribute to the prevention and protection against the use of drugs and with a main goal of protecting young people;
- Intensifying of the activity for registering drug addicts, providing them with assistance for treatment, legal obligation to contact a doctor, realizing workshops through Non Government Organizations to help beginners and their weaning, campaigns through the media about how a known addict became a good parent, a successful person, proven in his field of work who used the program through various social activities, etc.;

- Greater degree to coordination of prevention activities among the different sectors of the country (health, social services, educational institutions, non-governmental sector, etc.), increasing the number of counseling and treatment centers for addicts, as well as their technical equipment and properly educated stuff who will help patients to deal with their problems;

- Continuous and intensive preventive activity of police officers and operatives who should have bigger control in certain places, streets, settlements or areas, where there is movement and existence of certain groups, known drug addicts and drug dealers in order to be able to intervene on time in the future;

- Paying more attention to developing mutual trust and inter-institutional cooperation with neighboring countries, in order to improve the co-operation in the field of the fight against drug related crimes.

The main goal of these activities is contribute to the reduction of drug demand, the exchange of best practices, and the development and implementation of quality standards in the prevention of drug abuse (in the environment, universal, selective and indicated prevention), early detection of addiction from drugs and interventions, reducing the risk and harm from drug use, treatment, rehabilitation, social reintegration and re-socialization. In that direction, the cooperation, communication and efficient exchange of information, data and attitudes should continue in the frames of the States inter-departmental (ministerial) commission for fight against drugs, in accordance with the legislation that will contribute to promote the implementation of the goals from the National Strategy for Drugs of the Republic of Macedonia 2014-2020.

Of particular importance is the international cooperation, external bilateral and regional cooperation, as well as the cooperation with international institutions, bodies and organizations, in particular with SELEC, the European Center for Monitoring Drugs and Drug Addiction (EMCDDA), Interpol and Europol, which will significantly facilitate the coordination of the fight against this type of crime, information sharing, joint analysis and the forecast of drug problem worldwide, mutual support and assistance, promotion of opportunities to act against criminality bound with drug etc.
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PARTICIPATION OF THE LOCAL COMMUNITY IN PREVENTING VIOLENCE ON SPORTS GROUNDS - THE POSSIBILITIES IN THE REPUBLIC OF MACEDONIA

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Abstract:
Provides the Macedonian law for prevention of violence and misbehavior on sports fields possibility and ways for active inclusion of the local community in the possibility for prevention of phenomenon and reduction of its harmful consequences. Can the legislative solution be implemented or we are in a position to have a European law that we, must’’ adjust to the Balkan conditions?
When we are already in a position to borrow or prescribe legal solutions, it is good to think in the direction of getting to the position for the implementation of the solution itself. Each local community is a micro cosmos itself and certain features (cultural, political, economic, religious, etc.) are exclusive to it only. The local community must have more space and influence in the process of preventing violence in sports competitions.
Do local authorities have capacity to act as coordinators of all relevant stakeholders involved in organizing a sports competition and thereby contribute to the process of preventing violence.

Key words: local inclusion, possibility, influence, capacity, preventing.

1. SOCIO-POLITICAL, SECURITY AND ECONOMIC CONDITIONS IN THE EARLY 90'S OF THE LAST CENTURY ON THE TERRITORY OF THE FORMER YUGOSLAVIA: MACEDONIAN EXAMPLE

Is there a phenomenon of violence and misbehavior in sports grounds in the Republic of Macedonia, or we, as a small country, are not included i.e. affected by this negative phenomenon?

The above question would have lost meaning if Macedonia exists and lives without any influence from the outside, no matter in which area and on which field of social life these impacts relate. But the geographical position of the country, its strategic goals (NATO and EU membership) as a goal by itself require the country to integrate, build a system of positive cohesion and co-operation with other countries in the surrounding and with allied alliances, with in order to fulfill the
criteria that are necessary for full membership in the same. Of course, we are witnessing a situation where at certain moments of our country delivery is required of certain policies that are basically harmful to its existence and existence as a state, but the political elites need to find a way to bridge the problems and to continue the reform processes.

The influence that exists in Republic of Macedonia does not always and in all cases mean only the taking and implementation of positive and socially useful policies. On the contrary, the very positive cohesion itself, the very influence of certain events occurring in the West, and even in the immediate surroundings of the country, are followed and treated, i.e. they are perceived as negative. It is the emergence and spread of violence and unworthy behavior of sports grounds (hooliganism), which is in fact a process that in Republic of Macedonia. Macedonia has overflowed, taken from the neighboring countries i.e. of the EU countries. Yes, it is true that this phenomenon was first registered in England, but it did not remain to be and is not an exclusive feature of that country. On the contrary, the cultural development, the cultural evolution of the countries of Europe primarily created the conditions for this subculture to be easily accepted and applied very quickly in the countries that are neighbors of England (here I refer primarily to Germany and France) from there, at a relatively high speed, to the eastern bloc countries.

Certain political events that took place on the territory of the former Yugoslavia in the early 1990s, its disintegration, the war between the former members of that federation (Serbia, Croatia and BiH) only further increased the potential and created conditions that had a crucial influence in the process of the emergence of expressive nationalism among the former "fraternal" peoples, which nationalism, in addition to other spheres, was channeled among the fan groups. In fact, according to some political and security analysts, the incident (Petrevski, Tara, 2015) that took place at the stadium Maksimir in Zagreb on May 13, 1990, several days after the first parliamentary elections in Croatia, was an initial capsule for the start of the crisis. When we analyze violence on sport fields on the territory of ex-Yugoslavia, it is absolutely inevitable to mention the incident which has the privilege to happen during the process of falling apart of the federation. It happened at the football match between Dinamo Zagreb (Croatian football club) and Crvena Zvezda (Serbian football club) played on May 13th 1990 in Zagreb, Croatia. Although at first sight it looks like a normal football match, it is not. The time of its happening was “wrong”. Why? Two weeks before the game in Croatia the first multi-party parliamentary elections have happened. On this event majority was won by HDZ, the political party of Franjo Tudzman. This political party was insisting for independence of Croatia and also was known as party very close to the Croatian nationalistic ideas. On the other side, at the day of the match, 3 000 supporters of Crvena Zvezda arrived in the Croatia capital and were (coincidence
or not) led by Zeljko Raznatovic Arkan (very well-known Serbian nationalist from that time). Up to several hours before the game even began, there were already a number of fights in the streets between Dinamo (Bad Blue Boys) and Crvena Zvezda (Delije) fans. However, the real trouble took place within the Maksimir stadium itself. Provoked by stones being thrown at them by the Bad Blue Boys, Delije, placed in the stadium's segregated area reserved for visiting fans, began to tear the advertising hoardings and eventually made their way towards the Dinamo fans, attacking them with torn-off seats and knives, and singing Serbian nationalist chants like "Zagreb is Serbian" and "We'll kill Tuđman".

The Bad Blue Boys - incensed by the actions of their rivals - attempted to storm the field half an hour later, but were quickly pushed back by the police; restraint methods used by the police included baton striking and tear gas. Within minutes, the situation spiraled beyond control as the BBB could no longer be held back by the police, and soon took to the field to reach their Serbian counterparts. All the while, the police were quickly overwhelmed by the large numbers, but came back with reinforcements, armored vans and water cannons to disperse the violence. More than an hour later, with hundreds injured the running battles were all over.

Everything that was happening before, during and after the game seen with today’s objective eyes, absolutely gives answer for the situation in those days and unambiguously confirms the thesis that fans were used by political elites and were strong weapon in their hands. Although at the day of the game, media were giving subjective reports (Nimac, 2016), which were making a further tension at the stadia and out of it. But knowing the political tensions from that period, we will conclude that the scenario was planned somewhere far away from the stadium and in it the main role had the fans. Even today, 24 years after we still don’t have answers for the huge arsenal of weapon on the stadium, then the possibility of the fans of Crvena Zvezda to get to the center of Zagreb, then the police reaction etc.

Our impression is that political processes, those big political processes inevitably can be connected with football fans, political parties and their leaders without conscience and moral are using them for fulfilling their goals.

Fortunately, the Republic of Macedonia was not subjected to military intervention during that period nor did any military action take place in its territory. But the polarization of society, the crisis that lasted until 1995, the embargo on the part of Greece, etc. are major socio-political, security and economic events that of course have had some influence in the Macedonian overall development.

2. THE NORMATIVE DETERMINATION OF THE PHENOMENON OF VIOLENCE AND MISBEHAVIOR AT SPORTS COMPETITIONS

At times when hooliganism, the violence and misbehavior of sports competitions began to spread in all the countries of the old continent without
exception, and when serious football incidents were registered and with a large number of casualties (Bodin, Roben, Heas, 2007), Heysel on May 29, 1985 - 39 dead and over 600 injured, then EU member states began to think about a universal, joint fight against this negative phenomenon. Very soon after the events that took place at the stadium in Brussels, the EU came up with an institutional, that is, a normative framework that primarily aims to act and act in the field of preventive action and in the attempts to reduce or relativize the causes that have the greatest or strongest effect and influence in the process of occurrence and presentation, i.e. manifestation of violence on sports grounds.


The Convention (EU Convention on spectator violence and misbehavior) was adopted on 19 August 1985 as a document by the Council of Europe aimed at the States that are and will be its signatories to agree and commit to cooperation among themselves, that is, to encourage and initiate a similar cooperation between public authorities and independent sports organizations to prevent violence and to control the problem of violence and inappropriate behavior of spectators (fans) at sports events.

To this end, a number of measures are set up, namely: close cooperation between the involved police forces; prosecuting offenders and applying appropriate penalties; strict control of ticket sales; restrictions on the sale of alcoholic beverages; proper design and physical weaving at the stadiums to prevent violence and enable effective control of the crowd and safety of the crowd.

The Standing Committee established by the Convention is authorized to make recommendations (Security and service approach at football matches) to the Parties on the measures to be taken.

This Convention has been signed and ratified by 41 members (Chart of signature and ratifications of treaty) states of the Council of Europe and Morocco as the first country not geographically located on the European continent also in its national law has implemented the Convention.

European countries are policy makers regarding the prevention of the security risks that exist, which can arise from a sports competition. It was precisely this initiative that was crucial to adopt and gradually affirm the recommendation of the Standing Committee of 2015, which is aimed at amending the existing Convention. Namely, the recommendation refers to safety, security and service at Football Matches and other Sports Events. Among other things, this recommendation as a key notifies the confidence building measures between the institutions that are part of the organization of a sports event, and the need for inter-institutional cooperation in order to pass the best competition for a sporting event
(with a special tendency for football matches) to minimize or conditionally to marginalize potential risk points and factors that can negatively affect the event itself. Much attention in this recommendation is given to local communities and their proactive participation in the process of managing a sports event and its role in the prevention of eventual sports violence.

Good practice, useful examples that were derived from the implementation of the Convention, as well as the suggestions and proposals that the Council of Europe collected for a while, concerning the violence and unworthy behavior of sports competitions, the policies that were proposed as possible outbound solutions from the phenomenon of violence, seem to be incompatible with this recommendation. Thus, besides the other, in its content, we can also find the influence i.e. the importance of the fan groups as part of the solution to the problem, the police as a representative, i.e., as a body of state power and sports clubs and federations, all to participate in the preparation of a sports competition and all separately within the framework of its competences that it has according to the positive legal regulations in each country separately, and according to the foreseen activities that are noted in this recommendation, can only additionally increase the degree of prevention and protection against unwanted and harmful consequences of a sporting event.

Macedonia is a signatory to the Convention, some of its recommendations have been implemented through legal solutions, but this conditionally stated final recommendation is not available and the impression is that it does not use it.

2.2. The Macedonian Institutional Reaction

The ratification of the European Convention for suppression of violence and misbehavior on sport fields, especially football fields in 1990 as part of the Federation of Yugoslavia, for the Republic of Macedonia meant obligation for working to suppress this negative and harmful act and that it will give its contribution for decreasing its percentage of happening and decreasing its harmful consequences.

After all the obligations Macedonia accepted by signing the European Convention it seems that here still the problem is being solved on incident level, namely when something unlawful happens all institutions, national bodies, agencies start talking how worried they are and how serious this problem is. Once more we will mention that Macedonia is doing the biggest mistake in copying examples from neighboring countries. Why? Because every country is a case on its own. It is incorrect to compare events and situations from different countries, like it is incorrect and a mistake to copy other country’s laws in the area and then expect those to give the expected results (Petrevski, Stanojoska, 2014).
The Macedonian institutional reaction for this problem is coming very late. You may ask why? It is because till 2004 there was no law that directly regulated the area, giving freedom to participants to make their own interpretation of things. When we speak for institutional reaction we think on normative determination and normative regulation of the sport violence into the Macedonian legislative. The first Law on suppression of violence and misbehavior on sport events was adopted in 2004 by the Macedonian Parliament (Official newspaper of the Republic of Macedonia, 89/04). Before the Law all the events from the area were covered by other legislative solutions. The Law from 2004 clearly, precisely and concisely edits the questions of violence and misbehavior on sport games and at the same moment presents the possible measures for suppression of the phenomenon, strongly putting accent on the security of the spectators and defines the obligations for the organizer of the sport event in the area of security. The 2004 Law contains some preventive measures for avoiding sport violence and misbehavior. In the article 6 of the Law, contained are the obligations for the organizer so the risk of violence and misbehavior is decreased. If we analyze them we’ll see that the Law between other things proposes active cooperation between clubs and their fans, with interactive exchange of information, ideas, and obligation for the organizer to secure decent behavior of fans.

Focusing on the legal solution surely we can conclude that the 2004 Law contains an obligation for preventive cooperation and preventive action, which can result with decreasing the risk and reducing the possibility of sport violence appearance. The article 7 from the same Law contains the measures which the organizer should fulfill so the goal for decreasing the violence is filled. Of course as the most important measures are the ones of prohibiting the entrance of people which are under alcoholic influence, to prohibit selling of alcoholic drinks inside the sport object, to prohibit or disable inserting hard objects and pyrotechnics inside the arenas, then to remove the spectators who are singing songs with offensive content which can be reason for violence or can cause a feeling of instability. Of course these are measures which the organizer is not (technically and humanly) capable of fulfilling alone. Because of this the Law provides articles in which there is an obligation for cooperation between the organizer and the police, so there is a reaction on time and to eliminate the possibility for disrupting the security mosaic during the game. The cooperation between the organizer and the police is regulated in the article 8 from the same law.

The changed and supplemented Law for suppression of sport violence and misbehavior at sport games from 2008 (Official newspaper of the Republic of Macedonia, 142/08), mostly contains norms which precisely formulate some parts from the 2004 Law, and increases the fines for some of the offenders. The new norms and changes are some kind of general prevention which is directed to
decrease the sport violence and misbehavior, because it should influence the potential perpetrators and make them forget their intentions.

The preventive goals of the Law can also be found in the changed and supplemented Law for suppression of sport violence and misbehavior at sport games from 2011. Namely, these solutions complete and strengthen security and preventive activity. With the changes from 2011 fans of the home sport club mustn’t enter the part in which fans of the guest team are. This ban does not give a possibility of very close encounter of the “unfriendly” fan groups. Then, the Law bans entrance of fans in the part of the sport objects for where they do not have tickets, and of course prohibits the entrance of fans or other spectators into the area in which sport activities take place. In order of increased prevention, the legal solution from 2011 provides an even more bigger and closer cooperation between the Ministry of Internal Affairs, in a way in which the Ministry is directly included into the assessment of every game, together with the organizer works on the security plan, define the number of wardens, making a step further with giving a possibility to the guest team to choose the wardens.

3. CONCLUSION

Mentioning hooliganism, sport violence, we should point the fact that there are “different variations in the level and nature of football hooliganism and those variations are different in different places” (Spaaij, Amsterdam). Although in the action against this negative nature there is a necessity of strong international action and mutual cooperation of few bodies and institutions, which comes out as an obligation from the Convention for the area, and the above mentioned Resolutions and Recommendations of the Council of Europe, at the end there should be made a local strategy designed for local necessities.

In the eliminatios (Banja Luka, 2017) of this phenomenon, the removal of violence on sports grounds, the state and its apparatus play a key role not only in penal terms, but also in the process of investing and promoting school sports and engaging professional and experienced personnel. The introduction of a code of ethics, a code of sport behavior, a continuous learning of sports rules, and the teaching of the importance of fair play represent several key segments and areas to which serious attention should be paid.

The recommendation of the Council of Europe is a guideline on how local communities and fan groups should act and cooperate in the process of organizing a sporting event. It is not by accident that we targeting two entities in the process of organization because each local community knows exactly which structure of persons should cooperate, that is, they fully know the problems that occur in that municipality, as well as the opportunities, i.e. the resources that are available to them and which can to use them in the process of preventing any negative, i.e.
harmful phenomenon, in the case preventing violence in sports competitions. The national legislation and the obligations arising from the legal provisions actually represent only the framework in which through which action should be taken and the solution sought, but local communities should be part of that solution. Namely, each city, each local authority knows in which situation the sports object is located in which it is planned to play one game, it knows, that is, we assume that it should know the interest in a sporting event in its citizens, in coordination with them it can be much easier to target the possible weak points that may arise in the process of organizing a match, etc.

- The supported groups (fans) are an inevitable moment, the inevitable decor of every sporting (football) event. Under domestic law, which is based on the Convention itself, it is known exactly what is allowed and what is not allowed. But the law must not restrict the activity of fans in the process of preventing a sports event. On the contrary, fans need to look for another one in the array of collaborators and partners when it comes to organizing the event. The leaders of these fan groups know very well their own rows, the structure of the fan group, problem points, possible risk factors and moments that can contribute to the escalation of an event. Precisely because of the above characteristics, and in order to prevent or minimize the risk of undue and violent behavior, the fan group should be part of the solution to the problem and not be seen as a problem.

- Establishment of a coordinative body at the local level in which the authorities will participate police officers, fan groups, security agencies, sports clubs and federations will contribute seriously to reducing the occurrence of violence in sports competitions. This claim is derived exclusively from the positive examples we have in Western European countries, where the intensity of sports competitions and the number of fans is far greater than that of today in the Republic of Macedonia. As examples we want to enumerate as the starting point for a reflection in this direction are the English and German examples.

In addition to the conclusion of this paper, we want to present the German and English examples of dealing with this negative phenomenon. In doing so, we are aware that we are infrastructural far from these countries and that it is ungrateful to compare the conditions (social, economic, political, ultimately and sports), but it is good to take into consideration future policy planning related to this issue and proposed measures that could be implemented in the Republic of Macedonia, if not fully, at least some of them.

- German authorities(*Football violence in Europe*, Amsterdam, 1996) are using a proactive system in the action against sport violence. On this way, social workers make closer contacts with the structure of the fan group, making efforts to find out and understand their problems, the way they are thinking and the reasons which influence on their violent acts that are harmful for the community.
and mostly for them. German state goes even further forming local fan forums in which members of fan groups are educated. It is a way of influencing fans, giving them a possibility to find out the core of the problem and to understand its seriousness. These local forums are a measure that goes in line with recommendations and resolutions connected with this problem brought by the EU and the Council of Europe. Using local grouping is a step to animate local community which is cheering one sport club and using every day meetings to effectively and efficiently influence in decreasing the problem of sport violence and misbehavior.

- In England (Whalley, 2008), local authority is responsible for ensuring that the stadium complies with the guidance laid down in the “Green Guide” and has to carry out regular inspections of the stadium. The local authority also chairs a Safety Advisory Group, comprising club officials and representatives of the police, fire and ambulance services, which meets on a regular (usually monthly) basis. The Safety Advisory Group can also be called together at short notice to consider any issue arising out of a recent match or any special measures that are proposed for a forthcoming match. As part of the safety certificate, each club is required to have:
  a) A designated Safety Officer, responsible for the safety management operation at the stadium on match days;
  b) Stewards trained to a nationally-recognised standard;
  c) A computerised turnstile counting system, recording each spectator;
  d) Closed circuit television (CCTV) cameras covering key areas of the ground;
  e) A stadium control room with radio communications links to steward supervisors and police, CCTV display monitors, access to the public address system and a display monitor linked to the computerised turnstile counting system;

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Измени и дополнувања на законот за спречување на насилството и недостојното однесување на спортските натпревари. Службен весник на Република Македонија, 142/08.
DEMOCRATIZATION OF INSTITUTIONS THROUGH THE EU DEMOCRATIC CONDITIONALITY MECHANISM: IMPACTS ON MACEDONIA

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Abstract
This scientific research will focus on the degree of institution democratization, challenges as well as problems over the historical opportunities that we are given to institutionalize democracy and the rule of law in a political system such as Macedonia. A sin from which is not excluded the entire political class. Initially, I will develop a theoretical framework for analyzing democratic conditionality in general and conditionality as an individual state issue. The progress or regression will be illustrated by analyzing and comparing official EU documents accompanied by comments. Moreover, conditionality can be formally considered as a promising mechanism for democratization of institutions. However, in the total fulfillment of the institutional democracy, conditionality is limited.

Key words: democratization, conditionality, institutions, democracy, mechanism, Macedonia, EU.

1. INTRODUCTION
After the collapse of the communist regimes, the Balkan countries faced challenges and efforts to overcome the problems. Here it is also worth mentioning the urgent problems they had, the orientation of a new political course and the great economic difficulties. They spontaneously resorted to the Western model, which was founded: democratic regimes, independent institutions, rule of law and a free market economy. Among the international actors the EU has played a decisive role.

Democratic conditionality is one of the key concepts that has been applied during the enlargement of the EU. The purpose and the reason of using the conditionality by the Union is to ensure political or institutional outcomes in the countries that want to integrate. This has to be understood as a transformation (transition) from a communist regime to a liberal democracy and free market. Conditionality is a broad concept and varies based on the concept of application. The conditionality for integration (Smith 2003, 108), the conditionality for enlargement (Hughes and Gordon 2004, 78), the conditionality of approximation
(Barysch and Grabbe 2002, 36), political conditionality (Gateva 2016, 23) and democratic conditionality (Pridham 1999, 64) are some of the categories of conditionality defined in the European integration literature.

The analysis of academic literature shows that there are some important features about EU conditionality research. First, there is not yet a common definition of EU conditionality. However, in different books they try to reconcile with the fact that the concept of conditionality correlates the fulfillment of particular duties and the obtaining of special benefits (rewards). Secondly, most of the theoretical discussions about conditioning focus on the constraint placed on Copenhagen criteria and the transformation power of the Union by focusing on the mechanisms to promote alignment with EU rules and assessing their impact on domestic political issues of the candidate countries as the Republic of Macedonia.

The purpose of the research is to give an answer to the two research questions. (1) What effect has the condition of the democratization of the institutions of the Republic of Macedonia? (2) The role and influence of political elites in the democratization of the country's institutions, as the EU's demand itself?

It is worth here to take a moment to analyze the impact of the Union's democratic conditionality mechanism and the political class approach to independent institutions. We think that during these years of transition the political elites in Macedonia have played a negative role in consolidating the independence of the institutions.

2. WHAT DO WE COMPARE?

Case selection strengthens the comparative dimension of the study and allows us to analyze European Commission documents for the Republic of Macedonia. Progress achieved by the Republic of Macedonia over the 2013-2016 period will be illustrated by analyzing and comparing progress reports published annually by the European Commission. It is important to underline the fact that annual progress reports only show the progress or regression of a specific country over the last few years.

The EU uses the monitoring mechanism to assess these countries with their progress in implementing EU conditions. In Commission Reports, it is evaluated and ascertained whether candidates have met the political criteria: The Commission provides a description of various institutions (the Parliament, the Executive and the Judiciary). To be as consistent in the one-year objective estimates for the achievements of the pretender state in annual reports, this progress is assessed by standardized terms that imply some assessment categories such as:

Positive assessment, the formulation of the positive achievements of a state, a category which includes the estimates such as: Significant progress, substational
progress and good progress. Average rating, for certain progress, with the following formulations: progress, some progress and modest progress. Negative assessment, lack of progress, with the formulations like: limited progress and no progress (Reka 2010, 450).

3. THE TRANSFORMING POWER OF EU

Most of the theoretical debates about the conditionality examine the Union's transformative power by focusing on the mechanism to promote compliance with EU rules and assessing their impact on the domestic political affairs of candidate countries (Smith 2003; Grabbe 2006; Pridham, 2002; Schimmelfennig and Sedelmeier 2005).

Membership conditionality is used by the EU as an instrument of foreign policy to influence the domestic and foreign policy of applicant countries in order to protect the "club" called the EU. Putting membership conditions for joining an international organization is a form of conditionality. With the growth of the applicant countries "membership conditionality" has become very powerful, if not the strongest EU foreign policy instrument.

The Union uses its attractive power (attractiveness). Its transformational power, according to Ian Maners, lies in the values of the Union (freedom, peace, democracy, human rights, rule of law, equality, social solidarity, development, etc.) as its fundamental normative principles, which are promoted by the EU. In this regard, according to Maners the Union tries to give courage and will to institutions and people by accepting these values (as preferential) within the framework of supranational frameworks (Ilik 2012, 106-109). This attraction force by the EU has been transformed largely in great benefit by the applicants through insisting on fulfilling all the terms of their membership. The use of membership conditionality is an indication and a contributing factor for a more united and secure role of the EU. Certainly membership conditionality is a special foreign policy instrument. Acting as a 'Gateway Guard', the EU can influence the transformation of aspirants by allowing or denying entry into the lead and further stages of EU integration, which is described by Grabbe as the most powerful EU conditioning tool. Haughton agrees, asserting that 'the EU's transformative power is great when it decides to open accession talks (Braniff 2011, 93).

4. DEFINITION OF CONDITIONALITY

How should we understand the meaning of conditionality? According to the Oxford English Dictionary, the condition is "when something else is required or required as a condition for giving or doing something else - a condition" in the field of co-operation and development - the term conditionality is devised to show the practice of donors assistance with specified conditions where beneficiaries are
waiting to receive help (Fierro 2003, 94). Conditionality may also be limited as a condition of a party to contractual arrangements in order to determine the implementation of the agreement (Stokke 2013, 13).

Conditionality is a complex phenomenon that involves many types of factors of different natures. It is not a task or lesson to present full definition. Conditionality must be systematically used, often dependent on geo-political, strategic, commercial and economic interests. Due to its essential, political nature, conditionality has been analyzed by various scientists and scholars. Pridham defines it as a "process that requires specific conditions or perhaps even preconditions for support, including a pledge of material assistance or political opportunity, and usually involves political monitoring of domestic development in countries under review." According to Schimmelfenning and Sedlmeier conditionality is defined as "bargaining strategy, reinforced with rewards, through which the EU provides external incentives for the respective government to meet certain conditions" (Braniff 2011, 84). According to Smith, conditionality includes "links from states or international organizations, the perceived benefits of another country ... in meeting the conditions regarding the protection of human rights and the advancement of democratic principles."

But what is actually a democratic conditionality? According to Pridham democratic conditionality is a special version of conditionality which emphasizes respect for and the furtherance of democratic rules, procedures and values (Gateva 2016, 45). Various scholars have argued the fact that democratic conditionality is ‘the core strategy of the EU to induce non member states to comply with its principles of legitimate statehood’ (Schimmelfennig and Sedelmeier 2004, 662-668).

Conditionality is a general rule aimed at relations between the two unequal partners, the donor and the recipient (beneficiaries). Conditionality is also defined as inclusion, "use and non-use" of economic instruments to bring about political and other changes (Fierro 2003, 93-94).

Thus, the actual conditions to be fulfilled, the reward for their fulfillment, and the mechanism for monitoring and evasion are the three constituent elements of any conditionality (Dimitrova 2004, 39).

5. APPLICATION OF DEMOCRATIC CONDITIONALITY

Through the mechanism of "democratic conditionality" the Union has provided a standard association model for each candidate. Based on the model of conditioning, in the political aspect the integration into the European Union implies that the approach with the EU was matched by democratization. Throughout the two decades of the political-economic transformation of the former communist bloc countries, the EU has naturally combined the desire, will, efforts and commitment...
of these countries to realize integration and democratization through the mechanism of democratic conditionality.

According to Grabbe, the conditioning mechanism works because "The asymmetry of power between aspirant countries and unions gives the EU more binding road to impact on the domestic policy making process of applicant countries than in the EU itself, as candidate countries face additional conditions that current members do not do." Grabbe described the "mechanisms" as processes that have influenced institutional and political transformation in CEE countries. In his analysis about the mechanism of democratic conditionality, he divides it into five categories:

1. gate-keeping: access to negotiations and further stages in the accession process;
2. benchmarking and monitoring;
3. models: provisions of legislative and institutional templates;
4. money: aid and technical assistance;
5. advice and twinning (Grabbe 2002, 9)

Conditionality is more clearly preserved in the Copenhagen Membership Criteria. For many years, the Copenhagen criteria did not have a legal basis in the EU Treaties. This was amended in the Treaty of Amsterdam (1997). Copenhagen's political criteria emphasize that the candidate country should have "stable institutions guaranteeing democracy, rule of law in the state, human rights and respect and protection of minorities" (European Council 1993).

Conditionality is the main mechanism available of the EU to bring in the internal structure of political actors and to promote the harmonization of their interests with EU reforms. The main objective of EU conditionality is the rational choice of the cost-benefit logic by which internal change is a response towards the social and material benefits provided by the EU. Also, the EU can impose costs on third countries for stopping benefits and punishing unacceptable behavior. Since the destination is oriented, actors change their policies and behaviors if the offered reward from the EU is higher than the cost of compliance with its terms. (Noutcheva 2012, 17-18).

6. CASE STUDY: MACEDONIA

The democratic conditionality can have as a target the political elites by supporting and reinforcing pro-reform actors or by making the cost of non-fulfillment much higher. (Richardson 2006, 208-209). In addition, EU conditionality may fail to be implemented by transition countries. Checkel criticizes the strong conditionality applied by the EU as less successful or does not work at all when it has harmful consequences for the future. For example, the internal cost of implementing EU conditionality is too high for political elites, they will refuse to
co-operate with conditionality or partially accept it. Non-coherence and specific lack of EU political conditionality may limit the influence of conditionality as an instrument for conflict transformation. Sadurski states that: "the degree of specification of political conditionality varies from one realm to another and may be more effective when there are certain rules that candidate states expect to review, than in cases where the set criteria in the best case can be characterized as an unclear form" (Braniff 2011, 84). While the positive role of EU stimuli for the transition of democracy and market economy has been widely recognized in the case of the aforementioned countries, the EU conditionality instrument has not proved to be effective in the case of Western Balkan countries (Hoffman 2005, 56-57), part of which is our country, too.

The reasons for success in the CEE countries and the failure in the Western Balkans countries are primarily related to the achievements of these countries in the field of democratization. Asymmetric power and the EU's influence in fulfilling political conditions becomes possible when domestic politics is oriented by democratic governance practices. In countries with fragile democracies such as Macedonia, the implementation of democratic norms has often encountered controversies as they come across with the governing interest of political leaders of any political force.

7. POWER OR INSTITUTIONS? POLITICAL ELITE SYNDROME

In spite of the fact that "our political parties have eagerly promoted the values of democracy and the creation of a political system completely opposed to the dictatorial models, party-state, over the years in many cases they have been displaying the mentality of the old system, including the tendency of preserving the political monopoly on the state and society ". In fact, for the communist tradition, the party-state binomial was the key to the longevity of the political power. They have dominated the political process by harnessing the role of civil society, scholars and experts on many important issues that relate to the democratization of the country. From this statement it turns out that with this political class can hardly "built" "real" independent and functional institutions. The political will translates as the consensus that the political class should have for respecting democratic norms, another paradox of our country.

We have to admit that political life in Macedonia revolves around leaders and political parties. Outside this binomial, it is hardly empowered or heard by the governing people the opinion of any individual or intellectual, of the interest group or civil society to hear power, especially in cases when the interests of the latter are incompatible with the interests of the political class.

In Macedonia, political parties enjoy great power and influence in almost every political, economic and social activity. This approach probably has the roots
in the non-realization of the institutional transition process of the party detachment from the state. It is a fact that today politics and the governing power is everywhere. It is more present than it is supposed to be due to the fact that state institutions are fragile and dependent on its "will". The desire for power even for more governing power is the fundamental reason for the centralization of public administration. The EU integration process is deeply linked to the democratization of the country's political, economic and social system. In modern constitutional democracies, the division and balancing of powers is the basic feature, where indisputably the imposition of specific limitations on the state's competences towards the individual are also essential elements of democracy. The existence of many powers within the state, which function independently from one another, is vital for the development of democratic institutions and the strengthening of the state. The basic elements of a democratic state can be formulated in different ways, but it is the responsibility of those who have the political force to realize the formulations in function of the democratization of the country. During these years (over)governing power is faced not only in the style of governance, but especially as government "control" of independent institutions and the judiciary.

8. THE PARLIAMENT: BOYCOTT AND TENSIONS

The governing power is derived from the elections, the parliament as a product is the first institution touched by party power. Here is worth mentioning the fact that: "The Assembly is the first institution to become the object of imposing the "party" model of the state and which follows this from its side, in other state institutions with very negative consequences.

Often the functioning of the parliament is broken when there is no political dialogue, when we have boycott of parliamentary sessions and tensions by certain political subjects. Difficulties arise from the lack of constructive political dialogue and deep divisions among political entities. It is often the case that some laws are brought under a fast procedure despite the fact that it is foreseen in cases where intervention is needed in economic change, in the interests of security and protection of the country, or in case of natural disasters, epidemics and different extraordinary needs. The developments that emerged on December 24, 2012, on the occasion of budget approval, in the Parliament and out of it, have greatly affected the functioning of the rule of law (European Commission 2013). The democratic procedures upon which the assembly functioned were violated precisely with the command of the chairperson who led the legislature chamber. The case of the approval of the 2013 budget, in an unusual atmosphere, accompanied by extreme confrontations, which, as the main actors, had the largest political entities in the country, and unprecedented violence exerted by the Parliament's security, carries an uncertainty in itself that in the future may occur abnormal situations. The violation
of the parliamentary and law regulations, which foresees the work of the Parliament when adopting the budget in an anti-democratic manner, left behind serious consequences both in political and legal terms (Ramadani, 2013).

The continuation of the political crisis hindered the work of parliament and made once again visible the parliament's legislative and supervisory functions and the need to improve its functionality as a forum for constructive political dialogue (European Commission 2016). This implies that the entire regression and the inability to consolidate the state and independent institutions is the product of their political class and their power games. "When the political majority functions according to the "party" model logic, the Assembly cannot fulfill its constitutional responsibilities, it is atrophied. The examples show that "MPs in most cases appear more like a "party voting machine" than a responsible decision-maker. We believe this does not help to strengthen democracy and institutions in Macedonia, but to strengthen the position of party leaders and exhaustion of the different opinion from the first one. These changes resulted in a failure to democratize and control the power of the "party ace" and then the "executive ace". As above we can say that as long as the political class is only interested in power, it will not work seriously for the construction and democratization of state institutions and the EU integration.

9. UNSTABLE GOVERNMENT

Politicalization at central and local levels is always a concern. Confidence in the independence of state institutions is low. The trust in the independence of public institutions is on a low level because of the vastly widespread perception that the public administration is politicized and lacks transparency. There are reliable allegations that there has been pressure upon the employees in the public sector during almost all elections. The common practice of creating new jobs based on social or political criteria, artificially enhances the public service, undermining the meritocracy principle, as well as the general aspiration for efficient public administration. (European Commission 2013-2016). Regarding the functioning of the Government, it has shown signs of instability and tensions among the coalition partners. Governments have always shown signs of instability. The European Commission in the Annual Progress Report (2016) underlined that: 'The ruling parties also led to the absence of a clear line between the state and the party, thereby weakening trust in public institutions. There is serious concern about the government control over public institutions and the media' (European Commission 2014-2016).

The deep political crisis, instigated by the revelation of the vast illegal tracking of communications (the intercepted phone conversations) in 2015 and their serious content, was continued in 2016, as well. The decision of the President of
RM to pardon 56 individuals who had been accused or allegedly involved in the tracked conversations has been afterwards dismissed because of strong domestic and international objections (European Commission 2016).

The inefficient lines of responsibility, using the public sector as political instrument, the alleged pressure on the employees in the public sector and the alleged politization of the administration in election year, continue to be subject of concern. Also, the lack of political dedication for realization of the necessary reforms in public finances governing lead to substantial decrease of the financial aid from EU in 2016 (European Commission 2016).

10. POLITICIZED JUDICIARY

The Republic of Macedonia has shown a low level of judicial level since its independence. According to the European Commission, the lack of judicial independence is a permanent factor requiring immediate intervention. One of the main challenges is the increased concern expressed regarding the selective approach and the influence upon the application of laws and the judiciary. The basic principle of the rule of law, that the justice should not be merely an aspiration, but it must be tenable that justice is achieved, is not entirely comprehended and respected by the authorities regarding the activities for implementation of laws, directed towards certain persons or sectors (European Commission 2014-2015).

There is political involvement in the work and appointments of the judiciary. There hasn’t been any progress in securing functional independence of the legal system. There are perpetual rapports for selective justice in certain high profile or politically sensitive judicial cases. The public demonstrations illustrated the atmosphere of political tension in respect to the work of the judiciary, especially the scandal with the phone-interception.

11. EU: REALITY OR DEMAGOGY

It is a fact that established political power in a ruling power is an avidity and part of the strategy for taking it from any political force. The fundamental change of this process in the countries of democracy developed from those of the transition countries is mostly concerned with the legal and institutional path they pursue in implementing the democratic principles of the rule of law. The negative perception about the engagement of our politicians in the country's integration process towards Europe is clearly associated with the lack of cohesion between political and demagoguery entrepreneurship. In the spectrum of political parties in Macedonia, there is no political force that has in its own governing platform another alternative which excludes the alternative of European integration. In this sense, the membership in the European Union is one of the few issues of politics for which
there is a national popular and political consensus. If there are such valuable assets and they truly are, then what has made the politics in Macedonia in these few years so co-operative and consequently so little fruitful towards the integration process? In our analysis, we are firm on the opinion that the engagement of our politicians towards the country's integration into the EU results in more demagogy than reality. A partial answer to the above question lies in the fact that integration or democratization cannot coexist with corrupt practices and abuse of power. This implies that citizens think that integration depends and is in the hands of politics. If the political class really wants to implement reforms, rule of law in the state, independent institutions, integration, then who is opposing them? It arises naturally in the analyses of the progress of the country in many comparative studies with the countries of the region and beyond, that Macedonia's performance in democratization and development indicators is rather low. This approach helps us to understand the successes and disadvantages, the achievements and regressions, and moreover to judge with facts and arguments the work of those who we vote for, our politicians.

Table 1: Progress of democratization of the institutions of the Republic of Macedonia. (Source: Periodic Reports of the European Commission for the Republic of Macedonia, 2013-2016)

<table>
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<th>Institutions</th>
<th>2013</th>
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<td>serious concern</td>
<td>increased concern</td>
<td>No progress</td>
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<tr>
<td>Government</td>
<td>Progress</td>
<td>serious concern</td>
<td>increased concern</td>
<td>concern</td>
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<tr>
<td>Judiciary</td>
<td>There is concern</td>
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<td>No progress</td>
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The democracy and rule of law are permanently jeopardized, especially because of the enslaving of the state which directly affects the functioning of democratic institutions and crucial societal areas. The state suffers from divisive political culture and lack of compromising capacity. The institutions such as judiciary, regulatory bodies and media are enslaved. The narrow party interests still dominate over the interests of the state and the citizens in the crucial areas.

12. CONCLUSION

Macedonia's road towards the EU has had its ups and downs. However, politics has influenced both the process of developing democracy, the institutions and the rule of law, as well as the repression and reversal of these achievements. Throughout these years of transition, the politics of conflict, of kinks and non-cooperation are the main argument that shows that the political factor here in
Macedonia has not acted with "will" and "dedication" towards the membership in the EU structures.

We have to admit that the mentality of the political leaders in Macedonia differs markedly from the mentality of the leaders of the countries in the West. Such mentalities appear and hinder the necessary compromise and co-operation at times that are historic and crucial to our country. The lack of previous democratic traditions in our political history has led the political class to have a demagogic approach towards this process and not a real will for directing Macedonia towards the EU membership.

The biggest criticisms of the European Commission for the lack of progress in the country's integration are addressed to the political elites. The country's performance in terms of implementing the membership agenda from the political class did not go in line with the government's intentions and ambitions, even though the EU accession issues have determined the agenda of the main political parties. Failures in this direction have reinforced the conviction of citizens that only Europe can regulate something in this country. Most citizens trust the EU institutions more than the institutions of the Republic of Macedonia.

The EU has become the rhetoric of political parties to win the electorate's trust. The pro-European orientation of citizens has dictated the approach of political parties that have misused the "EU membership" not as an end in itself but as an attractive element to seek support from the electorate. The whole political activity of the ruling elite, the opposition and state administration goes in opposite line with the country's integration.

Macedonia continues to be a poor country with a fragile democracy, a polarized political class, with great problems related to the high corruption of the state, the institutions, the weak state, and so on. From this, we can conclude that the approach with the European Union does not mean that more democracy has been planted for the country. In conclusion we can say that, in countries with such characteristics of fragile democracies and political classes that are not distinguished for their political identity with democratic norms and values, the conditioning mechanism used by the EU has not yielded the desired results.

13. REFERENCES


PROTECTED WITNESS IN MACEDONIAN CRIMINAL LEGISLATION

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Abstract
The Law on witness protection was passed in 2005 and for the first time in 2006 took effect in the Macedonian legislation. According to this law: a witness is any person who, according to the Law on Criminal Procedure, has the status of a witness and possesses information on the commission of the criminal offense, his perpetrator and other important circumstances, that is data and information of importance for the criminal procedure that are necessary and decisive for the proving of the crime, by which the deprivation of life, health, freedom, physical integrity or property of a larger extent of the witness is exposed to danger. This subject is regulated by a number of international documents such as, The United Nations Convention against Transnational Organized Crime, as well as the Council of Europe Convention for the Protection of Human Rights which in its content does not possess a single provision relating to the protection of people who appear as witnesses in the proceedings, but the legal basis of witness protection is required in those provisions of the Convention, which regulates some of the basic human rights, such as the right to life, prohibition of torture, inhuman or degrading treatment, the right to liberty and personal security, etc. What is the difference between a protected and endangered witness? Such as an evidence may serve the growing number of instances in practice where the procedure is based on the testimony of a protected witness. Could all this lead to this endangerment of the fundamental human rights?

Key words: evidence (proof), witness, protected witness, endangered witness, human rights

1. INTRODUCTION

Society has always imposed norms which aim was how to regulate human behavior and interpersonal relations, simple or complex, like or dislike. But not always, the man is exemplary and adheres to them. It is right, this deviant behavior leads to the emergence of one of the biggest problems of the modern society – the crime, which is manifests itself through various forms. One of the forms is organized crime as one of the most widespread types of criminality in the world. Because it is a very dynamic phenomenon that adapts skillfully to social and
economic changes, and thanks to the process of globalization, the percentage of committed crimes in this group is increasing. In addition to quantity, the ways are sophistication in doing the crimes, and all of this contributes to the increased number of unexplained cases that end up in court labyrinths. As the main feature of organized crime is the high dark figure, which speaks of the difficulties encountered in resolving cases belonging to the group of organized crime.

All of this contributed to the fact that in 2005 the Law on Witness Protection was first adopted in Macedonia, by which the protected witness institute appears in our penal legislation. In January 2006 this Law was enacted. It facilitated the protection of witnesses who, because of the changes threatened by their life, health, personal or family safety it can be heard in a special way, by determining status a protected or endangered witness, by giving a pseudonym, which the statement will give with the help of audio-visual means, with a hidden face and altered voice. (Dimovski, 2014)

This law applies if the proving of a criminal offense is followed by disproportionate difficulties or can not be performed without a statement, by a person who due to the possible danger of being subjected to intimidation, threatened with retaliation or danger to life, health, freedom, physical integrity or property

As a larger scale, does not agree in the capacity of a witness to give a statement on the following crimes:
- against the state
- against humanity and international law
- in the area of organized crime and for which the Criminal Code prescribes a four year's imprisonment (Law on Witness Protection, 38/05)

By the fact that a certain person has knowledge of a particular crime, his life and the lives of his close relatives are in danger. Which means that each witness is in principle a threatened witness this is why the witness enjoys in protection as in the Law on Criminal Procedure, as well as with the Law on Witnesses, and at all stages of the proceeding, it is about two types of protection.

These are two types of protection:
- Procedural protection guaranted by the Law on Criminal Procedure (Articles from 226-231), consisting of undertaking a series of measures and activities during the course of the procedure itself, as a special way of examining these persons by covering up their identity with a help of a sound transmission devices, assigning a pseudonym, etc. and
- Not-procedural protection regulated by the Law on Witness Protection and by which the protection of the witnesses is provided both to the procedure and outside it. That is, outside the process protection consists of measures and activities undertaken by the authorities responsible for the implementation of
the protection that should guarantee the safety of witnesses and their close persons for the whole period during the procedure, but also in addition, the protection takes place after the completion of the procedure.

Or the time-determined extra-protection may begin before the start of the proceedings itself, to run in parallel with the procedure (procedural protection), but also after the completion of the criminal procedure in which the person appears as a witness.

The Law on Witness Protection (LWP) provides for the creation of a Council that decides upon a request for the insertion a certain person in the Protection Program. The Council is composed of five members. Members of the Council are the representative of the Supreme Court of the Republic of Macedonia from the ranks of judges, a representative from The Public Prosecutor’s Office of the Republic of Macedonia from among the deputies of public prosecutors, the director of the Directorate for Execution of Sanctions in the Ministry of Justice, a representative from Ministry of the Internal Affairs and the head of the Unit in the Ministry of the Internal Affairs. The members of item 2 of this Article have their deputies, who are representatives of the same legislative body of the members that replace them. The members of the Council, or their deputies, are appointed and dismissed by the official who manages the legislative body they represent.

2. TWO DIFFERENT CONCEPTS

What is noted in our legal regulation is that we often have insufficiently defined terms in the laws themselves. Such is the case with the Law on Witness Protection, and the Law on Criminal Procedure. The LCP uses the term “threatened witness”. In fact, as I mentioned earlier, every witness is a threatened witness. The endangered witness is provided with protection at all stages of the procedure and during the statements and may not be asked questions that can directly or indirectly reveal his identity, place of residence, employment, or family members.

“On the other hand, the Law on Witness Protection formally and legally with the status of ‘protected witness’ acquires a person who, with a decision of the Council for Witness Protection, is included in the Protection Program and with which the witness Protection Unit has concluded an agreement. So, a threatened witness is a person who, by giving the statement, would expose himself or some of his close person to, a serious danger to life, but which is not yet included in the program“ (Velickovic, 2016, p.3)

A Witness is a person who can give notice, of the crime and the perpetrator and other important circumstances (Articles 237, item 1 of the LCP, refined text- Official Gazette of the Republic of Macedonia No.15/05). Witness – according to the Law on Witness Protection (Official Gazette of the Republic of
Macedonia, No. 38/05, 5/05) is any person who, according to the LCP, has the status of a witness and possesses the information from the commission of the crime, his perpetrator and other important circumstances, that is data and information of significance of the criminal procedure which are necessary and decisive for the proving of the crime, with the reporting of which, life, health, freedom, physical integrity or property of a larger scope of the witness, are exposed to danger (Article 2, paragraph 1, item 1.)

This definition actually covers the notion “witness” and “threatened witness” mentioned in Article 237.i.1 and Art. 244. i.1. from the LCP.

1. INTERNATIONAL DOCUMENTS WHICH REGULATE THE THEME OF WITNESS PROTECTION

As this is a sensitive category of persons, it speaks also the fact that such it is the object of protecting a large number of international documents, especially those relating to transnational organized crime, as one of the most widespread types of crime.

1. First of all, I would mention the United Nations Convention against Transnational Organized Crime. This Convention, together with the Protocols, require the protection of witnesses as material-legal and procedural-legal for criminal offences covered by the Convention.

As the measures that States Signatories should apply in order to protect witnesses, The Convention proposes: physical protection, as well as a transfer from one place to another, prohibition of disclosing the identity and place of movement of the witness, giving testimony to the witness using the telecommunication technique to be safe enough for the witness.

2. The Convention for the Protection of Human Freedoms and Rights of the Council of Europe, which does not contain explicit provisions for the protection of witnesses in the criminal procedure, but this is implied by the protection of the rights proclaimed with it as an example: The Right to Life, The Right to Liberty and personal security, the establishment of conditions for excluding the public from the procedure and, etc.

3. The Recommendations of the Council of Ministers of the Council of Europe, and in particular here I would mention recommendation P (97) 13, the title is” For Intimidation of Witnesses and the Right to Defence”

With this Recommendation Member States are advised to consider the introducing of the following measures: recording a testimony of the witness with audio-visual means during the procedure if the witness is unable to appear at trial because of his safety and security of his family.

The recommendations also suggest anonymity, as a measure, which would mean that personal data remain completely entirely unknown to the defendant as one of the witness protection measures.
4. Here I would mention the Recommendation of the Council of the European Union on the Protection of Witnesses in the fight against international organized crime, which calls on member states to respect the Conventions that concern the protection of the basic human rights and freedoms, analogously to ensure protection and security of witnesses from direct and indirect threats, and protection extends to parents, children, the spouse of the witness. Also Member states are obliged in providing adequate and effective protection before, during and after the protection.

3. CRITICISMS TO THE LAW ON WITNESSES PROTECTION

In the period from 2006-2014, the procedures in the Republic of Macedonia covered 80 persons who received the status of protected or endangered witnesses or persons with undercovered identity.

This number was obtained by parallel requesting information from the courts, public prosecutor’s offices and from the police, as well as by detecting the courts cases in which they became known that there is an endangered or protected witness (Dimovski, 2014, p. 116).

„Also in our practice we have several cases whose verdict is mainly based on the statement of the endangered witness. By this we have a direct violation and disregard of the provision of Article 365, item 3. Of the old, then valid LCP, which reads: ‘’ the verdict can not be based solely on the statement of the endangered witness, obtained by applying the provisions and his undercovered identity or appearance for the purpose of protecting and protecting his close relatives“ (the current Code of Criminal Procedure contains an identical provision in Article 231.item2.).

Although other evidence from the judgements was made in the procedure, it is obviously that without the existence of the statements of the endangered witnesses, it was not possible to convict the defendants.

The assessment of one verdict is based solely on the statement only of the endangered witness can not be reduced, to merely determining whether only this evidence is made in the proceedings but whether it is crucial for the adoption of a (convictional) verdict. There are a large number of insufficiently sophisticated items, for example. In the Law on Witness Protection, we have a tax listing that belongs to the group of close people that can be covered by the Protection Program. It would be more correctly to follow the example of neighboring legislation, for example, Croatia where close relatives mean all those relatives and others for whom the endangered witness sought protection with the Program.

One of the measures for protection envisaged by the Law on Witness Protection is also a change of residence, or temporary residence.
Considering that the Republic of Macedonia is a small country with very developed acquaintances and familiar relations, I consider that it is not possible for a person to be displaced and while protecting his identity.

We also have inconsistencies in the concepts where the term ‘threatened witness is used in the LCP, and the Witness Protection Law does not operate with such a term, it is urgently necessary to make the alignment of the terms.

Regarding the changes the alteration whose application for protection with the Program will be rejected, would have the opportunity to address the appropriate court instance, as it is the case with the Montenegrin legislation, where the competent to decide on appeals of this type is the Administrative Court.

In our country the decision of the Council is final and the question arises as to the fate of the person who does not completely meet the conditions required by the Program and is rejected by the Council.

Considerning that the amendments to the Law on Witness Protection are already in the parliamentary procedure, we hope that it will come to the adoption of a more complete and more practical law that would also facilitate the work of the judicial authorities. The change at the request of the Special Public Prosecutor’s Office was not passed during the last year. Special prosecutor Janeva believes that the witnesses were not sufficiently protected by the permanent legal solution and that their better protection is necessary.

According to the existing legal solution, the identity of these witnesses at the start, while they receive the status of protected, is known to 15 people. In particular, for a certain person to become a protected witness or to be included in the Program for Protected Witnesses, a proposal shall be submitted by the State Public Prosecutor of the Republic of Macedonia on the basis of a written request received from the competent public prosecutor, the judge dealing with the case or the Ministry of the Interior. The witness himself, who refuses to testify publicly, is required to be a protected witness, for fear of his safety and for his relatives. The decision again is made by Council. This means that at the beginning, a dozen people know the identity of the protected witness which is why the Special Public Prosecutor’s Office insisted to reduce the number of people, as this could lead to information leaks, which would threaten the safety of witnesses.

Therefore, through the amendments, the Special Public Prosecutor’s Office required the Council to skip, and the decision on who would become a witness under the protection should be personally brought by the special prosecutor.

4. CONCLUSION

The Law on Witness Protection has been adopted as one of the efforts for harmonization of our legislation with the legislation of the European Union. The significance of the protected witness in the criminal procedure for the solving cases,
especially those of organized crime, is enormous. Given the speed of its adoption, it is normal now that after 12 years of its putting into force, it is also necessary to require its addition. What is recommended to our courts and public prosecutor's offices is a detailed examination of the person and the case before reaching a decision on granting the person a status of protected or endangered witness. It can be freely stated that with the application of this instrument in the criminal legislation several human rights violations have been made, which is also indicated by the fact that the Court of Human Rights in Strasbourg has ruled several verdicts against the Republic of Macedonia. It is also necessary to clearly establish additional criteria in the law on the conditions under which a certain person can become a protected or endangered witness, and foresee an opportunity for termination of obligations with a clear indication of the consequences. The latest draft amendments to the Law on Witness Protection, which is still in the legal procedure, foresees the competence of the Public Prosecutor's Office for prosecuting related crimes and arising from the contents of the illegal interception of communications in accordance with the Law on Public Prosecution for Prosecution of Related Crimes and arising from the contents of the illegal interception of communications (Official Gazette of the Republic of Macedonia, No. 159/15). The decision for inclusion in the Program is adopted by the Public prosecutor for the handing of related crimes and arises from the contents of the illegal interception of communications at the request of a person who because of the possible danger of being subjected to intimidation, threat of retaliation or danger to life, health, freedom, physical integrity or property on a larger scale, does not agree in the capacity of a witness to give a statement in the criminal procedure, after which The public prosecutor for the prosecution of related crimes and arising from the contents of the illegal interception of communications shall provide the data required in accordance with this Law. This issue has been particularly actualized after the announcement of the wiretapped conversations by the current prime minister and the possibility of endangering the privacy of some of the persons mentioned in the talks, which are now in the Special Public Prosecutor.

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CIVIL SERVICE OF REPUBLIC OF KOSOVO: CHALLENGES IN THE CONTEXT OF EUROPEAN INTEGRATION

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Abstract
Public administration reform and an accountable public service constitute the key requested reforms lying ahead in Kosovo's European integration future. This paper analyzes the functioning of civil service in the Republic of Kosovo by building on theoretical approaches and best international standards of civil service performance and development. Paper examines the legal framework pertaining regulation of civil service in Kosovo, in a comparative outlook towards the requested reforms. The relevance of civil service reform for the European integration process of Kosovo is assessed through discussion of the past and upcoming milestones. Qualitative research methods were applied in validating author's assessments of the challenges, drawing on the content analyses method, supplemented by key informant interviews methods. Study conclusions lead to the inference that delays in implementing civil service reform - as per the requested timelines and logical models of civil service development - impacts the overall quality of public administration reform, consequently impacting the dynamics of the progress of integration of Kosovo in the European Union. Study significance consists in offering recommendations for sustainable and contemporary approaches of the functioning of civil service at a point of time when the amendment of the law on civil service has been assessed as a need for Kosovo by the European Commission.

Key words: civil service; challenges; Republic of Kosovo; European integration

1. INTRODUCTION
Synonymous with public service, in administrative sciences, the notion of civil service has been regarded as the nucleus of public administration. For the Republic of Kosovo, well-functioning of civil service has been of an instrumental character to state development efforts. Following the declaration of independence in 2008, Republic of Kosovo has reaffirmed its commitment to European integration through numerous milestones and legal commitments. The recently announced enlargement strategy of the European Union A credible enlargement perspective for an enhanced EU engagement with the Western Balkans (European Commission,
points out the required regional dynamics and outcomes for countries of Western Balkans – as, for Kosovo, the general vision is aimed at the processes of normalization of relations with Serbia. Besides the enlargement strategy that provides a reference for Kosovo's integration in the European Union, Kosovo has signed the Stabilization and Association Agreement with the European Commission, by undertaking a set of obligations requiring comprehensive domestic reforms, with a strong focus on public administration reform. The relevance of civil service reform for European integration consists in Kosovo's path towards fulfilling the Copenhagen criteria, specifically political criteria for EU accession: 1) functioning of the judiciary; 2) fight against corruption, fight against organized crime, freedom of expression; 3) administrative capacities estimated through public administration reform, among others.

Civil service is at the heart of Kosovo's public administration reform efforts. Any attempt to approach the civil service scientifically must take into consideration Republic of Kosovo's historical context of the development of public institutions. After the 1999 war (that emerged in Kosovo as part of the former Yugoslavia dissolution process) that followed NATO's military intervention and placement of United Nations Mission in Kosovo (referred further as UNMIK), Republic of Kosovo has been governed jointly by UNMIK and the local self-governing authorities. Since then public administration development has been characterized by the implementation of a considerable number of programs/projects supporting the development of capacities of public institutions, funded by international donors. Joint governance with the international community in Kosovo has continued until 2008 when Kosovo declared its independence. Under such a context, the following assumptions are taken into consideration for analyzing civil service in Kosovo:

- Civil service in Kosovo is relatively new - as its establishment commenced after 1999;
- Considering that Kosovo has been one of the largest beneficiaries of foreign aid per citizen capita in the history of international development, and despite the support promoting the development of organizational capacities of Kosovo institutions, these institutions are still fragile, lacking sustainable capacities and transparency;
- Functioning of civil service for a decade has been challenged by many issues commencing with inconsistencies in the legislation regulating the functioning of public administration;
- Civil service development has not met the determined strategic timelines in order to deliver the desired quality of public services;
- Public administration in the after-war era has been the largest employer sector, comparing to the private sector.
The Strategy for Modernization of Public Administration of Republic of Kosovo 2015-2020 (Ministry of Public Administration, 2015) is the main guiding strategic document for public administration reform in Kosovo aiming at tackling key challenges of the functioning of civil service. When discussing challenges of civil service, it is of great importance to note that the total number of civil servants in Kosovo is not clear, but a rough estimation by various sources accounts 19,000 servants.

1.1. Problem statement

With the purpose of informing the most relevant evidence-based problem statement, this study will refer to Kosovo annual progress reports published by the European Commission. Annual progress reports are used as policy tools within the Neighbourhood and Enlargement Policy of the European Commission for countries of Western Balkans and provide comprehensive assessments of reforms noting political, social and economic developments and progress. Aiming at offering a narrow overview of challenges concerning the progress of development of public administration in Kosovo, we commence with Kosovo* 2011 Progress Report (European Commission, 2011), calling for the improvement of skills of civil service and emphasizing the need for building a professional public administration immune from political interference. One year later, through the Commission Communication on a Feasibility Study for a Stabilization and Association Agreement between the European Union and Kosovo*, the European Commission (2012) welcomes the new laws on civil service and salaries of civil service but raises concern on delays of application of these laws (7). On 2013, the Special Group on Public Administration Reform is established as the highest structure of dialogue on public administration reform, consisting of representatives of Kosovo government and representatives of the European Commission (European Commission 2013, 4). In 2014, in the Kosovo* Progress Report, the European Commission (2014, 3) assesses that implementation of the strategy on public administration reform has been a major challenge for Kosovo delivering very limited results. Kosovo* 2015 Report (European Commission, 2015, 4) points out that it is of concern the continued politicization of the public administration and there is need to improve accountability in the public administration. In 2016, setbacks relate to political appointments of members of boards of independent institutions and agencies (European Commission 2016, 4). If we take a comparative outlook on the issues and problems, we see that considerable progress in Kosovo was made in public administration development from the legislative perspective. Corruption in public administration has remained a serious concern in recent five years. In 2013, we still do not see any progress documented while the need for reform is still evident in 2014. Lack of a satisfactory implementation of the strategic framework on public
administration reform has not yielded the desired results, while in 2015 the politicization of the public administration has been referenced as of concern. In addition to this, the Government of the Republic of Kosovo reconfirms public administration challenges in the National Development Strategy of Republic of Kosovo 2016 – 2021 (Office of Prime Minister, 2016). "The country, however, faces considerable challenges in terms of effectiveness and impartiality of the state in delivering effective and fair services..." (7).

This paper seeks to answer research questions as the following: 1) what are the challenges of the functioning of civil service in the context of European integration? 2) What are the trends characterizing civil service reforms vs. criteria of European integration and how these trends are affecting the overall European integration process?

1.2. Conceptual definition of civil service

The conceptual definition of civil service varies across different states subject to legal definition, in terms of scope and responsibilities:

There is no universally accepted definition of the civil servant and civil service...in some jurisdictions, civil servants include nearly all of a state’s civilian employees, for example in France, teachers and university lecturers are included in the country’s civil service list. Whilst in the US there is a different system again, whereby for example all postal workers are deemed federal civil servants, and each US state overlays the functions of the federal government with public employees of its own.

In the International Handbook on Civil Service Systems, Andrew Massey (2011, 3-4) provides the reference for various forms of definition of civil service. Theoretical sources and international organizations provide a variety of approaches when defining civil service. Functions based on legislation and financial systems provide some of the approaches ground to the definition. The scholar thinking on public administration is mainly divided into two eras: 1) old public administration, and 2) new public management. As old public administration approach concerns with the paradigm of running state administration in accordance with the quality of delivery for citizens, the new public service theory comes with multifaceted questions seeking to raise efficiency in public administration. Under the old administration theoretical framework, the Weber model of bureaucracy has led the academic discussion of public administration for many decades and has provided the foundation of many international development assistance programs. Critics of the Weber model of state argue that his classical theory does not relate to the contemporary public sector reforms. Page (2003) argues that hierarchy and rule-bound behavior seem hard to work in modern work environments characterized by new public management, "governance" and postmodernity and asks the question if
there is any case for taking such classical theories of bureaucracy seriously anymore (485).

Yet, civil service remains unexplored at a satisfactory level as Sarah Repucci argues in the Civil Service Reform: A Review working paper: "Civil service reform is just one aspect of the broader topic of public administration (or public sector) … The civil service is, however, the area that receives the least analytical attention, even as it touches on the most basic functions of the system " (2012, 1).

1.3. International standards on civil service

Working with various countries through its Neighbourhood Policy, the European Commission has defined Principles for Public Administration that cover six core areas. Alike for other components of public administration, the Support for Improvement in Governance and Management (referred further as SIGMA), a joint initiative of the Organization for Economic Cooperation and Development and the European Commission, has developed a number of governance principles covering public service and human resource management that call upon implementing best practices of governance and management in public sector (SIGMA 2017). For purpose of analyses, the key SIGMA requirements for public service and human resource management will be elaborated in the following. There are two key requirements on public service, and a total of seven principles guiding functioning of public service: 1) the need of existence of a policy, legal and institutional framework for public service, and 2) principle 2, among others, requires for public service an institutional set-up that would enable consistent and effective human resource management practices across public service (39). In addition to SIGMA Principles, the InCiSE Index, piloted by Institute of Government of the Blavatnik School of Government aims to assess civil service effectiveness. Piloted in 2017, index comprises a set of indicators measuring various dimensions of civil service effectiveness. The embraced approach defines the scope of civil service by measuring performance on the core functions of the civil service with the focus on functions which deliver services or affect citizens directly, and public management and policy functions carried out at the center of government (9-11). According to this model, at the phase of inputs, human financial resources are in order for the civil service to operate.

2. CIVIL SERVICE IN KOSOVO: AN OUTLOOK ON LEGISLATION AND RESPONSIBILITIES

Current legislation on civil service regulates basic working conditions, the rights and obligations of civil service, professional development, promotion, supervision and development of training policies. Article 101 of the Constitution of Republic of Kosovo (Kosovo Government, 2009, 35) holds that the composition of
civil service shall reflect the diversity of the people of Kosova, building on recognized internationally principles of gender equality. Functioning of civil service in the Republic of Kosovo is regulated through a package of legislation consisting of several laws and bylaws. Since 2010, regulation of civil service has been governed by the Law NR. 03/L-149 on Civil Service of Republic of Kosovo and the Law NR. 03/L-147 on Salaries of Civil Servants. Complemented by a number of secondary legislation, the legislation on civil service has not been fully implemented due to limited capacities of Kosovo institutions to adequately manage human resources, as indicated previously through European Commission reports.

Law on Civil Service recognizes a set of guiding principles for functioning of civil service including legality, prohibition of any forms of discrimination against members of civil service, obligation to respond to requests, efficiency and effectiveness, responsibility, impartiality and professional independence, transparency, avoidance of conflict of interest, equal opportunities for genders and ethnic communities. It is of particular importance to emphasize that according to the Law on Civil Service, acceptance in civil service is conducted only through public competition through vacancy announcement.

The flaws of the current legislation on civil service relate primarily to its scope of definition of civil service, which is not well defined according to the civil service standards that we elaborated in the theoretical framework. Law on civil service in Kosovo is needed to be amended so that it can define clearly categories of public employees as the actual distinction between categories of public employees and civil service is not clearly specified.

2.1. The relevance of civil service reform for Kosovo’s European integration

One of the most important milestones of Kosovo's way to EU integration was the process of negotiation, conclusion, and signing of the Stabilization and Association Agreement between Republic of Kosovo and the European Union in 2016. For effective implementation of this agreement, public administration reform in Kosovo is of critical importance. Article 120 of SAA on public administration, stresses the cooperation and dialogue as means towards further development of a professional, efficient and accountable public administration in Kosovo.

Modernization of public administration focused on civil service reform is also enshrined in the National Development Strategy 2016 – 2021 of Kosovo. NDS interventions in area of governance and rule of law include the following: 1) Strengthening the property rights system; 2) Enhanced efficiency of judiciary in disposing cases; 3) Close loopholes for abuse in the public procurement system; 4) Further enhancement of service delivery for businesses and the public; 5) Decrease administrative obstructions for issuance of business licenses and permits; 6)
Improve the efficiency and coordination of state inspections; 7) Regular review of regulatory policies and measures prior to adoption; 8) Shift from border taxation to taxation inside Kosovo (19-27). Following signature of the Stabilization and Association Agreement, Government of Republic of Kosovo has launched the European Reform Agenda (2016) seeking undertaking of the following measures to fight corruption in public administration: 1) Review and adoption of legislation that makes mandatory the suspension and/or removal of public officials indicted and convicted for corruption; 2) Amendment of the law on conflict of interest and related regulation, and bringing them in line with European standards and indicating the exact circumstances in which public officials may take on additional employment and appointments; 3) Ensuring that the planned legislative package covering civil service, salaries, and organisation of state administration is prepared in a coordinated way in an inclusive and evidence-based process on the basis of concept notes agreed at the government level; 4) Ensuring transparent, merit-based and non-political selection processes in line with the law for all independent institutions, agencies, and regulatory bodies as well as in public companies, including and in particular in relation to pending selection processes and ensure full implementation of the recommendations by the Kosovo Anti-Corruption Agency; 5) Continuing to strengthen the track record on the fight against corruption and organised crime, including through reinforcing the capacity of the Special Prosecution Office investigating and prosecuting high-level cases (6).

3. ASSESSMENT OF CHALLENGES OF FUNCTIONING OF CIVIL SERVICE IN REPUBLIC OF KOSOVO

Since its early phases of the establishment, civil service has faced various challenges its role as providers of public services. Based on content analyses method where we analyze reports, legislation and policy documents, we conclude that the most notable challenge in recent years for the functioning of the civil service has been the non-allocation of funding for implementing the Law on Salaries of Civil Service, based on the job classification system. The non-allocation of such funding has undermined the preconditions for civil service effectiveness, motivation, and professionalism – as the theoretical framework on civil service and international standards on public administration regard the remuneration based on job classification systems as the essence of the logical model of the functioning of civil service. This has resulted in the selective application of the package of legislation on civil service, and in this situation, the need for amending the legislation is of an urgent character.

Functioning of civil service has also been considerably challenged by the lack of statistical/administrative data to guide and inform strategic management of
civil service, as consequence of the selective application of HR management systems.

Despite the international support for the capacity development of institutions, foreign aid provided in Kosovo has resulted as non-sustainable in most of the cases. Non-adequate professional capacities of civil service continue to hinder the policy-making and implementation processes. Practices, when members of civil service have misinterpreted EU directives have been observed in many instances by civil society in Kosovo, due to lack of knowledge and capacities. "Lack of knowledge and capacities of civil service, non-merit based recruitment and lack of knowledge of EU legislation and directives constitute key challenges to the functioning of civil service. Capacities of the Kosovo Institute for Public Administration must be strengthened, investments on this institute must be channelized and government's will is required for this" (Rushiti, 2018).

An interview held with the Head of the Legal Department of the Ministry of Public Administration of Republic of Kosovo reconfirms that the following constitute key challenges of functioning of civil service: 1) advancement of professionalism of civil service; 2) depolitization of civil service through merit-based recruitment, and 3) lack of mechanisms that would motivate members of civil service, as the new legal initiatives to amend the legislation aim to tackle these challenges by establishing and introducing new methods for recruitment such as group recruitment (Shamolli, 2018).

3.1. Way forward for a professional civil service towards EU integration

Undoubtedly, implementation of the strategic objectives of civil service reform is directly related to the progress of Republic of Kosovo in its European integration path. There is sufficient evidence showing significant delays and failures to implement the strategic goals of civil service reform as per the determined timelines, including the SMPA, ERA and selective implementation of the SAA, that constitute benchmarks of the progress of the reforms impacting the integration processes.

For the purpose of ensuring a professional civil service, the new package of legislation must address the weaknesses of the current legislation and embrace all the determinants that drive a successful public administration performance. Drafting of the package of legislation must be synchronized with the timely allocation of funding for human resources. The new legislation should set priorities such as the principle of meritocracy for helping to maximize the employee performance. Kosovo Government must use strategically this momentum to introduce new ethics and integrity policies in the context of reshaping the workforce.
4. CONCLUSION

Civil service is at the heart of policy documents for public administration reform in the Republic of Kosovo. Functioning of civil service in Kosovo has been challenged continuously. Given the after-war period, the establishment of civil service came along as a state-building effort, while after the declaration of independence, challenges were related to obstacles in implementing the package of legislation on civil service adopted in 2012. Non-allocation of funding based on the job-classification system has been the key challenge in driving performance of the civil service, while the need for advancing professional capacities, ensuring the principle of merit in human resources through recruitment and performance management have further impacted the capacity of state administration to deliver.

As public administration reform is among key political criteria for EU integration, undoubtedly delay in implementing strategic goals of civil service reform has a direct impact on the progress of European integration. Lack of effectiveness and sustainability of reforms in public administration first of all impacts the quality of the outputs of public administration for national development.

While the next steps for 2018 in the context of European integration shall include drafting of the new package of legislation, this momentum must be used strategically to address the lessons learned and past challenges, such as ensuring allocation of funding synchronized with entering into force of the new package of laws on civil service. Embracing determinants that drive a successful performance of civil service such as the principle of merit must be ensured along the way with introducing new integrity rules that would safeguard civil service from patterns of occurrence of various forms of corruption.

4. REFERENCES


258


POLITICAL AND SOCIAL NEO-PATRIMONIALISM AS A CAUSE AND CONSEQUENCE FOR DEMOCRATIC DEFICIT AND PARTY CLIENTISM IN THE REPUBLIC OF MACEDONIA

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Abstract
The paper will first theoretically present what political-social patrimonialism, neopatrimonialism and reciprocal altruism means, and what are its emergent forms and elements. Based on the so-called theoretical framework, a model for identification of such societies will be presented, on whose postulate the Macedonian case will be sketched. Consequently, such a scheme will determine the evident fragilities which at the same time constitute a reason for a democratic deficit and which ruin the democratic development of the Macedonian political system on the one hand, and as a by-product in itself contain party clientelism on the other side. The relation of political-social patrimonialism to democracy in such a case is two-way. It is set up as an input to the political system, that is, as a condition and reason for establishing an undemocratic system and an inefficient and labile public sector, and is generated as an outcome that, through legal and systemic solutions, continues to maintain such a model of functioning of the government and the public sector.

Key words: Patrimonialism, Neopatrimonialism, Democratic deficit, Macedonia, Party clientism

1. INTRODUCTION
One of the fundamental obstacles for the development of young democracies is precisely the absence of such a political culture that, in a clear way, feeds on political and social patrimonialism, as well as neopatrimonialism, which in turn leads to a democratic deficit of all political subjects and encourages party clientelism and spoil system in the public sector. In this paper will be set out the
following key determining questions which, at the same time, give the framework for our subject of study. First, what do the phenomenal political-social patrimonialism, reciprocal altruism and neo-patrimonialism signify through theoretical discourse? Second, what are the general indicators for the identification of neo-patrimonialism and clientelism in a state? Third, on the basis of the so-called indicators and parameters, what does the Macedonian system look like, or how would they sketch it through the determining characteristics inherent in the transition countries? In fact, its sketching itself should determine the intensity of party clientelism and patrimonialism in the Republic of Macedonia. And finally, what is the causal-consensual position of the political-social neo-patrimonialism towards the Macedonian deficient democracy, the party clientelism, the cronyism and the system in the state institutions?

2. PHENOMENA PATRIMONIALISM, CLIENTELISM, RECIPROCAL ALTRUISM AND NEOPATRIMONIALISM

The phenomenon of patrimonialism owes its origin to Weber’s conceptions of patriarchal society and the patriarchal structure of power. According to Weber, patrimonialism is a system in which the administrative and military apparatus is named and accountable to the state leader. The ruling deputies are given jurisdiction over various domains with broad freedom of action that is informal and out of the record. In such a system, the public service is treated as a private right of the official, and not as in the rational bureaucracy, as a consequence of the metrical interests: professional specialization and the pursuit of legal guarantees of the subordinates. (Weber 1999, 110). The political phenomenon of patrimonialism in contemporary societies is being re-examined by Francis Fukuyama, noting it as a fundamental problem for the development of all societies. (Fukuyama 2011, 42).

Michael Breton and Nicholas van de Val define the neopatrimonial society as the coexistence of the customs and patterns of patrimonialism with the rational legal institutions of Weber's lexicon (Bratton and van de Walle 1997, 62). Byproduct of neopatrimonial systems are widespread reciprocal altruism and clientelism. Reciprocal altruism is a coinage of Fukuyama and it marks a positive attitude towards other people, conditioned by permanent and continuous interaction from mutual benefit, which besides the relative selection is one of the two ways of human sociality. (Fukuyama 2014, 10). On the other hand, according to Fukuyama, clientelism is a political situation in which politicians do not strive to secure the support of citizens through articulation and implementation of party programs or public policies, but through satisfaction of specific and individual goals of their followers. As an essential feature Kitschelt here notes the fact that, in contrast to traditional clientelism, contemporary clientellist networks are not directly
distributed face to face between the patron and the client, but through mediators whose task is to recruit clients (Kitschelt 2000, 5).

3. GENERAL IDENTIFICATION INDICATORS OF PATRIMONIALISM AND CLIENTELISM

The theoretical and analytical framework provided by Brinkerhoff and Goldsmith is particularly applicable to states in the transition period, such as the Republic of Macedonia. Such a model is segmented into three categories entitled Contextual Paradigm, Actors and Activities and Outcomes.

Table 1. The Contextual Paradigm for detecting clientelism and patrimonialism (Source: Brinkerhoff and Goldsmith 2002, 22)

<table>
<thead>
<tr>
<th>Culture, Social Relations and Tradition</th>
<th>Characteristics of the state and the economy</th>
<th>Agents of restraint and enforcement</th>
</tr>
</thead>
<tbody>
<tr>
<td>Extensiveness of Poverty and Limited Access to Productive Means?</td>
<td>Degree of political appointments in the public sector in relation to regular career progression?</td>
<td>Open and fair elections? Vote-buying, coercion and similar irregularities?</td>
</tr>
<tr>
<td>Social and ethnic heterogeneity / marginalized groups?</td>
<td>Significance of the state in economic decision-making? Importance of public vs. private sector</td>
<td>Alternative interest groups as compensation to patron-clientelism?</td>
</tr>
<tr>
<td>Degree of elite monopolization of economic resources?</td>
<td>Do leaders see state institutions as a means of rent-seeking and personal corruption?</td>
<td>Do citizens have a choice between competitive patrons or are they locked in monopolistic dependent relationships?</td>
</tr>
<tr>
<td>Impact of ethnic and family relations in political and economic decision making?</td>
<td>Do policies and programs regularly support / exclude certain groups?</td>
<td>Balance of power between legislative, executive and judicial power?</td>
</tr>
<tr>
<td>Dependencies between the elite and the poor?</td>
<td>Transparency of government regulations and procedures?</td>
<td>Mechanisms for disrupting clientelistic practices (judiciary, ombudsman etc.)?</td>
</tr>
</tbody>
</table>

Table 2. Actors and Actions for detecting clientelism and patrimonialism (Source: Brinkerhoff and Goldsmith 2002, 22)

<table>
<thead>
<tr>
<th>Actors and Actions</th>
</tr>
</thead>
<tbody>
<tr>
<td>What is the frequency of request bribes in exchange for the delivery of services?</td>
</tr>
<tr>
<td>How widespread are patronage jobs and contracts? Who is appointed?</td>
</tr>
<tr>
<td>Are there certain sectors where there is a high level of clientelistic practice?</td>
</tr>
<tr>
<td>Who are the patrons, who mediators and how high is the personalization of the patronage ties?</td>
</tr>
<tr>
<td>What constituencies exist for reform? Where are they located (government, civil society, private sector)?</td>
</tr>
</tbody>
</table>
The first category - The Contextual Paradigm, (see Table 1) has taken into account the elementary socio-political and cultural context of the state, as well as to detect the degree of economic inequality, the availability of citizens' political choices and mutual brains and balances both between the authorities and civil sector. The second category - Actors and Actions, (see Table 2) aims to illustrate the degree of involvement of political entities in encouraging and practicing clientelism and patrimonialism, as well as to determine the general activities that contribute to the deepening of the situation in this direction. The third category - Outputs (see Table 3) aims to reflect the outcomes produced in the society by the practice of patrimonialism and clientelistic discourse. It can be concluded that they have the capacity to express themselves in an explicit or latent manner in distributing the benefits of the practice of power or social positions in the system.

Table 3. Outputs that identify patrimonialism (Source: Brinkerhoff and Goldsmith 2002, 22-23)

<table>
<thead>
<tr>
<th>Apparent functions and reciprocity</th>
<th>Latent functions and hidden outcomes</th>
</tr>
</thead>
<tbody>
<tr>
<td>How much do clients give up on such relationships and what do they get in return?</td>
<td>Does clientelism essential to the existence and / or the co-optation of new elites?</td>
</tr>
<tr>
<td>For patrons whether the economic impacts of clientelism are considered significant or marginal?</td>
<td>Are clients adequately (professionally) doing their job?</td>
</tr>
<tr>
<td>Are resources channeled through clientelism consumed or re-invested? Quasi-public goods or individual services?</td>
<td>Are such situations compromising state institutions?</td>
</tr>
<tr>
<td>What is the impact on investment (domestic and foreign)?</td>
<td>How high is the net cost to the society as a whole, especially to the poor?</td>
</tr>
<tr>
<td>Are the current levels of patrimonialism and clientelism aggravated by social unrest or a political crisis?</td>
<td>Are these relationships decaying or developing? What replaces them?</td>
</tr>
</tbody>
</table>

4. MAPPING THE MACEDONIAN MODEL OF POLITICAL AND SOCIAL NEOPATRIMONIALISM AND CLIENTELISM

The framework above will serve as an indicator for detecting political and social neo-patrimonialism, analyzing it through Macedonian prism. Here political and social neo-patrimonialism and clientelism will be symbiotic, because the methodological construction of the first section imposes the same.
Contextual framework

The Republic of Macedonia is characterized by a high poverty rate of 21.8% and an uneven distribution of the revenue (Gini Index) from high 33.6% (Drzaven zavod za statistika 2017), and the country is a multi-ethnic, multi-religious society, from which total of 2 022 547 inhabitants 64, 18% are Macedonians, 25, 17% Albanians, 3, 85% are Turks, 2, 66% are Roma, 1, 78% are Serbs, 0.84% are Bosniaks, 0, 47% are Vlachs. (Drzaven zavod za statistika 2002), whereby the exceptional marginalization of the Roma population in education, health care, social protection and freedom of movement is noticeable. (Georgievska and Noveska 2016, 13-14). The degree of elite monopolization of economic resources is extremely high. The commercial resources of the former self-governing socialist system were privatized under suspicious circumstances by former state officials, people close to the then political establishment or managers in the enterprises themselves, without a clear distinction in shareholder ownership, labor rights and no existence on the stock market. Almost identical is the situation and the influence of ethnic and laughter in the process of economic and political decision-making. The political crisis of 2015 through communication interception, the so-called "bombs", within the project "The Truth About Macedonia" announced by the then opposition, suggests such occurrences (Prizma 2015), and the newly established Special Public Prosecutor's Office opened a series of cases related to these cases.

The extent of political appointments in the civil service in relation to regular career progression seemingly in favor of the latter. Namely, only cabinet officials (in the Government, Parliament and ministries) have a political preference in accordance with the Law on Administrative Officers, but the influence of political parties in employment and professional administrators is immense. Also in the Macedonian economy, large enterprises are exclusively dependent on public procurements, which are also used as a political instrument, and political leaders also see state institutions as a means of renting and bribery. On the other hand, regarding government policies and programs in terms of their favoring or exclusion of certain groups, for the latter it is only apparent. A series of legal solutions and practices favor high strata and discriminate against social background (eg Social Security Act, case with health specialists, practice of nepotism in employment, etc.). Consequently, the transparency of government regulations and procedures (referring to the government, ministries, funds) is extremely weak both in terms of financial performance (below 8% of the general indicator of publication), as well as in terms of monitoring regulations and reporting on policies (average of 7% of the general indicators) (Cekov and Risteska 2015, 8-11).

There is noticeable absence of free and fair elections, buying votes, coercion and electoral irregularities, and they were also found by the European
Commission, as well as the report of the group of experts on systemic issues related to wiretapping, the so-called Priebe Report (Evropska komisija 2016, 10 and Recommendation of Senior Experts 2015, 16-17). On the other hand, alternative interest groups are quite rare, and much of the non-governmental sector is closed in its own bureaucratization (the so-called NGO-ization) and servically placed towards capital or political structure of power or opposition (Apasiev, 2012). Because of such conditions, citizens have a relatively low possibility of choice and most often remain locked in monopoly dependent relations. At the same time, there is no adequate balance between the legislative, executive and the judiciary. Particularly striking is the weak parliamentary control over the work of the counterintelligence service and the independent judiciary, according to the relevant reports of the European Commission and the Priebe Report depending on the political establishment in the area of designation and advancement in the service and selectively in the cases (Evropska komisija 2016, 19-20 and Recommendation of Senior Experts 2015, 9-10).

**Actors and actions**

The actors and actions that stimulate, implement and maintain the system of patrimonialism and clientelism in the Republic of Macedonia have the qualities of a wide horizontal and vertical range of prevalence in many segments of social living. For example, the frequency of request bribes is extremely high, that is, the Republic of Macedonia is ranked 66th according to the Corruption Perceptions Index for 2015 (Transparency International Macedonia 2015), with about 10, 8% susceptibility of citizens to corruption and defeating level of the percentage of citizens who report it, i.e. only 1% (UNODC 2015, 7). Such relationships are widespread, and in many cases employ engagement or other type of service depends on interpersonal relationships. Consequently, it is very clear to detect situations where there is a high level of clientelistic practice. It is about health, police, education, judiciary, such as sectors that provide above-average level of financial incomes or are dependent on large capital. The same sectors are also characterized by the highest level of corruption – 58%, 38%, 20%, 19% (UNODC 2015, 23). In such cases, as a patron we identify the social elite in the particular faction and the political parties, while the party apparatus or the lower echelon in the given jurisprudence appear as mediators. The new government, the so-called reform, he tries to overcome these conditions and through the so-called Plan 3-6-9 to strengthen capacities in the public administration, the judiciary and to present itself as a constituent for reform (Government of the Republic of Macedonia 2017) in cooperation with civil society.
Outputs

The first segment, which refers to the evident functions and reciprocal actions illustrates the situation regarding the relationship between clients and patrons. Namely, the first ones rarely give up such a relationship, that is, from party activism or neutrally and cronyism categories and in return they gain or retain a position in the public sector and / or economic privileges. For example, the European Commission notes in its Annual Progress Report of the Republic of Macedonia that it is concerned about the use of the public sector as a political instrument, the mobility of personnel and the possibility of dismissal from the administration and at the same time recommends limiting political appointments and dismissals (Evropska komisija 2016, 17), and noted weaknesses in the competitiveness of the domestic economy due to non-compliance with the agreements and the large informal economy (Evropska komisija 2016, 35). On the other hand, for patrons, this allows for considerable party obedience resulting in political benefits and instrumentation of the cronyism and party impost.

These conditions generally have a negative impact on the domestic and positive impact on foreign investment. Foreign investors received a series of benefits not enjoyed by domestic investors, such as flat tax rates for personal income, income tax of 10 %, tax relief, free connection to the key infrastructure (Garvanlieva-Andonova et al. 2016, 15-16). Consequently, the stated conditions have led to social and political protests, parliamentary crisis, publishing illegally tapped communications in 2015 that the country has plunged into one of the biggest political crises. The protests were titled as "Colorful revolution" aimed towards resignation of the former government, forming a transitional government to implement urgent reform priorities, forming special public prosecutor's office, the resignation of the President of the Republic and involvement of the civil sector in resolving the crisis (E-Magazin 2016).

The second segment of this category reveals the following features. First, the clientele set up in this way is essential for the existence of the current elites, as well as for the co-optation of new members through party machinery and nepotistic and cronyism behavior. Second, professional clients do their job if they are the personal or elite interests of their patrons. Otherwise, there are obstacles in the proper functioning of the institutions in terms of financial performance, service delivery efficiency, logistical issues (Perovska 2017, 14). Third, the institutions are compromised, and the state received an epithet captured state with an inefficient and politically involved administration (Evropska komisija 2016, 15). Fourth, the net cost for the entire society is characterized by a high social inequality rate, i.e. uneven distribution of incomes of 33.6 % (Drzaven zavod za statistika 2017), discrimination based on social origin, especially manifested in the labor relation through mobbing and political retaliation, as well as ethnic discrimination (Naroden
pravobranitel 2016, 106-107). Finally, in regards the issue of the trajectory of such networks and practices, it can be concluded that they were particularly weak due to the situation in the judiciary, the inhibited non-governmental sector, as well as weak mechanisms for the Ombudsman in his staffing and financial dependence on the executive power and the weak mechanisms of influence of the legislative sphere.

5. POLITICAL AND SOCIAL NEOPATRIMONIALISM AND DEMOCRACY IN THE REPUBLIC OF MACEDONIA

Several essential elements characterize the Macedonian political and social neo-patrimonial nomenclature. First, it is a historically based category contributed on social background. Their wealth is accumulated during the transition period, as successors of high social and political functions during the socialist system. Second, there is an extremely strong level of elitist solidarity based on profession, wealth and family ties. It is common for such lines to act only when certain sectors are managed by personnel from a politically affiliated opponent. Third, analogously to the previous feature, there is an extremely high intensity of patronage, servile and party pragmatism and flexibility, and such examples are noticed in the appointments of some directors on public enterprises and ministers in the new government since 2017 (Ordanoski 2018 and MKD 2018). And finally, there is a great degree of dependence and exploitation of state resources, which results labor deprivation and the reduction of labor rights and extra benefits for the rich: reducing taxes, reducing social security contributions, limiting the basis for calculation and payment of contributions (Saveski et al. 2013, 23-26).

Neopatrimonialism as a cause of a democratic deficit (Input)

Few aspects contain Input elements in Macedonian system. (See Figure 1). First, the political and social neo-patrimonial elite, due to its historical foundations, succeeded in imposing itself as a dominant subject and in the transition period of transformation from a one-party system in the construction of a multi-party state with a market economy. The key segment towards the accumulation of wealth and the retention of social positions related to the close governing nomenclature was the transformation of social capital, as well as the appointment of holders of public state functions and professions. Second, the established political and social elite only formally legally recognizes the principles of democratic ordering, but is fundamentally guided by the motto "the winner takes everything." Such examples were notable after 1994 when the opposition boycotted the second round of parliamentary elections, and the new ruling majority imposed a system of party monopoly and party discipline (Mojanoski 2000, 52).

Third, its explicit congruence also manifests itself in the ability to co-opt new members by means of cronyism, nepotism or political influence. For example,
the pivotal principle of the democratic principle of power-sharing - the judiciary, is called into question by such situations. The general view is that the judiciary, the prosecution and the Judicial Council of the Republic of Macedonia are under great political influence (Taleski et al. 2016, 28-29), as well as, the absence of data on the overall number of persons working in the public sector, the absence of data on family correlations in the public sector itself, and the complaints of citizens in over 90% of cases to the Ombudsman for violation of justice where witnesses of evasion of justice, i.e. complaints and nepotism (Naumovski 2004, 16). Fourth, the social and business elite is successfully adapting to the change of the ruling elite or to continue to exist in the sectors themselves as a powerful factor in personnel decision-making and policy making. For example, many powerful businessmen have successfully flocked to the governments of the Social Democrats and Conservative governments, often changing their party affiliations, such as media owners (Ordanoski 2012, 183-197). Fifth, this way of positioning and acting fragile and a priori violated the pivotal principles of democracy and the constitutional order of the Republic, such as the rule of law, equality, social justice, political pluralism, free and fair democratic elections and the division of power, and invented party clientelism and led it to a situation of "perfection".

**Neopatrimonialism as a consequence of a democratic deficit (Output)**

We can identify several outputs in Macedonian case (See Figure 1). First, the nomenclature continued in the following period to strengthen the mechanisms of nepotism, cronyism, and perfecting party clientelism. For example, in the report of Transparency Macedonia is noticed that in the main tenure, the past ten years have seen the partisation of all institutions, clientelism, the cronyism, when many close relatives, friends and party obedient being placed in high positions in the central and local levels, and great wines has the State Commission for the Prevention of Corruption, which amends such conditions (Lokalno 2016). Second, it is indicative for the intention through legal solutions to create elitist selection in the distribution of public goods and professions (for example, restrictions in the Law on Public Procurement, change of urban plans in favor of business interests, part-time contracts, etc.). Such a selection aims to eliminate from the race for favorable social status and economic welfare citizens of weaker social background or party neutral and disobedient individuals. Third, such elite actively finances political parties and politicians suspected of abuse of office and authority, the dribbling of democratic standards and human rights and freedoms (Drzaven zavod za revizija 2017). And finally, this ambience produces a parochial and subject political culture of the clients and there are strong indications that the elite’s will is to incline or co-opt in the new governing strures, regardless of ideological attitudes or party campus.
6. CONCLUSION

The fact that the Macedonian political system is characterized by a high level of political social neo-patrimonialism and clientelism is undoubtedly certain. The general indicators for the identification of neopatrimonialism and clientelism that have a triple nature - contextual (culture, social relations, tradition, state and economy characteristics), actors and actions, as well as outcomes (visibility and latent elements) unambiguously indicate that according to all criteria the Macedonian model is an example of a high level of neopatrimonialism and clientelism. It suggests a lack of political will and political culture to change the course of such a trend and to democratize society to the level of active and developed pluralism, free expression of thought, equality and equal opportunities, as well as social justice for most citizens.

Political-social neo-patrimonialism encourages the democratic deficit in the Republic of Macedonia, and at the same time it initiates and develops client...
clientelism through its own module. Interest in such a case is overwhelming on the side of the patrons, but due to economic and social inequality, it is necessary for clients to remain obedient and not get out of such a relationship. In this context, the relation of political-social neopatrimonialism to democracy is two-way. First, it sets itself as an input element, that is, a condition and a reason for an undemocratic system, and second, it is generated as a by-product, or a visible output element. Ultimately, such correlation is maintained through systemic and legal solutions that make segregation and selection in the Macedonian society based on social origin, party affiliation and nepotistic relations.

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TUNGUSKA EXPERIMENT
Security aspects

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Abstract
There are some moments in the history that are very important for the world’s science. The new scientific discoveries have contributed to advance the human civilization.
The subject of this research is the experiment of Nikola Tesla conducted in 1908, where for the first time he tested the abilities of a directed energy weapon on inhabited territory.
For the purposes of this research, the method of content analysis will be used as the main method.
The authors of this paper intend to explain the security aspects of the Tunguska experiment and the technology that was developed by Nikola Tesla a century ago.

Key words: Nikola Tesla; Tunguska; Wardenclyffe Tower; Directed energy weapon; Security aspects;

1. INTRODUCTION

Planet Earth is a spherical capacitor of huge capacity. It's a magnet that rotates rapidly and fills the atmosphere with electricity, especially its highest layer, the ionosphere. Nikola Tesla's writings have many references to the use of his wireless power transmission technology as a directed energy weapon. These references are examined in their relationship to the Tunguska event of 1908.
Scientific discovery is morally neutral. Its use depends on the moral capacity of the one who uses it. During his life, Nikola Tesla has made great progress in the field of scientific achievements. Many of his inventions are still used today. Some of them have been perfected in the last 30 years. The biggest risk today are so-called, directed energy weapons-DEW. This kind of weapon was tested in 1908, personally by Tesla, during an experiment with the Wardenclyffe Tower. In fact, he tested the possible negative consequences of his invention.

Before the turn of the 20th century, Nikola Tesla had discovered and was utilizing a new type of electric wave. Tesla repeatedly stated his waves were Non-Hertzian, and his wireless transmissions did not fall off as the square of the distance (Bearden, 1981, 1; Marjanović, 2018c).

The Non-Hertzian waves of Nikola Tesla are completely new physical entity different from the transferal-vector electromagnetic waves.

This research analyzes the security aspects of the Tunguska experiment and the technology that was developed by Nikola Tesla.

The main hypothesis of this research is formed as follows: if this Tesla`s technology is used for malicious purposes, then it`s a real threat for the global security.

2. TUNGUSKA EVENT

The Tunguska event took place on the morning of June 30th, 1908, at 7:43am, by local time. An explosion estimated to be equivalent to 10-15 megatons of TNT, flattened 2,000 square km of pine forest near the Tunguska River-Podkamennaya area in central Siberia. The explosion was heard in a radius of 700 km. When an expedition was made to the area in 1927 to find evidence of a meteorite presumed to have caused the blast, no impact crater was found. When the ground was drilled for pieces of nickel, iron, or stone, the main constituents of meteorites, none were found down to a depth of 118 feet. According to some testimonials, it is assumed that a kind of plasma formation was formed which is not characteristic for a meteor or comet. Evniki, the people who lived in this area, a month earlier at the call of their shamans, had moved about 100 kilometers away from the epicenter of the detonation. From the esoteric societies in Russia, it is known that Tesla through the Buryat Shamans informed the tribes in Tunguska to evacuate several months before the catastrophe. Many historical facts point to the possibility that this event was caused by a test firing of Tesla's energy weapon.

In March of 1908, Nikola Tesla sent his assistant George H. Scherff to go to the Congress Library in Washington to request military cartographic sections of central Siberia (Abramović, 2016, 102). The goal was to find an unpopulated area on Earth where the signal from the Wardenclyffe Tower would be sent. Aleksandar Plaksin says: “Nikola Tesla revealed the lightning balls. He created models of these
balls in a laboratory conditions. Encouraged by these successes in studying plasma physics, Tesla was probably wondering if these effects could be repeated in space on a global scale”. The assumption is that the plasma is created by multiple lightning balls.

![Tunguska forest. Burnt forest arranged in concentric circles. Source: http://www.historyrundown.com/4-most-ridiculous-theories-about-the-tunguska-event/](image)

The woods were cut off precisely like a laser but at the point of the intersection there is no a thermal effect which is very strange. At the site of the cross-section, a classic laser makes burns. Another specific thing is that the roots of the trees were shagged and burnt. The epicenter of the explosion is in the shape of a cone. Its peak is narrow and the base is broad, which in itself indicates the fact that the energy went out up from the ground.

The event was enormous, covering the whole World. It can not be linked to any single explosion before. And after so many years of research, the conclusions compelled the fact that it was not a meteorite. These are totally strange things, most similar to the fact that there was somehow a huge discharge, unusual electric activity. In herbs, mutations are similar to those of mutations that are caused by strong ionizing radiation or a strong electromagnetic fields.

Another indicator is the next one - the Wardenclyffe Tower on Long Island and the place of the Tunguska explosion are located on the same meridian on Earth.
Viktor Kuzmin (2017), Doctor of Technical Science at the Moscow Technological University MIREA, says: „Tesla used the linear dominant magnitude of the natural environment. It was possible to resonate through the upper layers of the atmosphere when it was possible to form clusters of thick energies, which, by their energy content, and up to thousands of millions of times, passed the level of the signal flowing through the Wardenclyffe. Finding out the uninhabited region is one of the goals and the location where this signal was sent“.

At the time of the Tunguska explosion, Admiral Robert Peary, Tesla's friend, went to another expedition to conquer the North Pole. According to the admiral's secretary George Sherf, who handed over a lot of documents related to Tesla and Admiral to the FBI, a Serbian scientist told Peary that he would try to contact him on 30 June 1908 (on the day of the explosion) over a wave cannon, and to record in the North Pole what will happen and report to him upon return. Tesla writes: „Friend Peary, I am going to send a lightning beam near you and you will tell me how everything has gone“. Perry returned a year later. The notes are likely to be in the FBI, and Russian scientists claim that the overhead part of the transfer of energy was going through the North Pole (Večernje Novosti, 2017; Rivara, 2018).

2.1. Witness's accounts collected from 1908 till 1960s and proposed trajectories by the Russian researchers

There are some interesting information and documentation about the trajectory of the so called “body” which exploded in the air that day.
The trajectory marked as 1 is a trajectory proposed by Voznesensky, and later supported by Astapovich and Kulik. It is based on witness's accounts collected in 1908-1930s. The trajectory marked as 2 was proposed by Krinov. The trajectory is based on the same groups of witness's accounts. The trajectory marked as 3 was proposed in the mid-1960s. It was based on witness's accounts collected in 1960s in general and initial data on the Tunguska forest-fall symmetry. The trajectory marked as 4 is based on the most accurate data on symmetry of the Tunguska forest-fall combined with the tree's burn. Its wideness shows possible errors (Ol'khovatov, 2018, 47-49).

Picture No3. The trajectory of the “body “proposed by Voznesensky.
Source: http://olkhov.narod.ru/tunguska.htm

Some details of the observed phenomena and especially the duration hardly conform to the meteorite fall.

- Kezhma (214 km, 193). This settlement is a good example to demonstrate the strange (for the meteoritic interpretation) property of the Tunguska accounts: as usually different luminous phenomena were reported by different eyewitnesses from the same place. In Kezhma they were: a flying luminous cloud, multicolored luminous bands, a fireball, a flame over the northern horizon. For example, Kokorin A. K., the observer of the Kezhma meteorological station marked in the observational register (pay attention to EVIDENTLY HIGH TRUSTWORTHINESS of this information!) that at 7 a.m. two giant fiery circles appeared on the north. They persisted for 4 minutes and then disappeared. Soon after, noise, like a
wind was heard. It came from the north to the south and its duration was 5 minutes. Then other sounds, resembling large cannon shots and crackling appeared. Windows trembled. These shots continued for 2 minutes, then a crackling like a gunshot appeared and persisted for 2 minutes. The sky was clear.

• Teter (92 km, 165). Fire columns were seen in the north (Ol'khovatov, 2018,49).

Even in London at that time are newspaper account records of a night sky so luminous that "...one could read by it." Brilliant sunsets were reported worldwide for weeks also.

Furthermore, the explosion occurred at the area of the most powerful volcanic activity in the Earth’s history 250 millions years ago. The Tunguska explosion epicenter is right in the middle of the ancient paleolithic volcanic crater, which after its discovery in 1972 got the name "Kulikovskii". This volcano is a part of Khushminskii tectono-volcanic complex. Nikola Tesla knew the secrets of the Earth’s geomagnetism and he used that magnetic power which was accumulated on that part of the Earth. A surge in tectonic activity may produce various optical effects in the atmosphere: luminous columns, stripes, lightnings, flame, glowing sky, etc. Exploding "meteors" are among them.

In Berlin, the New York Times of July 3rd reported unusual colors in the evening skies thought to be Northern Lights: "Remarkable lights were observed in the northern heavens...bright diffused white and yellow illumination continuing through the night until it disappears at dawn." Massive glowing "silvery clouds" covered Siberia and northern Europe. A scientist in Holland told of an "undulating mass" moving across the northwest horizon. It seemed to him not to be a cloud, but the "sky itself seemed to undulate." A woman north of London wrote the London Times that on midnight of July 1st the sky glowed so brightly it was possible to read large print inside her house. A meteorological observer in England recounted on the nights of June 30th and July 1st: A **strong orange yellow light became visible in the north and northeast**... causing an undue prolongation of twilight lasting to daybreak on July 1st (Stewart, 2017).

One thing is sure – Tesla activated the ionosphere.

A typical statement about the light induced by Tesla’s transmitter is this from the New York American Newspaper of December 7th, 1914: The lighting of the ocean ... is only one of the less important results to be achieved by the use of this invention [the transmitter]. He says: “I have planned many of the details of a plant which might be erected at the Azores and which would be amply sufficient to illuminate the entire ocean so that such a disaster as that of the Titanic would not be repeated. The light would be soft and of very small intensity, but quite adequate to the purpose”. When Tesla used his high power transmitter as a directed energy
weapon he drastically altered the normal electrical condition of the Earth. By making the electrical charge of the planet vibrate in tune with his transmitter he was able to build up electric fields that effected compasses and caused the upper atmosphere to behave like the gas filled lamps in his laboratory. He had turned the entire globe into a simple electrical component that he could control (Stewart, 2017).

Professor Weber from the University of Cologne, from June 26 till June 30, recorded strange jumps of the Earth's magnetic field, which oscillated every three minutes between 6:00pm and 1:30am. These strange pulsations ceased 1 hour after the explosion in Tunguska. It turned out later that at this time Tesla’s Wardenclyffe Tower in the United States was working full time. In fact, it was the underground activation of the equipment from the Wardenclyffe Tower.

3. WARDENCLYFFE TOWER AS A HIGH FREQUENCY OSCILLATOR

Wardenclyffe Tower located in Shoreham, Long Island, New York is a part of laboratory and a power plant that conducted electricity in the tower itself, in which a huge Tesla coil was built. The Tower is 57 meters high with a steel tube and 37 meters in depth in the ground with a branched net of turbo conductors. There was a metal dome on the top. It represented a resonant transmitter unprecedented at that time, with a force of 100 000 000 V and a current of 1,000 A (Abramović, 2015, 57).

Tesla experimented with a billion watts’ force. If this amount of energy would be released in an extremely short period of time, it would be equal to an explosion of 1 million tons of TNT explosive.
The Wardenclyffe Tower is a resonant Oscillator with all the frequencies of the geophysical system of the planet Earth. It is so conceived after the Colorado Springs since 1899 where Tesla revealed the secret of stationary waves, the secret of lightning balls and many other findings. On the cupola of the Tower there were UV lamps that opened an ion channel to the ionosphere which in spring, summer and autumn is higher above the earth's surface is on approximately 60 km high and in winter it’s about 30km high. So, Tesla connected the tower with the ionosphere, the stratosphere, the entire atmosphere, troposphere and the earth itself which has mechanical oscillations beside the electrical. He could take the whole planet in one resonance at once and move it on to a higher potential and possibly change its way around the Sun. Just as the electron that receives the photon jumps to higher movement. The physical laws act the same, as macro so micro.

The Russian academic Dimitri Strebkov (2017; 2018) says: "Because I know exactly that the capacitor diameter, which stood at the top, had the ability to receive an electric discharge of up to 10,000 amps. It is a pulse, and the voltage it receives reaches 100 million volts. If we multiply this impulse and voltage, we get 1 terawatt. One terawatt - that is the energy in the impulse that Tesla could have got 100 years ago and which nobody could ever get, because the maximum we transmit is 1 million kilowats, in our lines, this is 1000 times less. Today we have a generator of 3 million volts and it is considered to be a great happiness. Tesla got 100 million volts without any problems".

Tesla says: „The electric waves created by my transmitter will be the greatest spontaneous appearance on the planet caused at a point that falls on the diametrically opposite side of the transmitter. My device can illuminate the whole
of the United States. In one moment, it will flow through the air in all directions creating the effect of a polar light.” (Nikola Tesla - ULTIMATIVNO ORUZJE (Death Ray), 2017).

Such a transmitter would be capable of projecting the force of a nuclear warhead by radio. Any location in the world could be vaporized at the speed of light (Nikola Tesla - ULTIMATIVNO ORUZJE (Death Ray), 2017).

Recent speculations about Tesla's involvement in the 1908 Tunguska event were initially fueled by a few statements made some time ago in the New York Times. In the first of these, published in March 1907 he speaks of "projecting wave-energy" and again in April 1908 reference was made to the "direct application of electrical waves without the use of aerial engines or other implements of destruction". And, in 1915 he stated: "It is perfectly practicable to transmit electrical energy without wires and produce destructive effects at a distance. I have already constructed a wireless transmitter which makes this possible, and have described it in my technical publications, among which I may refer to my patent 1,119,732 recently granted. But when unavoidable [it] may be used to destroy property and life. The art is already so far developed that the great destructive effects can be produced at any point on the globe, defined beforehand with great accuracy" (21st Century Books, 2017, 1).

All of these statements suggest the capacity of a Wardenclyffe-type plant to transmit a destructive impulse of electrical energy. Presumably this would manifest itself as an explosive release of energy such as can be created by the discharge of a large value, high voltage capacitor. Electric fireballs, spherical plasmoids, or ball lightning have also been reported to explode in a similar fashion (21st Century Books, 2017, 2).

In the evening on July 15th 1903, the Long Island Tower almost drove crazy the inhabitants of New York and the surrounding area. A few hundred miles in all directions from the Wardenclyffe, gigantic artificial lightning, illuminating the sky were stretched above the Atlantic Ocean, where newspapers could be read overnight. The next day, New York Sun writes: "All sorts of lightning were flashed from the tall tower and poles last night”. The atmospheric layers burned at different heights and in large territory, so that the night turned out in a day. The air was filled with light-emitting electricity that concentrated on the edge of the human body and all the present emitted light with a mysterious flame (New York Sun, July 17th, 1903, 1; Abramović, 2016, 90).

A typical natural lightning is 18-20 million volts, but Nikola Tesla created up to 150 million volts of strong lightning, 10 times stronger than natural ones using his Tower.

Jadrijević (2018) says the following about the Tesla Tower: “The basic device with which Tesla wanted to make a wireless transmission of energy is so-
called magnifying transmitter. It is some sort of radio station that, instead of the program, sends energy and can be applied remotely with an adequate device. It consists of a magnifier, so called a Tesla-amplifier, a kind of resonant antenna that produces oscillations of which only the electric field is magnified rather than the magnetic field. In doing so, there is a disproportion between these two fields and oscillations of electricity in relation to the Earth are generated. The device must be grounded so that it can work well. The concept is that the electric component in the transmitter is used here, and not the magnetic. So it's not a classic type of EM energy. A stationary wave is formed along the antenna axis and the voltage increases from its lower part in the direction of the antenna upwards. That's why he called it a magnifier, because the voltage is increasing, but the magnetic field does not”.

3.1. Undergroung connection of the Wardenclyffe Tower

The other part of the tower that was built deep below the ground was made up of a whole system of underground channels covered with mineral oils. These channels according to Tesla, should have mechanical vibrators, which had the role of transferring special acoustic oscillations on the Earth's surface and to serve as activators (Godin, 2018).

“The villagers declare that it leads to a well-like excavation as deep as the tower is high with walls of mason work and a circular stairway leading to the bottom. From there, tunnels have been built in all directions, until the entire ground below the little plain on which the tower is raised has been honeycombed with subterranean passages. They tell with awe how Tesla, on his weekly visits to Wardenclyffe, spends as much time in the underground passages as he does on the tower or in the handsome laboratory and workshop erected beside it…” (New York Times, 1904, 1).

From Long Island, Tesla was able to fully direct the energy in the Tunguska area, simultaneously by two channels. One way was by using low frequencies along the current ring of the upper layers of the atmosphere through the North Pole, and the other way, with high frequencies activating the tectonic structure under the Tunguska.

In 1916 Tesla described the underground portion of the tower this way: „In this system that I have invented it is necessary for the machine to get a grip of the earth, otherwise it cannot shake the earth. It has to have a grip on the earth so that the whole of this globe can quiver, and to do that it is necessary to carry out a very expensive construction. I had in fact invented special machines”(Brooklyn Eagle, 1902).
4. TESLA PATENTS

Nikola Tesla’s patent No.787,412 - ART OF TRANSMITTING ELECTRICAL ENERGY THROUGH THE NATURAL MEDIUM is one of the main patents for the purpose of this research. The application for this patent was filed in May 16, 1900 but patented in 1905 (The U.S. Patents of Nikola Tesla, No. d).

Tesla stated the basic requirements for Earth resonance: “…the planet behaves like a perfectly smooth or polished conductor of inappreciable resistance with capacity and self-induction uniformly distributed along the axis of symmetry of wave propagation and transmitting slow electrical oscillations without sensible distortion and attenuation”(The U.S. Patents of Nikola Tesla, No. d).

In this patent, Tesla states: „The most essential requirement is, however, that irrespective of frequency the wave or wave-train should continue for a certain interval of time, which I have estimated to be not less than one-twelfth or probably 0.08484 of a second and which is taken in passing to and returning from the region diametrically opposite the pole over the earth’s surface with a mean velocity of about four hundred and seventy-one thousand two hundred and forty kilometers per second.” (The U.S. Patents of Nikola Tesla, No. d).

Another patent which is in correlation with the previous one is Tesla’s patent from 1914, but its Application filed on January 18. 1902 - APPARATUS
FOR TRANSMITTING ELECTRICAL ENERGY 1,119,732, we can see the basic model of the so called, Tesla Tower (The U.S. Patents of Nikola Tesla, No d.).

Picture No.6. APPARATUS FOR TRANSMITTING ELECTRICAL ENERGY
Source: http://www.tfcbooks.com/patents/1119732.htm

Tesla has another Canadian patent - CA142352 - Improvement in the Art of Transmitting Electrical Energy Through the Natural Media - 1906 April 17. When Nikola Tesla is speaking about improvement, he thinks about the improvement of a generator of electrical oscillations. He is not using the Hertz EM waves. In that patent Tesla says: “the effect will increase with a distance and will be greatest in a region diametrically opposite the transmitter” (Improvement in the Art of Transmitting Electrical Energy Through the Natural Media, 1906).

We can see that Tesla performs measurements and explains in his patents that he received the results in which the impulse from his transmitter went from one end of the Earth and returned through the Earth at a speed of $1\frac{1}{2} C$ (speed of light). The impulse would go into a state of contraction and return to a state of expansion, which is the same impulse when it returns is stronger than when it was propagated at the very beginning. With today's technology it is absolutely impossible to carry out in view of the existing electromagnetic laws accepted in the official science, more precisely described in Maxwell's electrodynamics. According to these laws, the speed of that signal via a natural medium should be up to 8.4 times slower than the speed of light. But the speed that Tesla tells is $1\frac{1}{2}$ times faster than $C$, which
suggests that he does not work with hertz waves, but with waves of a completely different kind / nature (Marjanović, 2018c).

Torsion waves/fields are most easily understood as longitudinal electrodynamic vibrations that are spiral, has a rotation in its propagation. Otherwise, Tesla's Non-Hertzian longitudinal waves are synonymous for the scalar waves. Through these waves, transmission of energy at a speed which is several times greater than the speed of light is possible. The lower limit is a billion times faster than C. They affect the biological processes, the gravity. These waves are 1030 times weaker than gravity. And gravity is 1039 times weaker than the electromagnetic interaction. Scalar waves are difficult to trace (Marjanović, 2018b).

4.1. Characteristics of the Tesla Scalar Waves

The Hertz waves are emitted from an antenna and travel according to the quality of the medium (water, air) and can not pass through obstacles, but are rejected. Non-Hertzian waves are waves whose length is proportionate to the distance. The transfer is instant in (t=0) and if you analyze all Tesla’s calculations you will see that he does not take into account the timing of the signal transmission. Why? If it needs to transmit something to 5 km, he emits a wavelength of 5 km. And the induction around the antenna at that wavelength that exits the oscillator circuit is in (t=0). So, the first wave arises as an inductive change in the space that does not have time to occur, it occurs **instantaneously**! Tesla was able to “play with it” so after the law of cosines of speed emitting a wave from New York to the North Pole and the Equator from the current-instantaneous speed (t=0), it could drop to 300,000 km / sec. There are records in his scientific documentation described through experiments.

Nikola Tesla says: “The electromagnetic energy travels with the speed of light, but see how the current flows. At the first moment, this current propagates exactly like the shadow of the moon at the earth's surface. It starts with **infinite velocity from that point**, but its speed rapidly diminishes; it flows slower and slower until it reaches the equator, 6,000 miles from the transmitter. At that point, the current flows with the speed of light - that is, 300,000 kilometers per second. But, if you consider the resultant current through the globe along the axis of symmetry of propagation, the resultant current flows continuously with the same velocity of light. Whether this current passing through the center of the earth to the opposite side is real, or whether it is merely an effect of these surface currents, makes absolutely no difference. To understand the concept, one must imagine that the current from the transmitter flows straight to the opposite point of the globe" (Brooklyn Eagle, 1902).

The Hertz EM transfersal wave does not transmit energy, but Tesla’s scalar longitudinal wave can transmit energy through the ether (Meyl, 2013).
The velocity of the electromagnetic wave through the earth is about 8 and a half times smaller than through other media (e.g., air or vacuum). Taking into account the very density of the earth, it is impossible to propagate the electromagnetic wave through the earth at very high speed. But Tesla measured 1½ times faster than C (speed of light) just across the Earth.

5. CONCLUSION

Of all this information we can conclude that all arguments are in favor of the hypothesis and confirm it. There is no doubt about it. Security aspects must be taken into account.

For the end here is an argument in relation to the force in physics. Albert Einstein received a Nobel Prize for the photo effect. They noticed that if the metal plate was illuminated, the electrons get out from there. However, regardless of how much the intensity of light increases, the number of electrons that are selected is not increasing proportionally. So, REZONANCE is necessary. With resonance and interaction, the same way in quantum chemistry can be done through the space-time relationship (1 / t or lambda λ / t) to guess exactly the resonance of the electron that is wanted to get out. The same way works in the mechanics. The Force in mechanics do not functions the same every time because, if we increase the leverage, that force turns into space, and with a large lever that has a very small force, something can sweep. The substance is in the resonance and vibration technology which is the basis of the entire Tesla’s cosmic idea and his own view on the structure of the matter.

Nikola Tesla is the man who like no one else in the known history, has penetrated deepest in the secrets of electricity. He realized that he had entered in the field of enormous energies, and using only a small percentage of those of the possibility of such technology had such an effect as the explosion in Tunguska. That's why he decided to stop the Project, because consciousness among mankind was on a low scale in his time. But, the future for which he is speaking is now. It's our time!

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Abstract
The argument that ‘the feminine’ is not an essence but a culturally produced position of marginality in relation to patriarchal society is an idea developed in the postmodernism area. Among many feminists it has long been established usage to make ‘feminine’ (‘masculine’) represent social constructs (patterns of sexuality and behavior imposed by cultural and social norms), and to reserve ‘female’ and ‘male’ for the purely biological aspects of sexual difference. Thus ‘feminine’ represents nurture, and ‘female’ nature in this usage. ‘Femininity’ is a cultural construct: one isn’t born a woman; one becomes one, as Simone de Beauvoir puts it.
An increasing number of women who not only consider their maternity compatible with their professional life or their feminist involvement, but also find it indispensable to their discovery, not of the plenitude, but of the complexity of the female experience, with all that this complexity includes in joy and pain.
Referring to Julia Kristeva, the rejection of the symbolic contract, and the refusal of maternity cannot be a mass policy and that the majority of women today see the possibility for fulfillment, if not entirely at least to a large degree, in bringing a child into the world.

Key words: postmodernism, feminism, love, creation, maternity, body

1. INTRODUCTION
Lately I read a notice published on internet, by Phyllis Chesler (Emerita Professor of Psychology and Women's Studies at City University of New York) about a ‘strange’ photo.
“Once upon a time, long ago, when I lived in Kabul, I was shocked when I first saw a woman wearing a burqa25. I was twenty years old but had grown up in New York and considered myself something of a worldly intellectual. True, the

25 A burqa (Arabic pronunciation: [bʊɾqa]; also transliterated burkha, burka or burqua from Arabic: بُرْقَا burqu’ or burqa’) is an enveloping outer garment worn by women in some Islamic traditions for the purpose of hiding a female's body when out in public. The burqa is usually understood to be the woman's loose body-covering (Arabic: jilbab), plus the head-covering (Arabic: hijab, taking the most usual meaning), plus the face-veil (Arabic: niqab) (http://en.wikipedia.org/wiki/Burqa)
women in my family did not wear burqas—but they did wear attractive head
scarves, long coats and gloves. True, at home, the female servants were not in
burqas; they would not be able to work. True, female agricultural workers or
female servants on errands did not always wear burqas—but if a male stranger
passed by they would quickly, deferentially, turn their faces away and hide their
faces in their headscarves.

And, I was there in the “salad days” when returning Afghan college
students were hopeful about the future of Afghanistan, and who even now, in bitter
exile, remember the 1960s and 1970s as a time when Afghanistan had flourished
and began to modernize.

Well, for what it’s worth, democracy exists in Afghanistan (ha!). But today,
women voted there. Here is a photo of a woman registering to vote in Herat.
Clearly, she thinks this is an important moment and wants to have a photo to
remember it.

Tragic, comical, ironic, pathetic. This is a photo of non-existence, of
erasure, proof of invisibility—but also of pride and “agency.” This woman chose to
vote and to take a photo of herself.

I am tearing my hair out over this one. This photo is the photo of the day at
the London Telegraph.”

How this topic became visible to me is curiosity and interest about women
and their stories all over the world. Each woman has a story to tell about herself and
the relation with the world, family, education, work, friends, men, children, etc.

2. POSTMODERNISM AND FEMININITY

Up until now philosophers have only interpreted the world. The point now is to
change it.

*Julia Kristeva*

Postmodernism provides inside its framework the construction of feminism;
both are contemporaries. Issues of gender, very articulated nowadays, often are
more noticeable with postmodernist theory. But not every feminist theorist can be
included in the postmodernism frame, only if the thinker would like to be styled so.
This happens maybe because of the eclecticism used by postmodernism, and
because the most part of the postmodernism (and post structuralism) constructors
that are male, have often neglected feminism. In the philosophy domain, in the
feminism area, it is more treated a post-Lacanian psychoanalysis, especially as

26 Published on 21 June, 2010 By Phylis Chesler. https://phyllis-
chesler.com/articles/picture-of-the-day-a-woman-votes-in-afghanistan

Which are the ideas of feminism in the 21st century?

I want to mention here one of the writers of this century that has brought a new spirit in this area. Julia Kristeva is not a feminist, but she has drawn some feminist ideas on her own writings in order to expand and develop various discussions in feminist theory and criticism.

Kristeva applies in her writings Freudian and feminist ideas to literature in works such as *Language: The Unknown and Desire in Language*. She has synthesized in her theories elements from such dissimilar thinkers as Jacques Lacan, Michel Foucault, and Mikhail Bakhtin.


3. CREATION AND LOVE

“And the Lord God said: It is not good for man to be alone: let us make him a help like unto himself. Then the Lord God cast a deep sleep upon Adam: and when he was fast asleep he took one of his ribs, and filled up flesh for it.

And the Lord God built the rib which he took from Adam into a woman: and brought it to Adam.

And Adam said: This now is bone of my bones, and flesh of my flesh; she shall be called woman, because she was taken out of man.

And Adam called the name of his wife Eve: because she was the mother of all the living.

And God created man to his own image: to the image of God he created him: male and female he created.” (*Genesis*, ii. 18, 21-23; iii.20; i. 27).

Here above is the story of woman’s creation told in the book of Genesis. What does it mean that God took a rib from Adam and not some other portion of his body, by which he created woman? This is explained by St. Thomas Aquinas. God choose not from Adam’s head, because this would indicate that woman was to be the “head” of the man and to command him; even not from the lower portion of the
body, because woman was to be the servant of man and he would dominate woman; but intentionally He chose a rib from the side of Adam’s body, nearest to his heart, to show woman dependence and dignity. In this story of the Bible it is well shown that woman is created to be equal to man.

How the biblical writings interpret the creation of woman, is that God chose woman to be in the highest of all His creatures, because she is a woman, and has her greatest title, that of Mother.

The contribution that every woman has to give to society is the gift of love. Every woman is by her nature, made for mercy, love, understanding and mediation. She has the privilege to provide human’s dialogue with God.

Kristeva recalls in her writings the notion of love and also the continuance of human’s dialogue with God due to woman existence. God has reserved this importance to women that now lately is emphasized in Kristeva’s discourses upon many other extremes feminist’s debates.

Characteristic about Kristeva’s project on feminism is that she traces the biblical writings. According to the biblical story told above, she emphasizes the expression that: "male and female created He them" – and this was written in Genesis before the story of woman’s creation from Adam’s rib, according to Julia. She claims that the Christian ideology insisted on female virginity and martyrdom, and as a result motherhood is an evident sign of “jouissance” (term used by J.Kristeva); the pleasure is associated with the female body which must be repressed. So, women are reduced and included into the symbolic order and this is possible only by and through the Father. What is obvious seen is a classic double bind: women are subordinated to the symbolic order because:

- A woman identifies with the mother; she ensures her exclusion from and marginality in relation to the patriarchal order.
- On the other hand, she identifies with the father, makes herself in his image, then she ends up becoming “him” and supporting the same patriarchal order which excludes and marginalizes her as a woman.

The woman is entrapped in this dilemma and what Kristeva suggests, is the refusal of it. Kristeva demands that women must:

a) Uphold the Law and sexual difference within the patrilinear frame
b) Refuse to become one of “them” (Men)

Woman is considered as the “silent other” and placed so in a marginal position in the symbolic order. As an unconscious person of the symbolic order, woman must disrupt this symbolic chain. How is it possible? Kristeva suggests that:

a) women must not refuse to enter the symbolic order

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27 jouissance - total joy or ecstasy achieved through the working of the signifier implying the presence of meaning
b) But on the other hand, they should not adopt the masculine model of femininity. Certainly this is a difficult position Kristeva mentions here, and very extreme for some kind of women to commit this balancing act because it turns out to be much too costly which led them to madness and suicide. (She mentions here Virginia Woolf).

Here takes place one of the main ideas where she unfolds her project, her attempt to bring the body back into discourses in the human sciences.

... No person lives his or her own body merely as a functional instrument or a means to an end. The human subject is capable of suicide, anorexia, because the body is meaningful, has significance because it is in part constituted both for the subject and for others in terms of meanings and significances. The body can never be a mere object or instrument for consciousness, never a matter of indifference or insignificance.

... The “imaginary anatomy” (Jacque Lacan) is an internalized image or map of the meaning that the body has for the subject, for others in its social world, and for a culture as a whole. It is an individual and collective fantasy of the body’s forms and modes of action. This, Lacan claims, helps to explain the peculiar, nonorganic, connections formed in hysteria, including anorexia.

... What psychoanalytic theory makes clear is that the body is literally written on, inscribed by desire and signification, at the anatomical, psychological and neurological levels. The body is no sense naturally or innately psychical, sexual or sexed. This implies that the body which it presumes and helps to explain is an open-ended, pliable set of significations, capable of being rewritten, reconstituted in quite other terms than those which mark it, and consequently the forms of sexed identity and psychical subjectivity at work today (Grosz, 1995: 183 – 196).

Kristeva set at the center of her discourse the material conditions which are the body, sex, and procreation. According to the body, there are many theories, which are called theories of the body, and they are particularly important for feminists because, historically the body is seen in connection with the feminine. What Kristeva did is always finding a connection between mind and body, culture and nature, psyche and soma, matter and representation.

According to Kristeva, the entire signification is composed by these two elements: the semiotic and the symbolic:

1. The semiotic element is the bodily drive as it is discharged in signification. The semiotic is associated with the rhythms, tones, and movement of signifying practices. As the discharge of drives, it is also associated with the maternal body, the first source of rhythms, tones, and movements for every human being since we all have resided in that body.

2. The symbolic element of signification is associated with the grammar and structure of signification. The symbolic element is what makes reference possible. For
example, words have referential meaning because of the symbolic structure of language. On the other hand, we could say that words give life meaning (nonreferential meaning) because of their semiotic content. Without the symbolic, all signification would be babble or delirium. But, without the semiotic, all signification would be empty and have no importance for our lives. Ultimately, signification requires both the semiotic and symbolic; there is no signification without some combination of both (Kristeva, 2009).

There is no time without speech. Therefore, there is not time without the father. That, incidentally, is what the father is: sign and time. It is understandable, then, that what the father doesn’t say about the unconscious, what sign and time repress in the drives, appears as their truth (if there is no ‘absolute’, what is truth, if not the unspoken of the spoken?) and that this truth can be imagined only as a woman. (Moi, T., ‘The Kristeva Reader’, 1986: 153)

Its account of two new areas of discourse, the semiotic and the symbolic, proposed new ideas on the formation of identity, especially the mother-child relationship, which have transformed ideas of women's function and significance (EBA., French Literature, Feminist writers). The postmodern age has turned to smaller, narrower petits récits (“little narratives”), such as the history of everyday life and of marginalized groups (EBA., Semiotics).

4. THE MATERNAL BODY

The strongest relationship that can ever exist is that of the mother and child. This is often called as an instinct in female body. It is an instinct implanted in the female body because it is necessary for the survival of the species, and its manifestation is called ‘nurture’. This instinct is stronger than the emotion; the emotion is only a sensation, of pleasure or pain, of joy or sorrow, experienced by the expression of an instinct. The strength of the mother instinct is greater than any other instinct, just as the relationship between mother and child during and at the term of her pregnancy, is the most intimate relationship than any other can possibly be.

What a mother feels as a duty is to nurture her child. The maternal care means the health and growth; even the child’s survival will depend on her attention to detail, on her intuition, on her ability to sacrifice herself for the sake of another. That is how we can explain, mainly in women, her feelings of sympathy and compassion, this happens because of her role of protecting the weak, being kind and gentle with the frail and helpless.

This is part of the motherhood to which all women are called, either physically or spiritually. Motherhood, whether physical or spiritual, is woman’s fulfillment; hence it is an emotional need.
In the late 60s – 70s many theories were concerned in psychological discourses. Kristeva’s linguistic theory was increasingly influenced by psychoanalysis. This influence resulted in the psycho-linguistic understanding of language. (In “Revolution in Poetic Language”) This became the starting point for discussions of the status of the subject and of the question of the identity in psychoanalysis, an issue of central importance also to political theories such as feminism or Marxism. Significance means a question of positioning. Following Lacan, Kristeva posits:

1. The mirror phase – the first step that permits “the constitution of objects detached from the semiotic chora”

2. The Oedipal phase – with its threat of castration as the moment in which the process of separation or splitting is fully achieved.

Once the subject has entered in the symbolic order, the chora will be more or less successfully repressed and can be perceived only as pulsional pressure on or within symbolic language: as contradictions, meaningless, disruption, silences and absences. The chora, then, is a rhythmic pulsion rather than a new language. It constitutes the heterogeneous, disruptive dimension of language, that which can never be caught up in the closure of traditional linguistic theory.

The Kristeva subject is a subject-in-process (sujet en proces), but a subject nevertheless. We find her carrying out once again a difficult balancing act between a position which would try to capture these entities in an essentialist or humanist mould.

It is Kristeva’s psychoanalytic practice that makes her put the case with such force for an unstable and always threatened, yet nevertheless real and necessary, form of subjectivity.

The modern, unstable and empty subject, she argues, ought not to be fixed and stabilized, but to be turned into a work in progress. The Law constructs speaking subjects in the first place.

Maternity is the embodiment alterity within as represented by Kristeva. The maternal body exists as an outlaw ethics and this ethics binds one to the other through love and not through Law.

In the Song of Songs the amours relation is figured as a relation between a man and a woman who are strangers, travelers, destined to lose each other. Separation is thus placed at the heart of the relation of one to the other in the Bible. St. Thomas Aquinas, as she has claimed, tells us about this alterity, commenting what is said in the Bible and in the Gospel: “Love your neighbor as yourself”. But in her book, “Tales of Love”, she has interpreted it as the necessity of structuring narcissism. “To become capable of loving our neighbor as our self, we have first of all to heal a wounded narcissism. We must reconstitute narcissistic identity to be

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28 The model of the body is defined as chora (Sjoholm, C., ‘Kristeva And the Political’, p.4)
able to extend a hand to the other. Thus what is needed is a reassurance or reconstruction of both narcissism, personality and, of course, the subject for there to be a relation to the other. This seems to be the primary message of Thomas Aquinas: love the other as oneself, but by being settled within oneself, by delight in oneself. Thus: heal your inner wounds which, as a result will render you then capable of effective social action, or intervention in the social plane with the other. Therefore, I would argue that we must heal our shattered narcissism before formulating higher objectives.” (Given in an interview to Kathleen O'Grady, 1998)

Love for Kristeva then becomes the indispensable element of the cure, the moment of structuring which intervenes in the imaginary chaos, an organizing force produced by the intervention of the “father of personal prehistory” in the very first months of the child’s life. Kristeva belief that art or literature precisely because it relies on the notion of the subject, is the privileged place of transformation or change: an abstract philosophy of the signifier can only repeat the formal gestures of literary models. (Moi, T., ‘The Kristeva Reader’ p. 15-17)

What Kristeva see in the maternal function is its importance in the development of subjectivity and his access in the culture and language surrounding. She has been much concerned in the writings of Lacan and Freud. What they claim about the subjectivity is that the child enters the sociality by the paternal function, and moreover, child enters this sociality with fear and threats leaving the safe maternal body. This is the first step that a child develops its subjectivity, and here lies the Kristeva’s interest.

Her new discourse on maternity is focused in the importance of the maternal function in the development of subjectivity and in culture. She suggests that the maternal function cannot be reduced to mother, feminine or woman. Kristeva invokes the idea of the maternal function that can be fulfilled by anyone, men or woman. As a woman and as a mother, she loves, desires, and by this she fulfills herself as a social and speaking being. But also she is sexed and when she becomes a mother (fulfilling her maternal function), she is not sexed. Kristeva analyses the maternal body for presenting the idea of the subject-in-process. Becoming so must undergo a process of negation explained as an achievement of separation. Maturity is seen to be reached when the dependent infant comes to regard its primary caretaker (nearly always a woman) as simply an object through which it defines its own identity and position in the world. Separation and objectivity rather than relationship and connection become the markers of identity (Waugh, P., in Feminisms, p.209-10). Kristeva mentions in her ideas on the maternal function that as subject-in-process we are always negotiating the other within, it means a return of the repressed.
Kristeva moves away from Lacan\textsuperscript{29} in several accounts. First, sexual difference is a complex of biological facts and social determinations. According to Kristeva, the biological factor is hidden but not removed. Second, Kristeva insist that the father can be only a metaphorical one, a space of transference rather than a site of law. And finally, the symbolic is not a foundation of culture, a law ex nihilo as in Lacan; it is intertwined with the semiotic, and cannot be understood as its opposite. Another challenge for the Lacanian theory is the notion of the subject of the semiotic. The subject doesn’t place itself under the constraints of the law and the Oedipal structure of social life, the subject-in-process of the semiotic is always up and against such a law and such a structure. The pre-oedipal sphere introduces another aspect of subjectivity, unlike Lacanian point of view. In Lacan, there is no aspect of the subject preceding the establishment of the symbolic: everything that appears as a pre-history is in fact predetermined by Oedipalisation. What appears to precede is in fact a retroactive construction. The aim of Kristeva’s deviation from Lacan’s more rigid terminology is to emphasize the place of the body in the process of signification. The subjection-process has a flesh of sensitivities and a memory of affects that cannot be transported into language. (Sjoholm, C., ‘Kristeva and the Political’ p.14-15)

What does this desire for motherhood correspond to? The feminist ideology leaves the door open to the return of religion which provides the necessary ingredients for satisfying the anguish, the suffering and the hopes of mothers. On the other hand, it is in the aspiration towards artistic, and in particular, literary creation that woman’s desire for affirmation now manifests itself.

5. CONCLUSIONS

The first wave of feminism was focused on women’s legal rights, like the right to vote, etc; the second wave of feminism touched every area of women’s experience, including: family, sexuality and work. The third wave of feminism emerged in the mid 1990s. This was the generation born in 1960s-1970s in the developed world. They possessed significant legal rights and protections that had been obtained by the first and second wave of feminists. In some way, however,

\textsuperscript{29} Jacques Marie Émile Lacan (1901-1981). French psychoanalyst who gained an international reputation as an original interpreter of Sigmund Freud's work. The teaching and writing, much of it dating to the 1930s, of the psychoanalyst Jacques Lacan (\textit{Écrits} [1966; \textit{Ecrits: A Selection}]) influenced many major thinkers in the 1960s and '70s. Lacan proved to be a major influence on avant-garde French feminism, and he led Freudian thought in fresh directions through his work on the part played by language and unconscious desire in the formation of a human subject that must always be seen as open, incomplete, and in process.
third wave feminism can be viewed as a reaction to the positions and unfinished work of the second wave feminism. *(EBA, 2009)*

As Toril Moi mentions referring to Julia Kristeva, gaining some distance from the two preceding generations, Kristeva brings a new generation that is now forming, at least in Europe. And by ‘generation’ she doesn’t mean another ‘mass feminist movement’, but a *signifying space* (a corporeal and desiring mental space). This third generation represents the parallel existence of the three *attitudes* at the same time or maybe interwoven to each-other.

Kristeva suggests that "real female innovation (in whatever field) will only come about when maternity, female creation and the link between them are better understood. (*Creatures and creatresses*, in ‘Women’s Time’)

Life is made up of both challenges and differences. Kristeva could say, considering feminism, as but a *moment* in the thought of that anthropomorphic identity which currently blocks the horizon of the discursive and scientific adventure of our species. (*Women’s Time*)

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ETHNIC CONFLICTS IN THE WESTERN BALKANS AND THE ROLE OF EU, USA AND NATO IN THEIR MANAGEMENT

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Abstract
Former Yugoslavia was a country with many nationalities that have established throughout its historical development very complex and layered relations especially Serbs, Croats and Bosniaks (Muslims) in Bosnia and Herzegovina, Albanians and Serbs in Kosovo and Albanians and Macedonians in Macedonia and they were the topic of the analysis in this work. The differences, which caused tensions, and later conflicts, derived from different levels of economic development, which created a feeling of inequality or marginalization of particular ethnicities within a certain socio-political communities, as well as from sociological peculiarities of ethnicities, lack of both general and minority rights that reflect the status of ethnicities, lack of mechanisms for proper implementation of the rights of ethnicities. Such relationships often tended to allow radical ways of solution including wars. In all situations, contemporary wars will be ended with the mediation by the international factor, i.e. NATO as a military organization, the European Union and the United States as participants in the peaceful, soft-power negotiations between the parties that were at war.

In the postwar period, as a possible solution in terms of ethnic reconciliation and coexistence in these countries the majority democracy will significantly be replaced with a consociational democracy aiming to protect the collective rights of their dominant ethnicities. In addition, Bosnia and Herzegovina and Kosovo, for further stabilization are placed under the international protectorate, with civilian representatives from EU and NATO forces. The third solution undertaken in Bosnia and Herzegovina only was its federalization.

Effects from these solutions were mostly positive - ending of hostilities and stability of the political institutions but less success is achieved in respect to the effectiveness of their political systems.

Key words: Political system in Bosnia and Herzegovina, political system in Macedonia, political system in Kosovo, human rights, consociational democracy, protectorate
1. INTRODUCTION

Political and economic disintegration of SFR Yugoslavia in the period 1991-1992 clearly had its interethnic dimension. With the collapse of Yugoslavia all ethnic divisions did not end and all ethnic problems were not solved.

These differences, which caused tensions, and later conflicts, derived from different levels of economic development, which created a feeling of inequality or marginalization of particular ethnicities within a certain socio-political communities, as well as from sociological peculiarities of ethnicities, lack of collective minority rights that reflect the status of ethnicities, lack of mechanisms for proper implementation of the rights of ethnicities, from political outvoting (majorization) of majority over minority, furthermore, of lack of mechanisms for affirmative action resulting in permanent discrimination of minority ethnicities (at the level of policy, education), etc. Such relationships often tended to produce radical ways of solution.

Thus, the Republic of Bosnia and Herzegovina, Kosovo and the Republic of Macedonia coped with interethnic wars. The external factor that intervened in such conflicting circumstances imposing peace negotiations to the parties in the above mentioned states, former parts of Yugoslavia, were the EU, USA and NATO. They participated in the redefinition of the political systems of the former states established after the peace negotiations and the characteristics and functionality of these political systems are a matter of our research interest.

2. BOSNIA AND HERZEGOVINA

As a state, Bosnia is formed in the XII century mainly composed of ethnically homogenous Serbs and Croats, and in the XV and XVI century it falls under the government of Turkey, which has Islamized a part of the population, when appears the third ethnicity- Bosniaks, who in faith are Muslims. Its modern history began in 1878, when it falls under the rule of Austro-Hungary. After World War I, Bosnia and Herzegovina joined the Kingdom of Serbs, Croats and Slovenes (in 1929 renamed Yugoslavia). In 1929, it came to redrawing of administrative regions into banovinas, leading to Serbo-Croat tensions over the structuring of the Yugoslav state, with no consideration of a separate Bosnian entity (Ramet 2005, 145).

After the conquest of Yugoslavia by Nazi forces in World War II, all of Bosnia was ceded to the Independent State of Croatia (NDH) that started a campaign of extermination of Serbs, Jews, Romani, Croats who opposed the regime, communists and large numbers of Josip Broz Tito's Partisans. The Ustaše recognized both Roman Catholicism and Islam as national religions, but held the position that Eastern Orthodoxy, as a symbol of Serbian identity, was their greatest foe. Many Serbs joined the Chetniks, who were responsible for widespread
persecution and murder of non-Serbs and communist sympathizers (Hadjijahic 1973, 277). Starting in 1941, Yugoslav communists under the leadership of Josip Broz Tito organized their own multi-ethnic resistance group, the partisans, who fought against both Axis and Chetnik forces. On 29 November 1943 the Anti-Fascist Council of National Liberation of Yugoslavia with Tito at its helm held a founding conference in Jajce where Bosnia and Herzegovina was reestablished as a republic within the Yugoslav federation almost in its Habsburg borders.

At the end of the war the establishment of the Socialist Federal Republic of Yugoslavia, with the Constitution of 1946, officially made Bosnia and Herzegovina one of six constituent republics in the new state (Vojna Enciklopedija 1970, 772-778).

In the postwar period, Bosnia is characterized by inter-ethnic harmony, because for the first time in five centuries it gains statehood with a political decision by Tito. As a country, it emerges on the Adriatic Sea for the first time and due to its process of industrialization it has a rapid economic development and social reformation.

The break-up of Yugoslavia, created an opportunity for nationalist elements in the society to spread their influence (Ramet 2005, 155-157). In the 1990, Western countries tended to crush Yugoslavia, and besides them, Serbian leader Slobodan Milošević and Croatian leader Franjo Tuđman tended to break Bosnia. The Bosnian Serbs formed the Army of Republika Srpska (VRS), and started fighting in 1992 against Muslims (Bosniaks) and Croats over Bosnian territories that would be ruled by Serbs. In 1994 a joint Bosniak-Croat Federation of Bosnia and Herzegovina was created (Bose 2009, 124). The war was ended by the Dayton Peace Agreement with mediation of USA that put an end to the active combat and roughly established the basic political structure of the present-day state. All parties agreed to ensure the highest level of internationally recognized human rights and fundamental freedoms (Annex 4, Art. II, 1) and the right of Bosnian dispatched people to return to their homes, even in areas controlled by other ethnic groups (Zahar 2005, 125-127).

Dayton Peace introduces 3 types of systemic changes in the political system of Bosnia and Herzegovina:

**The first political systemic change is its Federalization.** Bosnia is constituted of two Entities Republika Srpska (RS) with 49% and Bosniak/Croat Federation with 51% of Bosnian territories. The need for federalization was to divide the ethnicities in order to restore the peace on that territory.

**The second political systemic change is the introduction of Consociational democracy.** Bosniak–Croat Federation and Republika Srpska share a set of central governing institutions, the Parliamentary Assembly of Bosnia and Herzegovina and Presidency, where all three ethnicities are equally represented. Central institutions
are responsible for: foreign policy and trade, customs, monetary policy, financing of the institutions and international obligations of Bosnia and Herzegovina, immigration, refugee and asylum policy and regulation, international and inter-entity criminal law enforcement, establishment and operation of common and international communications facilities, regulation of inter-entity transportation and air traffic control (Art III-1). Power-sharing institutions in Bosnia and Herzegovina are an example of Lijphart’s consociational model – a model that is based on four key characteristics: grand coalition, mutual veto, proportionality and segmental autonomy (Lijphart 1977).

The third systemic change is the introduction of protectorate. Since 1997, Bosnia became protectorate by the International Community. First, military and a civilian component was deployed, at first the Implementation Force (IFOR) that in the second phase (1998-2000) was replaced by Stabilization Force (SFOR) that did not tolerate any attempts at partition by anyone. This was decided by the European leaders.

Peace Implementation Council, meeting in Bonn in 1997, authorized the Office of the High Representative (OHR) to take certain key decisions which covered the ‘crucial areas of institutional reform, substantial legislation, and the personnel of public office (Knaus 2003, 60-74).

At this time, according to DPA the Bosnia’s central bank should operate as a currency board under the direction of an IMF appointed governor for the first six post-war years. Bosnia’s central bank has to:

- Provide fix exchange rate between the local currency and a stable foreign currency (in that time German mark, until the introduction of the EURO). This arrangement is essential in generation confidence in the weak currency and contains inflation.
- It prevents the Federation from taking loans.

The crucial antagonism in the last decades of existence of Yugoslavia is seen between Serbs and Croats, especially during the reign of Miloshevic who tended towards special status of the Serbs within Yugoslavia based on the majority of the Serbian population within Yugoslavia. These ethnic tensions and definitely the split in Yugoslavia had a reflection in Bosnia where there was a strong ethnic consciousness and affiliation and close connection of the Serbs with Serbia and Croats with Croatia. Bosniaks or Muslims could easily be inclined towards Croats because Croats were smaller ethnic community in comparison to the Serbs and they needed an ally in that conflict and historically during the Second World War they were more allied with Croats than Serbs. The end of the war and peace negotiations had to produce a situation where the three ethnicities would stay together because they were settled throughout Bosnia and all other material resources, infrastructure, communications and economy represented an integrated
whole as well as the disintegration of a country in Europe could have sent a negative signal to the rest of the countries in Europe. The peace solutions had to take into consideration the reality coming from the war conflicts implying that federalization was needed to separate Serbs against Croats and Bosniaks (Muslims) in order to provide inter-ethnic decision-making process on several and not on all issues because in the latter case the process would be permanently blocked since the former antagonisms among the Bosnian ethnicities would generate new and new tensions and conflicts. The other solution to put Bosnia and Herzegovina under protectorate was aimed by the international community intervening in Bosnia to provide for itself a strong position in peace keeping process maintaining Bosnian integrity and peace by external troops and enabling a position to the High Representative to organize the process of introducing European legislation and provide room for intervention in case of violation of some regulation or inappropriate behavior of some state authorities in respect to the functionality of the political or economic system. Definitely, consociational democracy is introduced for adaptation of the decision making process to the ethnic needs in order the parties to acquire habits to compromise their own interests with those of the other parties.

The effects from the activities of the international factor are mostly positive - they are characterized by the ending of hostilities, providing conditions for refugees who emigrated abroad or internally displaced persons to return to their homes, to rebuild their destroyed homes and return to their economic activities, as well as any other normalization of their conditions. However, the main efforts of the foreign factor were more intended to ensure the environmental safety of the population and the stability of the political institutions and less to ensure the effectiveness of the Bosnian political system.

3. KOSOVO

In Kosovo, ethnically pure with Serbian population, after the Battle of Kosovo in 1389 the victorious Ottoman Turks started to settle in Kosovo Muslim population, Turkish and Albanian, the latter by time becoming predominant. In all political and military turmoil during 19th and 20th century the Albanians and Serbs being ethnically and confessionally different took opposite sides and waged wars against each other (wars during Eastern crisis 1876-1878, First Balkan War 1912, First World War 1914-1918) (Knaus 2003,42-50).

The new Yugoslav state constituted in 1919 was the one where the non-Slav populations were intentionally neglected. In the inter-war period (1918-1941) the Kosovo region was of economic and military importance for the Serbs and they began colonizing it. Albanians were also not represented in any public office or administration.
During the Second World War, most of the territory of Kosovo was occupied by Italians. Italians opened schools in Albanian language and brought Albanians into administration and army. Now the Slav settlers were attacked, to some extent killed and some forced to migrate (Tomasevic 1975, 116).

In 1943 and the beginning of 1944 the Albanians made some efforts to unify all Albanian populated areas including Albania and Kosovo. However, these agreements were annulled with intervention of the Yugoslav Communist Party and especially strong opposition by Marshall Tito. At the end of the war Tito realized its tendency to reestablish prewar Yugoslav frontiers. The Albanians felt betrayed in their tendency to unite with Albania, so they raised a rebellion in 1945 against the partisans but it was suppressed. The Albanians were alienated after the war (Vukmanovic 1990, 205-210).

In 1946 the new Constitution recognized five nationalities: Serbs, Croats, Slovenes, Montenegrins and Macedonians, but not the Albanians. These five nationalities enjoyed the right of protection, cultural development and free use of their languages. This Constitution also determined that the autonomous provinces of Vojvodina and Kosovo were to be regulated by the Republic of Serbia. The Yugoslav leadership took side of the Serbs because they contributed the most in the war. After the split between Yugoslavia and USSR in 1948, Albania attacked Tito. Therefore, the government promoted a policy of 'Turkification' where many Albanians started learning in Turkish and registered as Turks to escape persecution. After the war, Yugoslav authorities gradually opened Albanian language schools and encouraged bi-weekly print of Albanian newspaper. Many of the Albanian population were illiterate, in 1948 Albanian children enrolled in school for the first time.

The majority of the Albanians in the 1950s and 1960s lived in harsh poverty and this resulted with massive exile of Albanians to Turkey.

In 1966 Tito removed the police minister Aleksandar Rankovich who was very strict to the Albanians in Kosovo. After this the national rights of the Albanians were getting better with an aim the Albanians to stay loyal to Yugoslavia. However, this process encouraged the Kosovars to become more aware of their national rights. As a result of this revolt new constitutional amendments were passed in 1968 according to which Kosovo got the right to be directly represented in the Yugoslav Parliament.

In 1969 the Serbian parliament adopted a new Constitution for Kosovo. With it the Province received its own Supreme Court and more rights that were enlarged with the Constitution of 1974. As a result of a big mistrust between the Albanian and Slavic population a new exodus began in 1968, but this time Serbs and Montenegrins started to abandon Kosovo. Until 1985, the Albanians in Kosovo had better situation than ever, they were better politically represented in the
Yugoslav system and their cultural autonomy was very high. However, they did not have republican status thus inter-ethnic conflict within the Federation deepened. This situation created nationalism in Serbia, Montenegro and Macedonia in contrast to the Albanian one. In Serbia it enabled the rise to power of Slobodan Milosevic. He was a nationalistic and conservative leader. He started to change the autonomous status of Kosovo in 1987 first by suspension of the authority of the provincial police and judiciary. Then came the abolition of the Kosovo’s autonomy with amendments to the Constitution of SR Serbia in 1989. Many Albanian protests were organized but to no avail. The federal police imposed terror over the Albanian citizens of Kosovo. Many Albanians were dismissed from their jobs. Kosovo Albanians started to emigrate towards Western countries and Albania. It led to resistance groups in Kosovo. Separatist movement was created (Vickers 1998, 297-303).

When the conflicts between Serbs and Albanians in Kosovo intensified, the World Community tried to solve the problem by negotiations. The peace talks led to Rambouillet Agreement which was a proposed peace agreement between the Federal Republic of Yugoslavia and a delegation representing the Albanian majority population of Kosovo, drafted by NATO. The negotiations should have led to a consensus on substantial autonomy for Kosovo, including mechanisms for free and fair elections to democratic institutions, the protection of human rights and establishment of a fair judicial system, including the modalities of the invited international civilian and military presence in Kosovo. The Serbs rejected any discussion of the involvement of foreign troops. which NATO used as justification to start the War. Serbia was defeated militarily in 1999 by NATO. The war ended with the Kumanovo Treaty, with Yugoslav forces agreeing to withdraw from Kosovo to make way for an international presence (Herring 2000, 224-245).

United Nations Security Council Resolution 1244 passed on 10 June 1999, authorized an international civil and military presence in Kosovo (then part of Serbia) and established the United Nations Interim Administration Mission in Kosovo (UNMIK). United Nations Security Council Resolution 1244 designed the future arrangement in Kosovo in which formally Kosovo is in a thin connection with Serbia but, essentially it is a protectorate. In addition, as a part of the management of the protectorate, the military and police role is taken over by KFOR (Kosovo Force), this is a part of NATO and is in charge of preserving peace and security in Kosovo. UNMIK was established to "help the Council achieve an overall objective to ensure conditions for a peaceful and normal life for all inhabitants of Kosovo and advance regional stability in the Western Balkans. "UNMIK still exists today, but its day-to-day functions are relatively minor since Kosovo declared independence and adopted a new constitution, that follows the creation of the European Union Rule of Law Mission in Kosovo - EULEX, which assists and supports the Kosovo authorities in the rule of law area, specifically in the police,
judiciary and customs areas. Within the protectorate, they have the International Civilian Representative for Kosovo (appointed by the Council of the EU), which is a counterpart of the Office of the High Representative in Bosnia and has the right to bring or challenge a law or other regulation enacted in the Kosovo institutions, and may also replace senior public officials. This office was active until September 2012.

In 2007, Martti Ahtisaari plan was adopted, reflecting the Kosovo Constitution. The plan confirms the form of the protectorate which additionally introduces the CONSOCIATIONAL DEMOCRACY in the organs of the authority of Kosovo. The Republic of Kosovo proclaimed its independence from Serbia in 2008 and it was accepted by many countries, with exception of Serbia, Russia and China. According to the Constitution, the forms of the consociational democracy are introduced in Kosovo - guaranteed seats for Serbs and all other minorities, in all spheres of state power - legislative, executive and judicial. Second, they have the right to VETO i.e. when deciding about important decision for the ethnicities, it is said: a majority of all MPs and a majority of the minority must be reached, especially for very important constitutional issues such as language issues, religious freedoms, the use of religious and national symbols, etc. The consociational principles can be found in the local government too. More precisely, in municipalities where at least ten per cent (10%) of the residents belong to Communities not in the majority in those municipalities, a post of Vice President of the Municipal Assembly for Communities shall be reserved for a representative of these communities. (Art. 62).

A step forward is made to extended own municipal competencies. The municipality of North Mitrovica shall have responsibility for higher education. All municipalities in which the Serbs are in the majority should have:

a. The authorization to be responsible for performing activities in the field of culture or protection and promotion of Serbian and other religious and cultural heritage in the municipality, as well as support for local and religious communities;

b. Greater rights to participate in the selection and dismissal of police Station Commanders. As well, the communities and their members shall be entitled to equitable representation in employment in public bodies and publicly owned enterprises at all levels, including the police service in areas inhabited by the respective Community. (Art. 61).

Kosovo is a country where the international community did not see any possibility to keep Kosovo within the borders of Serbia. The two peoples, Serbs and Albanians have had tense and even antagonistic political, economic and citizens’ relations in large parts of their common history, especially in the period of the modern times. That led to different positions different political cultures, different social consciousness of these two peoples. Unitary state is impossible for nations
with so much differences when they have to decide together on many issues such as economy, use of languages, etc., and by no other characteristics Kosovo should be a federal state since the Serbian minority at the time being is less than 5% and federal unit with such a small dimension cannot be functional from life viewpoint. Sociologically they have had different approach to all national characteristics such as interpretation of history, symbols, heroes. Therefore to spare the conflicts in which it was impossible to find some common formula for coexistence it was necessary to split the political link between two states, Serbia and Kosovo, since for EU and USA a lot of energy would have been needed to put them and sustain them together and it is found out that a lasting tendency of a common life between them would be instability that cannot be of convenience either to the European Union which is characterized with stability and effectiveness of all social processes or to NATO that tends to eliminate all substantial conflicts either among its member states or within each particular state within the alliance. Therefore, the definite solution was a split between the countries Serbia and Kosovo as units with a special political status, making a protectorate of Kosovo in order EU and NATO by their own bodies to prevent violence and introduce EU legislation necessary for ensuing modernization of Kosovo, strengthening the position of the Serbian minority by some elements of the consociational democracy, with special protection and special status or high level of respect for the human rights seen as the special status given to Kosovo municipalities with a Serbian population which have rights and duties characteristic for federal units or regions in some other states.

The effects from the activities of the international factor are mostly positive - they are characterized by the ending of hostilities and return to their economic activities, as well as any other normalization of their conditions. However, the foreign factor was more intended to build and stabilize the political institutions and less to ensure the effectiveness of the political system.

4. MACEDONIA
Macedonia, as a state did not exist in the Middle Ages and during the Ottoman rule in Macedonia, that ended in 1912, a smaller part of the Albanians, as Muslims, belonged to the Ottoman feudal aristocracy and had some political and economic privileges. The Macedonians who in the Ottoman Empire were non-Muslim subjects mainly serfs or craftsmen were without any political influence on public decisions. Serbia occupied Vardar Macedonia definitely after the First World War (1918). During this period (1918-1941) in schools and administration in Macedonia the Serbian language was imposed. Macedonians were not allowed to work in the higher state authorities at all and were present in the lower administrative bodies to some small extent, while Albanians have never been part of the structures of power
being quite economically and politically marginalized (Macedonian History Institute 1969, 9-10).

During the Second World War, Macedonians and Albanians are on two different sides, fighting between themselves, with civilian casualties. In the period after the Second World War, Macedonians and Albanians are formally and legally proclaimed as equal entities, but in practice, the higher social level belongs to the Macedonians due to higher educational level above all, city affiliation and the fact that the Macedonians are the majority of the population in R.M. This provided them with privileged status seen through: increased representation of both students and professors in the secondary and the tertiary education, significantly higher employment rate in both economic and non-economic activities, higher employment status and greater representation in the political institutions. For illustration, in the 1950/1951 school year there were 87.3% Macedonian students that enrolled secondary school and 6.3% Albanian counterparts. That same year, teaching was performed by the 93.5% of the professors Macedonians and only 3.5% professors Albanians. In terms of employment, in 1986 85% Macedonians and 7% Albanians were employed in the social sector. The more we go up the line of eligibility, the ratio of employees becomes less favorable for Albanians. Thus, in the total number of employees, the Macedonian skilled workers were 15 times more represented than the Albanian ones. In terms of participation in the political system again the Macedonians have significantly prevailed over the Albanians.

In 1990 it comes to dissolution of the communist system and opportunity for Macedonia to develop itself towards political pluralism based on parliamentary democracy. In 1991 the Declaration of Independence of Macedonia was adopted establishing the "right of the Macedonian people to self-determination" (Art.1). This formulation expresses the character of the new state, as a national state of the Macedonian people, removing the possibility of creating a multi-ethnic state (Redzepi 2007, 31-33). Next important act was the Constitution adopted in November, 1991. The preamble to the draft constitution reflected the past of the Macedonian people and their efforts to create a national state. So, the Preamble clearly aspired to the Macedonian national state stating equality with other minorities (Decision on Proclamation of the Constitution of Republic of Macedonia 52/1991). The Albanian people could not agree to minority status in the country and they did not vote it. They launched three initiatives to redefine the Macedonian state.

The first was establishment of Albanian federal unit in a federal Albanian-Macedonian state; the second was constituting an Assembly with two Houses (Macedonian and Albanian), or bicameral parliament, which would ensure full equality of these national groups; the third was the initiative for political and
territorial autonomy of the Albanians in Macedonia, or constituting Ilirida. These were not accepted by the external international community and they failed. At the end of the war in Kosovo, between NATO and Serbia or Yugoslavia (1999), the interethic relations in Macedonia were temporarily relaxed. Macedonia received a large number of refugees, saving lives. Generally, the cooperation between these two communities was closer compared to the previous period. But relations were degraded by the signing of the demarcation of the border line between Macedonia and the Federal Yugoslavia and the adoption of this law in the Parliament. The Agreement for the border line did not take Kosovo into account that was the interest of the Albanians in Macedonia. The first sparks of the crisis and war appeared in early 2001. The crisis in Macedonia was followed by the UN and NATO. All relevant international diplomats took common attitude, that they "support the territorial integrity of Macedonia and the stability of its borders”. With the mediation of US Ambassador in OSCE Robert Frowick, a plan was composed that as main objective was to cushion the whole extremism, both on Albanian and Macedonian side. This plan was signed in May, 2001 in Prizren, by the Albanian leaders. After this Agreement and the armistice followed the Ohrid Framework Agreement. signed in Skopje in August 2001 by the Macedonian and Albanian representatives who participated in the enlarged government coalition and the Euro-American mediators, Leotard and Perdew.

The Ohrid Framework Agreement introduced consociational democracy that gives a guaranteed political position for the Albanians.

The consociational democracy in Macedonia has the following characteristics:

1) On power is the grand coalition of political leaders of all significant segments in the given plural society. The GOVERNMENT should be composed of winners of Macedonian and several Albanian party / parties that will constitute the MAJORITY of MPs in the MACEDONIAN ASSEMBLY. This concept is not contained in any formal legal document, but it is a commitment of the international community!

2) Ohrid Agreement significantly increases local competencies introducing urban planning, economic development, spatial planning, education, health care, and other activities at local level where the both communities have the opportunity to decide on their issues and problems, in those municipalities where they are majority (Amendment XVII).

3) VETO's right: the most important decisions affecting the status of communities are brought by a majority of all in the Assembly and a majority of the minority group (adopting laws with Badinter majority).

4) Proportional representation in the employment in the state and in part of the municipal (public) administration.
As well, with the amendment V, Article 7 of the Constitution in addition to the Macedonian language, the Albanian language became official language in internal relations.

The Ohrid Agreement was characterized as a compromise between the Macedonian and Albanian political representatives in Macedonia. It ended the armed conflict between the two nations and changed the concept of the state.

The decision of the international factor intervening in the Macedonian conflict and carrying out the peace negotiations was to avoid all post-conflict measures and instruments characteristic for Bosnia and Kosovo. The decision was based both on the fact that the war was not prolonged and was not characterized with so many victims and losses that would produce high negative sentiments among population as well as on the circumstances that the social relations among various ethnicities were mainly cooperative and not antagonistic in the recent history. In addition to this even before the introduction of the consociational democracy the political cooperation between the Macedonian and Albanian ethnic communities seen through the coalition in the government between the Macedonian and Albanian political parties existed. Therefore the solution to improve the situation after the war conflict was restricted to introducing consociational democracy only in order to eliminate the danger of political majorization through a coalition between the Macedonian and Albanian political parties’ leaders and the possibility of imposing veto in some decision making areas as well as providing proportional representation as positive discrimination measure through the employment in the public institutions of the members of the Albanian ethnic communities being underrepresented until then.

The effects from the activities of the international factor were mostly positive - they are characterized by the ending of hostilities, return of population to their economic activities, as well as any other normalization of their conditions. However, the foreign factor was more intended to the stability of the political institutions and less to ensure the effectiveness of the political system.

5. CONCLUSIONS

In this paper we analyzed the interethnic relations in three countries: Bosnia and Herzegovina, where three ethnicities have been important - Serbs, Croats and Bosniaks (Muslims); Kosovo, where in modern history have been particularly significant two ethnicities: Albanians and Serbs; and Macedonia where an important role in the modern political history have played two ethnicities: the Albanians and Macedonians. The historical circumstances have had an impact on the interethnic relations, as well as the contemporary social and political processes, so that the characteristics of these interethnic relations reflect on great complexity and layers of meaning.
So, all these countries are characterized by occasional conflicting interests that led to wars. In all situations, contemporary wars will be ended with the mediation by the international factor, i.e. NATO as a military organization, the European Union and the United States as participants in the peaceful, soft – power negotiations between the parties that were at war.

In the postwar period, as a possible solution in terms of ethnic reconciliation and coexistence in these countries the majority democracy will significantly be replaced with a consociational democracy as a form of political functioning that mostly protects the collective rights of the dominant ethnicities in these countries, i.e. where the making of the most important state decisions is bound to the consensus of the dominant ethnicities and their parity representation in the highest state institutions - the Government, Parliament and Judiciary, but also locally. In addition, Bosnia and Herzegovina and Kosovo, for further stabilization are placed under the international protectorate, with civilian officials from the European Union, with a mandate to revise the highest state decisions and remove from office the highest holders of the relevant functions in these countries in case of their inefficiency, and the presence of the NATO forces, which maintain militarily the territorial integrity and internal order of Bosnia and Herzegovina and Kosovo.

Effects from the decisions of the international factor are mostly positive - they are characterized by the ending of hostilities, providing conditions for refugees who emigrated abroad or internally displaced persons to return to their homes, to rebuild their destroyed homes and return to their economic activities, and any other normalization of their conditions. However, so far the main effort of the foreign factor was more intended to ensure the environmental safety of the population and the stability of the political institutions and less to ensure the effectiveness of their political systems that will be their commitment in the coming period.

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ENSURING OF CIVIL RIGHTS
IN THE CRIMINAL PROCEDURE LAW

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Abstract
On the 1st of October 2005 a new Criminal Procedure Law came into force. The aim was to ensure the regulation of human rights in investigations. A new approach to human rights issues was developed, including the implementation of new legal institutes – the investigating judge, special investigative actions and a new approach to dealing with properties. Also the regulation of guaranteeing a moral compensation was implemented.
By using the new regulation, the law enforcement institutes were provided with a better and more efficient way of guaranteeing the human rights for all the parties involved.
Authors will review the history of implementing the new regulation, discuss the issues and new challenges in ensuring the human rights, while describing the role of the legal institutes in the Criminal Procedure Law and the expression of the law in investigation. The principle of their implementation and results will be summarized.

Key words: human rights, criminal proceedings, investigating judge, special investigative actions, moral compensation, investigation

1. INTRODUCTION
Authors will describe and analyse information in this paper indicating at proper decision-making, including the applicable provisions of the Criminal Procedure Law - special legal institutes as one of the ways to obtain evidence in criminal proceedings and the basic conditions of ensuring human rights when investigating criminal offences stipulated under the Criminal Law of Latvia. Said legal institutes are attributable to the control of procedural restrictions and intervention in the life of a person, allowing special investigative actions, taking and implementing such actions, i.e. obtaining of evidence in a special way that is not known to a person, as well as ensuring of financial matters in a criminal
proceedings that especially pertain to victims’ rights to receive a compensation for the caused physical damage, financial loss and moral injury. In this case the authors will pay attention to the aspect of moral injury, because this type of damage is mainly connected with the evaluation criteria and often within a framework of a criminal proceedings the victim party warns about cases of non-compliance with the human rights' premises when evaluating the non-material loss and compensation thereof. In order to explicitly discuss the topical issues in the field of criminal procedure, the authors will at first explain the history of these institutes and describe the circumstances that called for such legal provisions, then indicate at most important aspects that were included in the CPL during the validity period of these provisions in time and space. Within the framework of the paper the authors will offer an overview of general principles of the applicable criminal procedure system in order to correctly comprehend the basic issues of the topicality of given subject.

Currently there are few crucial laws and regulations applicable in the territory of the Republic of Latvia, stipulating the fundamental guidelines in the field of the criminal law, such as, the Constitution of the Republic of Latvia, a core document serving as the basis for the basic principles and existence of our State, serving as a source for all laws and regulations, such as the Criminal Procedure Law, on which the authors will elaborate in this paper, the Criminal Law as the main element of the criminal law, containing a description of criminal offences and responsibility for such offences, as well as other laws and regulations, including those in field of the human rights, of international scale and ratified also in the Republic of Latvia.

2. HISTORICAL VIEW ON EVOLUTION OF THE CRIMINAL PROCEDURE INSTITUTE

On the 1st of October 2005 the Criminal Procedure Law came into force in the Republic of Latvia, replacing the Criminal Code adopted on 1961. It was considered a logical step in efforts to adapt to the new political and social circumstances in the State of Latvia, returning to our law traditions and reclaiming the sovereignty of the State. The new Criminal Procedure Law was created on the basis of completely different principles and also different approach to investigating criminal cases and detection of offences than in the Criminal Code. One of the main issues bringing together said legal institutes and also being incorporated in present provisions of the Criminal Procedure Law is a comprehensive compliance with the human rights. The Law is based on the same fundamental principles that ensure the fundamental human rights in the most efficient way exactly in field of the criminal procedure. In this regard the authors will address and analyse creation of three new legal institutes. Before adoption of the Criminal Procedure Law the necessity for such institutes was only a hint and some of said provisions were reflected in other
laws and regulations of national importance, but they were not gathered in a core document that would guarantee a comprehensive compliance with the human rights in criminal proceedings.

In order to discuss the Criminal Procedure Law, authors explain that the purpose of the Criminal Procedure Law applicable in the Republic of Latvia is described in Section 1 of Chapter 1. "The purpose of the Criminal Procedure Law is to determine the order of criminal procedure that ensures the effective application of the norms of The Criminal Law and the fair regulation of criminal legal relations without unjustified intervention in the life of a person (the Criminal Procedure Law hereinafter referred to as CPL 2005). It means that the very definition of the Criminal Procedure Law lays the basis for ensuring the human rights. From that point the Criminal Procedure Law reflects the fundamental principles serving as the basis for the entire criminal procedure system, one of them — ensuring of human rights with clearly stipulated attitude of the State in the criminal procedure area and, namely: the criminal proceedings are directed in compliance with internationally recognised human rights and not allowing unjustifiable criminal procedure obligation or disproportionate interference with person's life; the human rights can be ensured only if it is required by the public safety considerations; to apply guarantees related to deprivation of liberty. In further explanation of the CLP structure the authors point out that after the Criminal Procedure Law coming into force new chapters were introduced, evidencing the guarantee of human rights, and specifically: Chapter 11: “Special Investigative Actions” and new legal institute with authorities were stipulated in a circle of persons who are procedurally involved, i.e. officials who direct the criminal proceedings — investigating judges. (CPL, 2005).

Returning to the historical aspect, it is necessary to explain that on the 4th of May 1990 the Independence Declaration of the Republic of Latvia was adopted which restored the independence of the Republic of Latvia and indicated at sovereignty of legal provisions, including those pertaining to the criminal procedure. On the moment of restoration of the independence the Republic of Latvia had an applicable Criminal Code and special instructions stipulating, for example, procedure of operative activities, i.e. measures which are executed covertly and without awareness of the person against whom it is applied, and it clearly violated the person's rights guaranteed in the Constitution. The Criminal Procedure Law did not correspond to the requirements of the restored State, a democratic republic, and it meant that a new law was required to regulate the criminal procedure and to comply with the principles and goals of a democracy. We cannot omit the fact that on the 1st May 2004 the Republic of Latvia became one of full-fledged member states of the European Union therefore it was even more urgent to change the legal provisions, including the Criminal Code. Accession to the
system of the European Union member states obliged Latvia to create a regulatory framework that would fully meet the basic principles of a democratic state and would ensure protection of the human rights. It meant that the Criminal Procedure Law had to be created referring to those legal principles that provided comprehensive compliance with the human rights, conforming to the laws of the European Union, as well as cross-border cooperation. It must be noted that from 1990 to 2005 Latvia ratified approximately 50 international regulations, including approximately 50 international laws, including the European Convention on Human Rights or the European Convention for the Protection of Human Rights and Fundamental Freedoms adopted in 1950 and coming in force in 1953. Latvia ratified that document on the 27th of June 1997. By ratifying said law Latvia won several priorities in the field of the criminal procedure, including that any resident of Latvia, who believed that his or her procedural rights had been violated, was entitled to address the European Court of Human Rights with a respective claim.

3. INVESTIGATIVE JUDGE IN CRIMINAL PROCEDURE

Elaborating further on this topic, the authors move on to a division addressing those legal provisions, which function in the Criminal Procedure Law as of the 1st of October 2005 and which are deemed to be the main procedural measures to ensure the human rights. The Criminal Procedure Law consists of several chapters and each of them has been created in a certain sequence, if we are to talk about one procedural area whether the procedural order, taking procedural activities, specific of the investigative activities, procedural limitations, financial matters or the legal proceedings. Each of these chapters are independent, yet their operational principles are common in terms of system functioning. One of chapters where the new legal institute — investigating judges in the Criminal Procedure Law — is reflected is Chapter 3 — Officials who Perform Criminal Proceedings (CPL, 2005). The institute of investigating judges was included in a list of officials, and consequently it corresponds to those categories of procedural persons who perform and supervise a pre-trial investigation. On the basis of Section 40 of the CLP the investigating judge "shall be the judge whom the chairperson of the district (city) court has assigned, for a specific term in the cases and in accordance with the procedures laid down in the law, the control of the observance of human rights in criminal proceedings" (CPL, 2005). Thus the very definition mentions the essential nature of this institute — supervision of observance of the human rights. Analysing the functions of investigating judges the following must be mentioned, namely: to decide on application of compulsory measures, their amendment or cancellation; to decide on performing procedural actions in cases provided for by the law; to decide on the request of a person who has the right to defence on the exemption from payment for the assistance of an advocate. The Criminal Code did not envisage such
rights until the year of 2005 and said issues were decided by regular judges, and it, of course, prolonged the examination of the procedural measures in the pre-trial investigation, and a judge, due to the lack of time and other functions, was not always able to dwell into implementation and supervision of the procedural measures. Current situation shows that the mentioned update was useful and has really alleviated the work of the investigation and court. When talking about the mentioned functions of an investigating judge in context of ensuring the human rights, it must be noted that it is an investigating judge who usually decides on implementing the most severe procedural compulsory measure, a security measure — arrest. Section 271 of CPL stipulates that "Arrest is the deprivation of the liberty of a person that may be applied in the cases provided for by law to a suspect or an accused with a decision of an investigating judge, or a court ruling, before the entering into effect of a final ruling in concrete criminal proceedings, if there are grounds for placing under arrest.” (CPL, 2005). When applying a certain security measure — arrest, an investigating judge, in order to comprehensively guarantee the human rights, must strictly abide by the criteria for placing under arrest according to the criminal procedure, namely he or she must evaluate the nature of the committed offence and reasons of arrest, including to evaluate whether a person, while being free, would not commit a new criminal offence, would not disturb or avoid the pre-trial criminal procedure, court or enforcement of the judgement. On the basis of Section 274 of the Criminal Procedure Law an investigation judge shall decide on the application of arrest, i.e. Paragraph one of Section 274 of the Criminal Procedure Law stipulates that: “An investigating judge shall decide on the application of arrest in pre-trial proceedings and until commencement of trial in a court of first instance by examining a proposal of the person directing the proceedings, hearing the views of the relevant person, as well as examining case materials and assessing the reasons and grounds for placing under arrest” (CPL, 2005). Paragraph four of Section 274 of the Criminal Procedure Law stipulates decisions adopted by an investigating judge: “a refusal to apply arrest; a refusal to apply arrest, but a decision to apply house arrest; a refusal to apply arrest, but a decision to apply placement in a social correctional educational institute; a decision to apply arrest; a decision to apply arrest and to determine the search for a person” (CPL, 2005). Even though, considering the discussed issues an investigating judge may decide on both the application of security sum and its amount. An investigating judge directly supervises the procedure of application of the security measures, enforcement and one of the most important issues — terms for restriction of rights of the persons involved in criminal proceedings.

When evaluating the aforesaid, the authors conclude that involvement of an investigating judge as a legal institute implementing the function of supervision over criminal proceedings, plays a great role in area of observing the human rights,
because one of the basic principles of the criminal proceedings is ensuring a fair trial. The second, but not least important functional aspect of an investigating judge is substantiation to obtain criminal proceedings evidence. Said function pertains to the procedural control by using one of frequently used investigative actions, performed generally — a search. On the basis of Section 179 of the Criminal Procedure Law — “A search is an investigative action whose content is the search by force of premises, terrain, vehicles, and individual persons for the purpose of finding and removing the object being sought, if there are reasonable grounds to believe that the object being sought is located in the site of the search” (CPL, 2005). Section 180 of the Criminal Procedure Law stipulates that “A search shall be conducted with a decision of an investigating judge or a court decision and a decision based on a proposal of the person directing the proceedings and materials attached thereto” (CPL, 2005). When analysing the aforesaid, the authors point out that the investigating judge is the one who decides on compliance with the one of the most important provisions included in the core document of the State — the Constitution, namely a right to inviolability of the residence and said provision is included also in the basic principles of the criminal proceedings. By evaluating the materials of criminal proceedings and getting acquainted with the case in general, an investigating judge adopts a respective decision — whether to allow intervention in a person’s life, to take or not to take the procedural action — the search. Said decision can be contested and it guarantees also supervision of the very investigating judge. Statistics show that the search is one of the most widespread investigative actions and more than ten decisions about search on average are considered in the State every day. Said institute fully justifies its existence, because the quality of an investigative action, accuracy of application procedure and the speed have increased considerably, if compared to possibilities of application of the Criminal Code.

4. SPECIAL INVESTIGATIVE ACTIONS IN CRIMINAL PROCEDURE

The next issue concerns the second legal institute that the authors would like to discuss it in their paper, namely Chapter 11 of the CPL “Special investigative actions” (CPL, 2005).

“Special investigative actions are measures provided for in the Criminal Procedure Law of Latvia, which are implemented in proceedings regarding less severe, severe or particularly severe offences, on the basis of a decision of an investigating judge or prosecutor, in a way that its object (person against whom it is implemented) is not aware of it, in order to find out the conditions to be proved in a particular criminal proceedings, in cases when it cannot be achieved with other investigative action or it is essentially complicated” (Kavalieris, 2003). On the basis
of Section 1 of the Criminal Procedure Law “The purpose of the Criminal Procedure Law is to determine the order of criminal procedure that ensures the effective application of the norms of the Criminal Law and the fair regulation of criminal legal relations without unjustified intervention in the life of a person.” (CPL, 2005). And also Paragraph one of Section 210 of the Criminal Procedure Law stipulates the rules of special investigative actions: “The special investigative actions shall be performed if, in order to ascertain conditions to be proven in criminal proceedings, the acquisition of information regarding facts is necessary without informing the person involved in the criminal proceedings and the persons who could provide such information.” (CPL, 2005). The special investigative actions included in the criminal proceedings must be used as a particular proof, they have a power of evidence and guarantees provided by the Criminal Procedure Law. The professor of the Academy of Science of the Republic of Latvia, A. Kavalieris, suggests that “the only reason why it was necessary to include special investigative actions in the Criminal Procedure Law was the poor criminogenic situation in Latvia and necessity to detect a series or severe and very severe offences to hold persons criminally liable, a task often impossible to accomplish with conventional investigation methods” (Kavalieris 2003) The second aspect, which evidenced incorporation of such special investigative actions in the Criminal Procedure Law — compliance with the human rights that are integrated in certain basic principles of the Criminal Procedure Law. When the provision had to be incorporated in the law the law scientists and practitioners did not have a single opinion regarding ensuring the human rights, but they came to a single conclusion that those laws and regulations that were applicable in the territory of the Republic of Latvia, while the Criminal Procedure Law was being elaborated, could not provide any procedural protection in field of the human rights. The main function of special investigative actions is acquisition of evidence in a covert way, not letting the participants of the proceedings to know about it, without using conventional investigative actions, thus obtaining a certain evidence instead of information. By introducing an institute of special investigative actions it was possible to obtain evidence legally, applying covert methods to detect offences and prevent them and their potential crucial harm. Currently Section 215 of the Criminal Procedure Law stipulates the following measures called special investigative actions: control of legal correspondence; control of means of communication; control of data in an automated data processing system; control of the content of transmitted data; audio-control of a site or a person; video-control of a site; surveillance and tracking of a person; surveillance of an object; a special investigative experiment; the acquisition in a special manner of the samples necessary for a comparative study; control of a criminal activity. Special investigative actions performed are considered to be a direct evidence. Supervision of this legal institute is completely implemented by an investigating
judge, and it repeatedly confirms the authors’ statement regarding the systematic
nature of the criminal procedure, namely that one provision of the criminal
procedure follows from another and supplements the next, and it emphasizes an
ultimate compliance with the principles of criminal procedure and achieving of its
goal. Special investigative actions are investigative actions that may particularly
violate the human rights therefore a law within the framework of which these
provisions are applied must be concrete and clear. The Criminal Procedure Law was
created with this idea in mind. The Criminal Procedure Law stipulates that special
investigative actions must be taken only if data-evidence for the purpose of
investigating and detecting the offence cannot be obtained with conventional
investigative actions. By providing a substantiation for such actions to an
investigating judge, firstly, such necessity must be precisely determined, and,
secondly, one must prove that the investigating judge has taken all the necessary
steps in a criminal proceedings yet the result has not been achieved and covert
actions are required. When analysing the application of special investigative
actions, the authors assume that the investigation authorities in Latvia apply said
legal institute very actively and it shows a positive result in investigating and
detecting offences, particularly those that are severe and extremely severe. Of
course, the authors point out to problems in applying said provisions that actually
exist, because the Criminal Procedure Law indirectly points out at the goal,
possibilities and general guidelines of application of these provisions, and
consequently it results in filing incorrect requests to a court and rejection of such
requests thus delaying investigation and reducing the opportunities to get evidence.
The second problem at which the authors point out is a deeper one, because it
violates the human rights when interpreting the law. Said problem is connected with
a goal to obtain information or evidence. The authors conclude that it is not always
possible to distinguish between the two categories in practical work despite their
completely different meaning.

5. COMPENSATION FOR A DAMAGE

The authors further elaborate on another category in the Criminal Procedure
Law that undoubtedly speaks of human rights guarantees in criminal proceedings.
The State must guarantee protection or rights of every resident. One of such rights is
a guarantee that the violated rights of residents will be restored. If we look at the
provisions of the Criminal Procedure Law it means restoration of rights, which have
been violated through criminal offence. Indications at necessity for a state to ensure
reinstitution of residents’ rights are included in provisions of Article 8 of the
Universal Declaration of Human Rights binding on Latvia, too. This document has
a strong moral significance and it defines human needs and rights as basic
conditions for appropriate and successful development of each state. In order to
ensure the appropriate, a state may not include merely the principle of fair trial in the national laws. Any state must include appropriate and fair provisions also regarding other aspects related to this subject, including provisions that would ensure a right to appropriate compensation in case of unsubstantiated violation of rights. This chapter is included in provisions of the Criminal Procedure Law and Latvia has joined the victim support directive the provisions of which have been incorporated in the Criminal Procedure Law. One aspect of such type of protection is compensation for damage to the victim, completely covered by Division 6 of the Criminal Procedure Law: “Financial Matters in Criminal Proceedings” (CLP, 2005), namely Chapter 26 stipulates the harm caused by a criminal offence and ensuring a compensation for such damage. Section 350 of the Criminal Procedure Law stipulates that “Compensation is payment specified in monetary terms that a person who has caused harm with a criminal offence pays to a victim as atonement for moral injury, physical suffering, or financial loss” (CPL, 2005). In context of the national legislation in area of the criminal law we should look at the law On State Compensation to Victims that came in force on the 20th of June 2006. This law is deemed to be a regulatory framework in this particular area of law and is one of normative regulators of the mentioned reinstitution regarding the rights of recognized victims in started of finished criminal proceedings in Latvia to receive state compensation for moral injury, physical suffering or financial loss resulting from intentional criminal offence. Of course, this issue has raised many discussions regarding the scope of compensation — whether five monthly salaries would be the optimum amount that the state could pay as a compensation for a victim. Regardless of this fact and, possibly, of insufficient amount in terms of money, the authors believe that this division of the Criminal Procedure Law directly determines the approval of human rights guarantee — a possibility to receive remuneration as a compensation for the harm caused.

6. CONCLUSIONS

When drawing a conclusion from the analysis of the Criminal Procedure Law, the authors payed attention not only to the officials who direct the criminal proceedings and who must implement the criminal procedure's purpose, but also to the way how the evidence is obtained, regarding the persons jointly involved in this guarantee.

Involvement of an investigating judge as a legal institute implementing the function of supervision over criminal proceedings, plays a great role in area of observing the human rights, because one of the basic principles of the criminal proceedings is ensuring a fair trial.

By introducing the institute of special investigative actions the suspects were given the rights to find out (in the trial phase) what secret actions were used in
the criminal procedure to prove their guilt, so this was also a significant benefit for the rights of a fair trial.

Authors conclude that the inclusion of a state-guaranteed compensation in the Criminal procedure law was an important step that was long needed to be taken to guarantee the rights of the victims.

In the end of this paper the authors conclude that all three areas included in the criminal procedure, elaborated on earlier in this text, undoubtedly is a step to guarantee the human rights, because all three legal institutes protect the fundamental human rights and values at national and international scale.

7. REFERENCES
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Criminal Procedure Law (Latvia), 1 April 1999;
THE DIFFERENCE BETWEEN
LEGAL ENGLISH AND PLAIN ENGLISH

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Abstract
Legal English, the language used by lawyers, judges, legislators and other professionals who work in the field of law, is often referred to as ‘legalese’. It’s lexical and grammatical differences from Plain English language makes it to be known as a very complexed style of language. Some of the specific characteristics that make this complexity are the use of archaic words, the use of the modal auxiliary ‘shall’, complex prepositional phrases, the use of the passive tense, long sentences instead of simple and short sentences that are used in Plain English, etc.

This study will give a review of the differences between Legal English and Plain English. It will address the main characteristics, which make this language to be characterized as a fossilized and complex style of language difficult to be understood by lay audience. It will also look at some of the proposed changes suggested by the Plain language movement whose objective is to modernize the legal language.

Key words: Legal English language; Plain English language; Plain language movement; difference; legalese

1. INTRODUCTION
Legal English has been used by legal professionals in the English speaking countries; The United Kingdom, The United States of America, Australia, Canada and New Zealand, which share the same common law traditions.

However, English as lingua franca became the international language of business, technology, commerce it also became the legal language within the European Union.

Legal English is well known for its complexity, a language that is very difficult to be understood by ordinary people is a result of its history. It could be said that the English language has begun around 450 A.D., when the Germanic invaders Angles, Jutes, Saxons and Frisians arrived from the Continent. The invaders spoke a very similar language, which gave the birth to the language known as Anglo-Saxon or Old English. They did not have a developed legal system but they used legal vocabulary some of which are used even today. Words such as guilt,
manslaughter, murder, thief, witness are examples of Old English. In 1066 William, Duke of Normandy, defeated the Anglo-Saxons and became king of England. The legal documents were written in Latin and later on it was replaced by French as a dominant legal language and was used in court proceedings. In 1362 under the Statute of Pleading, English became the language of law with a lot of Latin and French vocabulary, terms and phrases even grammatical characteristics.

2. CHARACTERISTICS OF LEGAL ENGLISH

Legal English is specific for the use of archaic words, pro-forms (the aforementioned) pronominal adverbs (hereby-in this way, by this, hereto- to this, herein-in this document, hereof- of this, hereafter –after this, hereinafter –after this, herewith- with this), which are not used in ordinary English. These forms are used in drafting legal documents, case reports, and legislation, court documentation and contracts as a way of avoiding the repetition of names of things in the document, to refer to the other parts of the same text or to related contexts, for example, the parties hereto instead of to parties to this contract.

Words such as: convict, detention, jury, omission, affirm, appellate, offence, injury, negotiate and many others are of Latin origin used in plain English and legal English as well.

Due to the Latin influence in the field of law, Latin words and phrases such as in personam, in rem, corpus delicti, ad hoc, bona fide, de jure, de facto, locus standi, mala in se, prima facie, inter alia, are used even today in legal drafting with no changes in the pronunciation and writing, The Court ruled that the applicant had no locus standi in the proceedings..., Section 76 of the Civil Proceedings Act provides that the court ex officio assesses whether the parties ……and so on. Latin has been considered as the language of law so it is not used only in the English legal language by the legal professionals in drafting legal documents but also legal professionals of non-English speaking countries use it for the purpose of writing legal documents.

The French language as a dominant language in the legal profession was used during the medieval period by English legal professionals so a lot of words were adopted and integrated in the English language, for example the words judge, judgement, jury, justice, attorney, bar, defendant, verdict, summons, disclose, plea, evidence, party. Not only words have been borrowed and adopted in the English language but also the French prefixes -in,- im ,-il,- ir, together with the French word, for example, illegal, impossible, irresponsible, incapacity, illegitimate, illiterate and so on.
2.1. Grammatical characteristics

The influence of the French language could also be noticed in the use of a very unusual characteristic for the English language and it is used only in the English legal language where the adjective follows the noun malice aforethought, attorney general, court martial and so on.

The use of legal doublets is a result of the usage of French and English synonyms in order to describe the same phenomenon, freedom and liberty, terms and conditions, rules and regulations, provisions and stipulations, larceny and theft, null and void, aid and abet, will and testament, duties and responsibilities, deem and consider and so on.

Another characteristic of the legal English is the alliteration, which means that the words begin with the same sound such as aid and abet, save and sound, each and every. Alliteration makes phrases easier to read and to remember.

The French influence has left traces in coining new words by using the suffix –ee, for example, offeree, trustee, mortgagee, and employee.

The use of the passive voice instead of active voice is another characteristic of the legal language, “the defendant was found guilty of manslaughter.”, ”the accused was caught stealing ....” The passive voice is used in order not to mention the doer of the action.

The use of the modal verb shall in plain English expresses future but in legal English it is used to express duty, obligation “The jury shall....”, promises and declarations “The court shall declare...”. “If a party concerned does not have the requisite standing and if such deficiency is repairable, the court shall invite....”. The negative form is used to express prohibition or that something is not allowed, The Convention shall not affect....”

The French influence could be noticed in the unusual sentence word order “the provisions for termination hereinafter appearing or will at the cost of the borrower forthwith comply with the same”

Using the present simple although it refers to the future is very common in the legal English, “the company agrees to pay the sum of .... “, instead of “the company will agree to pay the sum of ....”

The English legal language is characterized as complex because it uses long complex sentences with clauses that make them even more complex, for example, Section 184 of the Act provides that an individual in possession of a property, whose possession has been unlawfully disturbed or appropriated, is entitled to request the court to establish the disturbance or the deprivation, to order reinstatement of the previous state of affairs and to prescribe any such further or similar disturbance or deprivation. Using complex phrases such as at slow speed instead of slowly; subsequent to instead of after and so on. Adverbial phrases are commonly used in legal English, for example, in accordance with, (In accordance
with section 185 of the Act a person in indirect possession...), with regard to, for the purpose of and so on.

Another characteristic of the legal style is the use of impersonal constructions in order to avoid using first and second person singular (I and you); personal pronouns are not used once the noun has been used, if there is need for a pronoun to be used then the noun is used again instead of a pronoun (The defendant promises that the defendant will appear in court when ordered to do so.)

In semantics every technical term has its meaning and cannot be substituted with another ordinary English term, for example, summons cannot be substituted with the word ticket. In the English language words could have more than one meaning but when used in the legal language it can have only one meaning, for example, the word bill in the ordinary language has more meanings such as, an account for goods sold or services rendered, a poster, a piece of paper money, a beak and so on but in legal English it means the draft of the law. The word action in plain English has a number of meanings such as: the process of doing, acting, combat in war and so on but in legal language it means a lawsuit.

Consideration, in plain English means considering, deliberation but in legal terminology, is what one party to a contract will get from the other party in return for performing contract obligations. The use of ordinary words with special meaning in the legal language is what makes it difficult to be understood by ordinary people. The following example, given at the beginning of Tiersma’s The Plain English Movement shows that ordinary, not well educated people do not understand the legal terminology.

Judge: The charge here is theft of frozen chickens. Are you the defendant?

Defendant: No sir, I’m the guy who stole the chickens.

2.2. The Plain language movement

The main objective of the Plain language movement is to bring some changes in the legal language so it could be understood by lay audience, people who are not well educated, people who have not taken a course in law, especially in prescriptive texts such as laws or contracts. Contracts should be written in an understandable language because English is the lingua franca of international trade and commerce. Some of the changes that have been proposed by the Plain language movement are: to eliminate archaic words, so of this could be used instead of hereof or the above mentioned instead of the aforementioned; to eliminate Latin words and expressions; replacing old terminology such as malice aforethought,( The murder was committed with certain intent or it was planned instead of The murder was committed with malice aforethought); reducing the frequent use of the passive voice and replace it with active voice; reducing nominalization so instead of enjoying the right of the possession of the property the
active voice/verb phrase could be used *enjoys the right of the possession of the property*; replacing the modal *shall* with *must* or the semi modal *is/are to* construction, for example, *Compensation is to be given to the injured party instead of Compensation shall be given to the injured party*; the text should be written in gender-neutral; using shorter sentences instead of long complex sentences.

The Plain language movement began during the 1970’s in the United States of America and soon spread in Canada and United Kingdom. It is interesting to note that it was in Australia and New Zealand that the proposals for modernizing legislative texts were first accepted by the Offices of Parliamentary Counsel in the late 1980’s. In the USA, although the Plain language movement was first introduced, the progress in changes was rather slow and in the United Kingdom not much interest was shown for the proposals. In 1999 the UK Civil Procedure Rules were written in Plain language and constituted an attempt to streamline civil litigation (Asprey 2010: 79).

In the United Nations and The European Union, where English is one of the official languages there has been little interest for modernizing the legal drafting. In his study Williams., 2011:146) points out that to his best knowledge the only clear indication that the United Nations favors Plain language – at least in English - can be found in the ‘Plain Language Version’ of some of its important Treatises and Conventions. The example below, given by Williams. C., 2011:147 contains the Plain language versions of articles 1, 3 and 4 of the Universal Declaration of Human Rights of 1948, followed by the original texts of the three articles:

(7) 1. When children are born, they are free and each should be treated in the same way. They have reason and conscience and should act towards one another in a friendly manner.

3. You have the right to live, and to live in freedom and safety.

4. Nobody has the right to treat you as his or her slave and you should not make anyone your slave.

Article 1. All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in spirit of brotherhood.

Article 3. Everyone has the right to life, liberty and security of person.

Article 4. No one shall be held in slavery or servitude; slavery and the slave trade shall be prohibited in all their forms.

As it could be seen from the given examples the Plain English Version is simpler and is written so it could be understood by ordinary people.
3. CONCLUSION

The Legal English language and the Plain English language differ in many aspects and as Tiersma, P. (1999: 3) has pointed out that the interesting thing about the proposals of the Plain language movement is that it recognizes quite explicitly that legal language and ordinary English are in a sense, two different languages.

There have been some positive changes in legal drafting and in the use of some terms such as subpoena is replaced by a witness summons, a writ is now a claim form, in camera hearing is now a private hearing, and the term plaintiff is replaced by claimant.

Some scholars argue that plain language is better to be used in some areas of the law, such as in contract law, criminal law, family law, consumer protection law, employment law because people could understand their duties and obligations. For example, in contract law, the contractor would understand the contract that he or she is signing if it is written in ordinary English and would be aware of the consequences for breaching the contract. On the other hand, lawyers often argue that if the law were stated in ordinary English then important nuances would be lost.

Anyhow, changes have been made and legal English drafting is getting on the way to be modernized and understood by ordinary people but it takes time for changes to be accepted.

4. REFERENCES


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AN OVERVIEW OF THE PROTECTION OF HUMAN RIGHTS IN SLOVENIA - NOT EVEN A SINGLE VIOLATION IS ACCEPTABLE!

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Abstract
The key duty of each government is to enable all people to enjoy human rights and freedoms. Despite many positive changes Slovenia still has to change much in this area. The analysis of accessible reports and the data from the web page of the Ombudsman, the judicial statistics, the European Court of Human Rights and the US State Department with the focus on the year 2016, has shown the following most significant human rights problems: ensuring a humane treatment of the thousands of migrants and asylum seekers, trial delays, overcrowded prisons, delays in resolving property restitution cases, press self-censorship, defamation by journalists, political corruption, domestic violence, human trafficking (including for forced labour), discrimination against lesbian, gay, bisexual, transgender, and intersex persons; ineffective sanctions in cases of workers' rights violations, child labour, and ineffective enforcement of fair labour standards. The government and the Ministry of Justice are aware that there is still a lot of work ahead of them. Furthermore, the reports also mention the novelty brought about by legislative amendments that will be implemented in June next year – establishment of the Human Rights Council as the advisory body of the Ombudsman that will be composed of representatives of civil society and science and two representatives of the government. According to the Ombudsman, the Human Rights Council will be set up at the beginning of 2019, in line with the aforementioned amendments. Respecting human rights is an unattainable ideal since not a single violation of human rights is acceptable.

Keywords: human rights and freedoms, legislation, ombudsman, European Court of Human Rights, US State Department, judicial statistics

1. INTRODUCTION
Respect for human rights and fundamental freedoms as a fundamental social value comes from the Universal Declaration of Human Rights that was adopted by the UN General Assembly Resolution (UNSC) No. 217A (III) of 10 December 1948. The declaration represents the common ideal of all peoples and
nations from different cultures. Universal human rights instruments are the most important human rights documents, including the International Covenant on Political and Civil Rights with both Optional Protocols and the International Covenant on Economic, Social and Cultural Rights. All of these documents together form the International Human Rights Charter which forms the basis of the Human Rights Corps. The main purpose is for all social bodies and individuals to develop and gradually ensure universal recognition and respect of human rights through national and international measures. All human rights are equally important and are not classifiable. The duty of a state is to promote and protect all human rights, regardless of their different historical, cultural or religious backgrounds. Human rights, democracy and the rule of law are fundamental values of the European Union (hereinafter: EU), and Slovenia is obliged to respect them. The EU policy is based on the universality and indivisibility of human rights and respect for them within its borders, as well as in its relations with other countries, and the EU does not interfere with the competence of the governments of its Member States. The judicial practice of the European Court of Human Rights (hereinafter: ECHR) has also greatly contributed to the respect of human rights in the EU.

2. THE OMBUDSMAN IN SLOVENIA

The institution of the Ombudsman was introduced into the Slovenian constitutional system with the new Constitution of the Republic of Slovenia adopted in December in 1991. The Ombudsman is defined in Article 159 of the Constitution of the Republic of Slovenia which states that the protection of human rights and fundamental freedoms in relation to state bodies, self-government and holders of public authorizations is determined by establishing the Human Rights Ombudsman (Constitution of the Republic of Slovenia 1991). The Ombudsman's predecessor, the Council for the Protection of Human Rights and Fundamental Freedoms (hereinafter: the Council), was established in 1988, at a time when awareness of the role and importance of human rights in Slovenia was rising. Mostly, the Council acted on a more general level and, through public statements, warned of human rights violations in Slovenia and Yugoslavia. In the final phase, by the end of 1994, when the Ombudsman began to work, the Council put more emphasis on addressing individual initiatives (History of the Institution). In December 1993 the National Assembly of the Republic of Slovenia adopted the Human Rights Ombudsman Act which defines the Ombudsman’s competences and powers and provides the legal basis for the establishment of the institution. The Ombudsman officially started working on 1 January 1995. On that date the Council for the Protection of Human Rights and Fundamental Freedoms and the Law on the Council for the Protection of Human Rights and Fundamental Freedoms ceased to operate. The Ombudsman, in accordance with the law, took over the Council’s archives and affairs. The
Ombudsman, as defined by the law, is an institution formed according to the classic model of the national parliamentary ombudsman with wide powers towards state and other bodies exercising public powers. This model was taken over by most Western European countries. With the tasks and powers, it has, it is an additional means of extrajudicial protection of the rights of individuals. The Ombudsman's involvement is informal and excludes the power of decision making, therefore its power is also based on cooperation with the public. The Ombudsman does not use the argument of power, but the power of the argument. Arguments are presented through various ways of communicating with the public. At the national level the Ombudsman Institution spread to around 110 countries by 2001 (History of the Institution).


Regarding the violation of constitutional rights, the report of the Ombudsman showed the following situation (Annual Report of the Ombudsman for 2016 207):

Table 1: Constitutional rights (Annual Report of the Human Rights Ombudsman of the Republic of Slovenia for 2016)

<table>
<thead>
<tr>
<th>Scope of work</th>
<th>Discussed affairs</th>
<th>Index 16/15</th>
<th>Solved cases</th>
<th>No. of founded cases</th>
<th>Percentage of justified cases</th>
</tr>
</thead>
<tbody>
<tr>
<td>Constitutional rights</td>
<td>190</td>
<td>71,1</td>
<td>127</td>
<td>16</td>
<td>12,6</td>
</tr>
<tr>
<td>Freedom of conscience</td>
<td>6</td>
<td>116,7</td>
<td>6</td>
<td>1</td>
<td>16,7</td>
</tr>
<tr>
<td>Ethics of public discourse</td>
<td>87</td>
<td>48,3</td>
<td>42</td>
<td>7</td>
<td>16,7</td>
</tr>
<tr>
<td>Assembly and association</td>
<td>8</td>
<td>137,5</td>
<td>11</td>
<td>2</td>
<td>18,2</td>
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<tr>
<td>Security services</td>
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<td>0</td>
<td>0</td>
<td>0</td>
<td>-</td>
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<tr>
<td>Right to vote</td>
<td>4</td>
<td>200</td>
<td>8</td>
<td>4</td>
<td>50</td>
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<td>Personal data protection</td>
<td>61</td>
<td>82</td>
<td>46</td>
<td>2</td>
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<tr>
<td>Access to information of public character</td>
<td>3</td>
<td>166,7</td>
<td>4</td>
<td>0</td>
<td>-</td>
</tr>
<tr>
<td>Other</td>
<td>20</td>
<td>60</td>
<td>10</td>
<td>0</td>
<td>-</td>
</tr>
</tbody>
</table>

In 2016 there were a total of 55 less cases than in the year before in the field of constitutional rights. The biggest decline was in cases dealing with ethics of
public discourse, i.e. 45, which is more than half of the cases dealt with in 2015 (Annual Report of the Human Rights Ombudsman of the Republic of Slovenia for 2016 2017). This phenomenon was already encountered in the Annual Report of the Human Rights Ombudsman of the Republic of Slovenia for 2014 (2015) when more than a 50% decline was detected while in 2015 the number of such initiatives was no longer reduced according to the 2015 Annual Report of the Ombudsman (2016). The remaining numbers shown in the above table will not be specifically commented on, as they quickly show that these figures, despite a large index change, do not refer to any drastic changes. For example, if one considers voting right cases there were once again more cases in 2016 than in 2015, but there were only eight cases in 2016 in total. Similarly, in the field of access to information of public character almost twice as many cases than in 2015 was dealt with, but still there were only five cases in 2016 in total. The proportion of well-founded cases among the resolved cases for 2016 is considerably higher than last year, i.e. 12.6 while it was 10.3 in 2015 (Annual Report of the Human Rights Ombudsman of the Republic of Slovenia for 2016 2017).

2.2. List of recommendations by the Ombudsman and responses from competent authorities

The following are the recommendations of the Ombudsman for 2016, including subsections, and in some cases including examples. The Government of the Republic of Slovenia has already provided answers to some recommendations. Recommendations by the Ombudsman (Annual Report of the Human Rights Ombudsman of the Republic of Slovenia for 2016 2017):
- to adopt systemic and other measures to enforce the principle of separation between the state and religion;
- to avoid inciting hatred or intolerance on the basis of any personal circumstance, and in case of such cases, promptly react and condemn them;
- Politicians should adopt an ethical codex and form an arbitration tribunal that would respond to individual cases of hate speech in politics;
- a clear sanction of interventions in one’s honour and reputation;
- more effective implementation of voting rights;
- to adopt regulatory amendments which will determine the processing of personal data with the consent of individuals in accordance with the law on the Personal Data Protection Act;
- to provide conditions for the actual operation of the Advocate of the Principle of Equality
- systematically collect and analyse the information of individual ministries on the implementation of the measures set out in the Plan of Measures of the Government of the Republic of Slovenia for the Implementation of the Regulations in the Field
of Bilingualism 2015–2018, while also ensuring the availability of electronic forms for submitting online applications in minority languages; to prepare amendments that will eliminate discrimination in the performance of transport of students with impaired movement, i.e. disabled students; to take into account the observations / concerns of external experts regarding the preparation of building a new prison in Ljubljana; a more precise arrangement of the permits for visiting remand prisoners is needed; to provide every imprisoned person with possibility of daily showering; the establishment of adjusted rooms for convicts who need additional assistance in meeting their basic needs in the form of care or social care at the time they serve the sentence of imprisonment because of age, illness or disability as soon as possible; the early adoption of a protocol between the Office for the Enforcement of Criminal Sanctions and the Ministry of Labour, Family, Social Affairs and Equal Opportunities relating to housing in elderly homes for those convicts who need more intensive and demanding care; consistent compliance with the obligation to enable access to a doctor to imprisoned persons at all times; to reflect on the suitability of the current arrangement of compulsory treatment measures; the working group for the establishment of a specialized unit for the treatment of persons with the most serious mental disorders should start working as soon as possible; setting up a special (closed) department for children and adolescents with mental health problems in need of hospitalization; a comprehensive analysis of the current elaboration of pilot projects and a vision for the future, and renovation reform of the educational program and the necessary systemic changes, the preparation of systemic solutions for the proper accommodation of unaccompanied minors; to improve the management and the quality of the trial irrespective of the field of the case and the consistent observation of fundamental constitutional guarantees of a fair trial and at the same time encouraging state prosecutors to work diligently, promptly and professionally; the same principle should also lead to the regulation of the appeal procedure concerning the work of police officers of the Special Department; reiterated its recommendation that the Ministry of the Interior and the Police continue their efforts to ensure consistent respect of human rights in police procedures (the right to an advocate, the time of detention due to the care of domestic and personal inquiries); to adopt an appropriate strategy and measures with regard to the general problem of municipal roads; the regulation of the right to special tax relief for taxpayers for the maintenance of the family members; prepare an amendment to the Personal Income Tax Act to supplement the list of income arising from compulsory pension, disability and health insurance on which personal income tax is not paid, with the reference to the
survivor's pension, the recipient of which is a child under the age of 18, or 26 if she/he is a full-time student;
- protection of real estate buyers with the adoption of measures which would enable them inspection of the related records of land register status and actual status and administrative instruments related to the object of intended purchase prior the purchase decision;
- unification of criteria for determining sufficient means of subsistence for different categories of foreigners;
- preparation of a regulation relating to waste emission to the environment; defining priority criteria for the work of inspection services. At the same time, the Government of the Republic of Slovenia should provide the Inspectorate of the Republic Slovenia of the Environment and Spatial Planning with an efficient management of inspection procedures; preparation of systemic solutions for acquiring authorization for measuring emissions into the air, and ensure independent monitoring and financing of measurements;
- the amendment of the Housing Act, which will define the obligation of municipalities to provide a certain number of accommodation units of an adequate standard of living and to publish, at specified intervals, a call for the allocation of non-profit housing; thorough analysis of management of multi-dwelling buildings, constant supervision of the work of managers in multi-dwelling buildings, provide additional human resources for the Housing Inspection Service;
- preparation of amendments to the Fiscal Balance Act thus ensuring a transparent, efficient and prompt system of supervision of salary payments, the Government of the RS should ensure that procedures in all supervisory institutions take place within reasonable time limits; to persons who are being trained in a rehabilitation workplace or for a chosen profession, (at least) the costs for a snack should be reimbursed;
- The Pension and Disability Insurance Institute of Slovenia should conduct a comprehensive analysis and assessment of the work of experts; publish the composition of the working groups, their basic tasks and deadlines for the preparation of expert bases; in cooperation with the Information Commissioner, the Ministry of Health should study the possibility regarding the Patients' Rights Act to release doctors from their obligation to professional secrecy when the patient has already disclosed sensitive information about his/her state of health to the public; the regulation of the emergency paedo-psychiatry service should be examined which should also provide the appropriate triage; in 2017, the legal regulation of the provision of psychotherapeutic services should be prepared; the possibility of a price breakdown of health services; the rights dependent on the patient's residence should be regulated by law; regulate the repayment of sick leave compensation; the new Health Care and Health Insurance Act should fix the same compensation of
wages or lost income for blood donors and donors of hematopoietic stem cells;
- The Ministry of Labour, Family, Social Affairs and Equal Opportunities should prepare a program to eliminate backlogs regarding resolution of complaints of social care rights, and publish reports on its implementation on a quarterly basis. In cooperation with the Ministry of Justice it should examine the possibility of exercising social rights to be implemented according to specific regulations; all state bodies that prepare regulatory acts should strictly respect the Resolution on Legislative Regulation, and the reasons for possible exemptions should be specifically justified in the documentation that is an integral part of the proposal for a regulation; the National Institute of Public Health should, as soon as possible, develop standards and norms for nutrition in institutional care;

- The Ombudsman requests the Ministry of Labour, Family, Social Affairs and Equal Opportunities to immediately withdraw the proposed amendment to the Labour Market Regulation Act (2017) which specifies that missing the registration deadline for the unemployment register means ineligibility and to amend Article 63 of the Act in such a way that an individual will not lose the right to unemployment benefit due to the fact that he/she did not file a lawsuit on his illegality within 30 days after being served the notice on the termination of their employment contract if the violation or unlawfulness of the termination of employment was discovered at a later time;
- The Government of the RS should, without delay, prepare an analysis of the possible consequences of the ratification of the third Optional Protocol to the Convention on the Rights of the Child (1989) and, on this basis, prepare a draft law on ratification or the necessary legal changes that will allow the ratification of the Protocol; the Ministry of Education, Science and Sport should ensure a prompt preparation of tailored textbooks and workbooks for blind and partially sighted school children and explore the possibility of preparing adequate dietary lunches for students with severe allergies to a particular type of food or its ingredient in schools; and prepare a unified compulsory subject as part of the educational program that will enable children to use modern communication technologies safely.


Partially implemented or unimplemented recommendations are listed as follows:
- Adoption of appropriate measures for the accommodation of persons in a secured department - partially implemented;
- The ratification of the third Optional Protocol to the Convention on the Rights of the Child is being coordinated between different ministries.
- The regulation of the right to a special tax deduction for the maintenance of a family member is conditional, since the adult child is obliged to sustain the parents in accordance with his/her abilities only if parents do not have sufficient means of living and cannot obtain them.

- Concerning the adoption of systemic and other measures to enforce the principle of separation between the state and the religious community, sectoral legislation prohibits the exercise of confessional activities in public kindergartens and schools.

- Possibility of adjusting diet due to allergies: the area is extremely demanding and on the verge of performance and financial capabilities. It would be necessary to consider a complex change in the whole system of organized school meals that would be comparable to those in other developed European countries.

- Electoral legislation is inefficient for voters who were deprived of their freedom.

- With regard to the provision of witnesses, the Police proposed that in addition to reimbursement of witness expenses, the Police should also provide solitary witnesses for house searches.

- Due to the need for additional inspectors, the initiative was sent to the Ministry of Public Administration for a larger number of employees.

- The issue of permission to visit detainees under the Criminal Procedure Act did not receive the required absolute majority.

- Daily shower of prisoners: According to the findings of the Ombudsman, the latter was not enabled in Celje prison, Murska Sobota and Novo mesto prison.

3. HUMAN RIGHTS IN SLOVENIA - A VIEW FROM ABROAD

Every year the U.S. Department of State issues Country Reports on Human Rights Practices which also covers Slovenia. The following are the main areas where, in their view, the aspect of respecting human rights is partly or completely defined as problematic (Country Reports on Human Rights Practices for 2016 2017):

- Limited work or recreation opportunities for some prisoners.

- Occasional delays in judicial proceedings due to overburdening and lack of administrative support although the international comparison of the effectiveness of the judiciary in the area of civil, commercial, civil and administrative matters shows that the number of pending cases in Slovenia is decreasing and has been halved over the past five years, while the expected times for resolving cases have been shortened (The 2017 EU Scoreboard 2017).

- In the context of civil legal proceedings and remedies, several confiscated properties seemed to be untouchable due to political influence of the parties.
Freedom of Speech and Press: The Slovenian Association of Journalists and Media Analysts found that due to reduced protection for journalists and economic pressure some journalists practice self-censorship in order to maintain their permanent employment.

The government implemented an effective and humane transit of thousands of migrants and asylum seekers, but in February 2016, a representative of the United Nations High Commissioner for Refugees (UNHCR) expressed concern about the suitability of the winter tent accommodation at the main migration centre on the border with Austria.

Asylum status: the sectoral law provides the status of asylum or refugee, and the government established a system for providing protection to refugees. On March 9 2016, the Schengen zone border control was restored, thus effectively closing the "Balkan path" and ending irregular migration, which enabled the transit of potential refugees from Croatia to Austria. The estimation is that 97,990 migrants crossed the country between 1 January and 9 March 2016. On March 10 2016, the government approved an EU plan for the resettlement of 567 refugees.

The Government of the Republic of Slovenia provided subsidiary protection to individuals who cannot be identified as refugees and has provided it to about 24 persons since 31 October 2015.

Government corruption: According to the survey from April 2016, the public's view was that bribery and corruption were a serious problem. The criminal justice system continued its efforts to detect, investigate, prosecute and decide on cases of high-level corruption, but there were not adequate enforcement mechanisms, and adequate funding.

Discrimination, social abuse and women trafficking: SOS Helpline, a non-governmental organization, estimated that one in seven women was raped during her lifetime. Police have been actively investigating allegations of rape and prosecuting the offenders. Unfortunately, only a small percentage of victims of rape seek help or counselling since they fear a negative impact on themselves and their children.

Child abuse: in the first half of 2016 there were 695 cases of domestic violence and 268 cases of parental negligence and child abuse according to law enforcement authorities. There were 10 crisis centres for young people that together received 86 children.

Illegality of Roma settlements remain the biggest obstacle in providing the Roma with access to adequate housing, water and sanitation.

Sexual orientation and gender identity: While the law prohibits discrimination based on sexual orientation, discrimination in society was widespread. According to the LGBT NGOs, 49% of individuals belonging to LGBT community have experienced violence or discrimination on the basis of their sexual
orientation at least once; about 44 per cent of violence or bullying happened in schools.

- Workers' rights: Disabled persons, minors and migrant workers are particularly vulnerable to illegal work, which would necessarily require an increase in the number of inspectors.

4. STATUS OF SLOVENIA AT THE EUROPEAN COURT OF HUMAN RIGHTS (ECHR)

The parties who, after a constitutional complaint (still) consider that their human rights have been violated as stipulated by the European Convention on Human Rights, also have the possibility to initiate proceedings against the state at the ECHR. The following table shows the number of complaints and judgments since 1999.


<table>
<thead>
<tr>
<th>Year</th>
<th>Nr. of complaints</th>
<th>Nr. of judgements</th>
</tr>
</thead>
<tbody>
<tr>
<td>1999</td>
<td>86</td>
<td>0</td>
</tr>
<tr>
<td>2000</td>
<td>55</td>
<td>2</td>
</tr>
<tr>
<td>2001</td>
<td>206</td>
<td>1</td>
</tr>
<tr>
<td>2002</td>
<td>270</td>
<td>1</td>
</tr>
<tr>
<td>2003</td>
<td>251</td>
<td>0</td>
</tr>
<tr>
<td>2004</td>
<td>271</td>
<td>8</td>
</tr>
<tr>
<td>2005</td>
<td>3471</td>
<td>1</td>
</tr>
<tr>
<td>2006</td>
<td>1340</td>
<td>189</td>
</tr>
<tr>
<td>2007</td>
<td>1012</td>
<td>15</td>
</tr>
<tr>
<td>2008</td>
<td>1353</td>
<td>9</td>
</tr>
<tr>
<td>2009</td>
<td>598</td>
<td>8</td>
</tr>
<tr>
<td>2010</td>
<td>837</td>
<td>6</td>
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<td>426</td>
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<td>14</td>
</tr>
<tr>
<td>2016</td>
<td>239</td>
<td>2</td>
</tr>
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</table>

The largest share of infringements of cases is from the period between 2006 and 2008 and is related to the violation of the right to a trial within a reasonable time. Although the number of complaints per 10,000 inhabitants is decreasing it still exceeds the average of the Member States of the Council of Europe (Annual Report on the Efficiency and Success of Courts 2016 2017, Annual Report 2016 of the European Court of Human Rights 2017).
5. CONCLUSION

The World Human Rights Day represents the day of the implementation of the Universal Declaration of Human Rights which represents a key document for every state to enable its people to enjoy inalienable rights and freedoms. Full respect of human rights is a prerequisite for any democratic society, for sustainable development, security and long-lasting peace. Despite many positive changes Slovenia still has to change a lot in this area. In the past the biggest problem was to ensure a humane treatment of the thousands of migrants and asylum seekers, (there are still) delays in the trial, overcrowded prisons, delays in resolving property restitution cases, press self-censorship, defamation by journalists, political corruption, domestic violence, human trafficking (including for forced labour), discrimination against lesbian, gay, bisexual, transgender, and intersex persons; ineffective sanctions in cases of workers’ rights violations, child labour, and ineffective enforcement of fair labour standards. The Human Rights Ombudsman as well as foreign authorities exposed these issues. At the same time, individual initiatives are invaluable, emphasized the Ombudsman, as she also mentioned a novelty that will be introduced by the legislative amendments to the Human Rights Act and implemented in June next year. These amendments were presented at the end of 2017 at the event Challenges for the Protection of Human Rights. One of these is the establishment of the Human Rights Council as the advisory body of the Ombudsman that will be composed of representatives of civil society and science and two representatives of the government, while there will be one representative from the Advocate of the Principle of Equality, the Information Commissioner, the National Assembly and the National Council. The Ombudsman hopes that the Council will open important issues. Further, the Council will also deal with the promotion, research and education of the public on human rights, which will surely lead to greater public awareness, and perhaps to more initiatives and critical thinking. The latter is what allows the fulfilment of the ideal, i.e. a full respect of human rights.

6. REFERENCES


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WOMEN’S BODY: CONTROLLING IT IN THE NAME OF THE NATION

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Abstract
The right to abortion has been a topic that has been widely discussed and still, today continues to be a contested issue whenever it is brought up. Feminists connect the attitude towards abortion with the different gender roles defined by the societies and the place that women have according to these societies given roles. Controlling the women’s body and the sexuality of both men and women in the name of the nation dates since the 18th century. It has been widely used in the process of nation-building and nationalism and continues to be a tool for nation-building in the 21st century. The rise of the right-wing parties in Europe in the recent years has been characterized with nationalism, with politics based on tradition and firmly against abortion.

This paper aims to analyze the politics of the right-wing government while it was in power in Republic of Macedonia, more precisely of the new law restricting abortion and the law promoting birth, in light of the nation-building theories, controlling the sexuality and the rights of women, as politics of a right-wing party which is based on “traditional values”.

Key words: abortion, sexuality, nation-building, nationalism, Macedonia.

1. INTRODUCTION
The rise of populist, right-wing governments in Europe has negatively affected the reproductive rights of women. Namely, these governments use propaganda and legislation to push their ‘traditional’ values and in the attempt to control women’s body and sexuality in the name of the nation. This is something that has its roots in the 18th century, where during the nation-building processes the state, through different measures managed to control people’s sexuality, developed the gender roles which we know today, and all of this for the nation. This is still used today, through limiting the right to abortion, pressuring women to have children, which is most extreme in Poland with the effort to pass a law which makes abortion close to impossible. These measures were also used in Macedonia by the government lead by right-wing, populist party, where new laws were adopted which restricted reproductive rights of women and in a sense restricted their right to decide about their own bodies and socially pressuring them into motherhood, instead on
focusing of protecting women’s rights and the fact that for years, the state has been among the countries with highest neonatal mortality in Europe. This paper aims to analyze what is the policy of the right-wing parties/governments regarding the sexuality and the reproductive rights of women and why is that so, with a focus on the case of Macedonia.

1. **Nationalism, sexuality and the place of the woman**

The process of nation building was followed by different approaches and measures for controlling the sexuality of the people in the name of the nation, defining what is acceptable and what is not and designating the women’s place and role in the society. Many of the morals, manners and sexual attitudes normative in the modern societies of Europe, have been highly influenced by nationalism. There is a close connection between nationalism, respectability and sexuality which emerged in the 18th century, and involve important norms for today’s societies, like ideals of manliness and their effects on the place of the women (Mosse, 1985, 1).

However, even though nation and nationalism has been widely discussed, it is hard to find a generally accepted definition on both of them. “Nationality” derives from the Latin word *natio* which means “to be born”, implying a common biological origin and descent (Albanese, 11). Anthony Smith (1991) has defined nationalism as an ideological movement for attaining and maintaining autonomy, unity and identity on behalf of a population deemed by some of its members to constitute an actual or potential “nation”. Nation on the other hand, according to different authors, can be defined as a group of people who share objective (language, religion, etc.) and subjective (identity, myths, beliefs, a sense of historical continuity, etc.) characteristics (Nootens, 1998). Nationalism represents a special relationship between the state and the people, whereby nation is equated with people, united by some combination of history and sentiment. As Gellner (1983) pointed out “nationalism uses the pre-existing, historically inherited proliferation of cultures or cultural wealth, though it uses them very selectively, and it most often transforms them radically”. More precisely, nationalism uses religion, ethnicity, language, race and other cultural characteristics to construct national unity. One of the characteristics of nationalism is defining a group as “self” and creating boundaries between “us” and “them”, trying to achieve national homogeneity. Furthermore, raising attention on the population’s “purity” and growth, making reproduction of the new nationals essential (Albanese, 11). On this note, there is an evident rise of right-wing, populist and nationalistic parties, throughout Europe, not excluding the Balkan, which will be discussed later.
1.1. The place of the women

To understand today’s role and place of the women in the society, the connection between gender, nations and nationalism has to be explored. Women are those who reproduce the nations, biologically and culturally (Yuval-Davis, 1998, 2). Different theorists and researches have studied this connection. Namely, Carole Pateman (1988) analyzed the theories of ‘the social contract’, which today are accepted as a base for understanding of the functioning of the western political and social order. In these theories which divide the society on public and private spheres, women are located in the private domain, which is not considered as politically relevant. The women in the national arena entered as cultural and biological reproducers of the nation, excluding them from the other parts of the political scene of the society. Public and private became dichotomies, in which women and men are placed on opposite poles, where women are identified with ‘nature’, excluding them from the ‘civilized’ public political domain, identifying men with ‘culture’. (Yuval-Davis, 6).

Sherry Ortner (1974) argues that this is because by bearing children women create new ‘things’ naturally, while men can freely create culture. As a result, women are put in the domestic sphere, raising children as their main role.

The nation, with no doubt, is built on patriarchy, or as Carole Pateman (1988) explains, fraternity. According to her patriarchy, where the father ruled over both other men and women, transformed into a fraternity, where men got the right to rule over their women in the domestic sphere, but they agreed on equality among themselves within the public sphere. It is evident that there is a presence of gender oppression, which is persistent until today, especially in the undertaking of nation-building, which uses and abuses the women’s body in the name of the nation, while silencing them and excluding them from the public sphere and the politics. In connection to this, it comes as no surprise that ‘the nation’ was portrayed as ‘two males defending a territory with women and children’ (Yuval-Davis, 15).

1.2. Nationalism and sexuality

The values, morals, as well as the sexual norms we take for granted today have their close connection with the development of the nationalism in the 18th and 19th century. What is regarded as normal or abnormal behavior, sexual or otherwise, is a product of historical development, for example, homosexuality was tolerated and even respected in influential circles in the early middle ages, however later was considered dangerous by the church and the state (Mosse, 3). When the society, consisted by different players, tried to impose restraints and moderations, to support ‘normality’ and contain sexual passions, nationalism absorbed and sanctioned middle-class manners and morals, and played a crucial role in spreading respectability to all classes (Mosse, 9) Nationalism helped control the sexuality,
however it provided means for changing sexual attitudes which were absorbed into respectability. It advocated a stereotype of supposedly ‘passionless’ beauty for both women and men. Sexual intoxication, as well as those who could not control their passions were considered as both unmanly and antisocial, from which we still see implications in the modern societies (Mosse,10) The nation protected the ideal of beauty from the lower passions of man, transforming it into a symbol of purity and self-control. Masturbation seen as the root cause of all loss of control of abnormal passion, was considered as a stereotype opposed to all that was considered as manly and virile, or womanly and chaste. It was highly unacceptable to waste genetical material for mere passion. The evil of masturbation was even a principal theme of privately owned museum in Paris in the beginning of 19th century, where most of the figures were portrayed as near death, exhausted by masturbation or an excess of sexual pleasure. This was shown to school children in pursuit of modesty and decency (Mosse,11). People were supposed to control their sex urges, have intercourse only for reproduction in order to make their nation bigger. Moreover, the national “health” was considered as far too important to be in the hands of individuals, more precisely women, thus making it something that should be regulated by the nation-state (Albanese, 11).

The ideas of manliness and womanhood developed, defining what is proper for a man and woman to do. Woman should be chaste and modest, exemplifying bridal purity in all her thoughts and actions. Man should be strong, ready to fight in the name of the nation, while women should take care of the children, the future of the nation. The nuclear family was very important for keeping the order, and it did so through assigning to each member his or her place. The role of the women was more passive rather than active in the society, she was to be a guardian, protector and above all a mother. Men were seen as active and women as passive and those roles were not to be mixed. Through these practices and propaganda, nationalism managed to control people’s bodies, focusing on the reproduction in the name of the nation and the process of nation-building (Mosse).

With the nation-building process and nationalism, the nation flag, anthem, the national monuments had male and female stereotypes. These national symbols were part of the visual self-representation of the nation, however all of them were represented as passionless and respectable. A woman was used as a national symbol (even the nation was portrayed as a women), however she was pretrained as a guardian of the traditional order, Madonna-like ideal, protector of the continuity and immutability of the nation, she was presented as the embodiment of respectability, as chaste, dutiful, daughterly or motherly. Women were presented as The Mother, a “trope of ideal femininity”. The idealization of motherhood entailed the exclusion of all non-reproductively oriented sexualities, in other words, motherhood was viewed as a national service (Mosse).
Women for centuries have been pressured to have children, mostly in order to obtain and save the nation. According to different national projects, under specific historical circumstances, women of some or all childbearing age would be called on, or sometimes even bribed, or even forced, to have more or fewer children (Yuval-Davis). These measures are used, with some adjustments, today, in the 21st century, in some European countries, which will be discussed hereinafter. These measures are preponderantly related to restricting the right of abortion and promotion of having more children.

2. THE CASE OF MACEDONIA: RESTRICTING REPRODUCTIVE RIGHTS IN 21ST CENTURY

The attitudes towards the reproductive rights of women are still unfavorable. Particularly due to the rise of the right-wing parties and nationalist sentiment throughout Europe, these attitudes are getting even stricter. Although Poland is the most extreme, Hungary, Italy, Slovakia, Croatia, Macedonia are some of the states that have restricted reproductive rights. Namely, in the last decade there has been a significant rise of the right-wing populist parties and governments which have shaken the European political scene. These parties claim that they have their power form the only legitimate source – the people and they claim to represent them and their interests. According to Mudde (2011,7), the populist parties are led by charismatic figures, who attract new voters, and further, they use propaganda particularly the visual kind, which helps influence debate. The basic characteristics of the right-wing, populist parties are fear, more precisely, they use the different fears of people in order to get to or remain in power, for example the migrant crisis and the fear from “what the migrants bring” and the division between “us” and “them”, which was mentioned before as a characteristic of nationalism. In Europe, they claim that they are guided by ‘traditional’ values, which are in close connection with the patriarchal understanding of the society and the roles of women and men. In this sense, it is understandable why the right-wing populist governments have negative attitudes toward the reproductive rights of women and they are trying to forbid abortion (like the case of Poland), or make it close to impossible. They want to portray the gender rights as something alien from their culture, instead they see women's primary role as being within the family (Lister, 2006). In other words they say "The future of the nation is seen to depend on women's role within it. Without women deciding to have children, there is no nation in the future. If women choose not to bring up children in line with those 'nationalist' values, then the future of culture is seen to be under threat." (Lister, 2006). The situation in Poland is the most extreme, where again, the Parliament wants to adopt a law which will forbid abortion unless the life of the woman in endangered. In Serbia on the other hand, there is a birth promotion campaign, where
through slogans they are trying to increase the birth rate, which raised a lot of criticism in the public for viewing women as childbearing machines.

In this context, the situation in Macedonia is quite similar. Namely, during the governing of the VMRO-DPMNE-DUI coalition in Macedonia the right of the women to decide about their body and childbearing became stricter, more controlled, accompanied by intense propaganda for having more children. This coalition governed in Macedonia from 2006-2017 and used typical politics of right-wing populist parties. VMRO-DPMNE\(^{30}\) has self-defined itself as conservative, peoples, demo-Christian party which is guided by traditional values (Values of VMRO-DPMNE). During the governing, the biggest ruling party used religion, ethnicity, language and monuments to divide the society under the utterance of nation-building (of the Macedonian nation) and patriotism. Moreover, they used propaganda, fear, division between “us” and “them”, in this sense between Macedonians and Albanians and/or patriots (the supporters of the leading party) and traitors (everyone who did not support their politics) to stay in power. Nation-building was one of the politics they used, which culminated with the ‘search’ for the Macedonian roots in the antique time and the project Skopje 2014, followed by numerous monuments, which as Hobsbawm noted are a tool for nationalism and nation building.

Family, understood as a unity between a man and a woman, is seen as one of the core values of the party. In the politics of ‘nation-building’ the rhetoric of the ‘white plague’, that the nation is decreasing and that due to this, the Macedonians could lose the state were widely used in order to promote childbirth, controlling the women’s body and sexuality, pressuring women to ‘give birth for the nation’. Besides numerous commercials and propaganda against abortion and promotion for childbearing, new, more restricting Law on Termination of Pregnancy (Закон за прекинување на бременоста, 87/2013) was adopted in 2013 and the Law on Child Protection (Законот за заштита на децата, 23/2013) was adopted and give the right for compensation for having a third child. However, this government did little to protect the newborns, even though, Macedonia has been one of the countries that have the highest neonatal mortality in Europe since 2012 and in 2017 was second highest. Moreover, it stayed ignorant on the information that employers ask women when they plan to have children or fire them when they get pregnant to avoid paying maternity leave. From one side the state pressures women to have more children, from the other the employers pressure them to not have children.

The new Law on Abortion was proposed by the Minister of Health and was followed by a lot of negative reactions in the public from different NGOs,

\(^{30}\) Internal Macedonian Revolutionary Organization – Democratic Party for Macedonian National Unity
professors, activists and institutions. However, the majority in the Parliament, decided to adopt this law in a shorten parliamentary procedure and ignore all the reactions of the public and it was adopted without the support of the opposition. One professor viewed the law as a way of the Government to authoritatively impose its own worldview and value system (Najcevska, 2013).

The Law defines the abortion as a special medical intervention for which the woman freely decides (Art.2), however, abortion can be done only once a year (Art.3). According to Art.6 abortion can be done up to the 10th week of the pregnancy. If a woman wants to have an abortion she needs to submit a written request to the doctor who should perform the termination of the pregnancy. The doctor is obliged to do a consulting with the pregnant woman on the benefits of continuing the pregnancy and keeping the child and inform her about the risks on her health and life from the abortion, the methods for preventing abortion and inform her about the possibilities and methods for preventing pregnancy. If the pregnant woman, after receiving the information, remains on her request, she is obliged to give a written statement of consent for accepting the termination of the pregnancy. The abortion cannot be performed before the expiration of 3 days after the consultation, unless the pregnant woman is under-age, has revoked or limited legal capacity or if there is sufficient medical indication that doctor must duly record in the medical documentation.

Further, Art.7 states that, if the doctor determines that the health of the pregnant woman does not allow the abortion, or that the termination of the pregnancy will endanger the life or the health of the woman or that more than 10 weeks from the date of conception have passed, he/she is obliged to refer the pregnant woman to the First Instance Commission for approval of the termination of the pregnancy. If this is the case, according to Art.9, the pregnant woman has to file a written request for termination of the pregnancy to the commission, along with a confirmation by a doctor of gynecology and obstetrics that she is pregnant, that she has been informed about the possible benefits of prolonging pregnancy, as well as the risks from the abortion in the consultation and findings and opinion by a specialist doctor in the appropriate branch of medicine in which the disease of the pregnant woman belongs to, and/or confirmation by the public prosecutor that criminal proceedings have been initiated, if the conception was a result of a crime, and/or confirmation from the center for social work or a health institution if the termination of the pregnancy is required because it was found that during the pregnancy or after the childbirth the woman could have difficult, personal, family, material or other circumstances that will reflect on her health.

The First Instance Commission, again, informs the pregnant woman of the benefits of continuing the pregnancy and keeping the child and inform her about the risks on the health and life of women from abortion, the methods for preventing
abortion and get acquainted with the possibilities and methods for preventing pregnancy (Art.11). If the commission decides that the abortion could be performed, it is obliged to request a written statement of consent from the pregnant woman for performing the termination of the pregnancy. If she is not satisfied with the decision she has a right to file an objection right away or in written in 3 days from the announcement of the decision (Art.14). The decision of the Second Instance Commission is final.

This law raised a lot of criticism in the public, it was and still is considered as constricting for the reproductive rights of women and a law which does not allow the women to fully make their own decisions about their bodies. This law has the goal to deter women from abortion through biased consultations, where the emphasis is on the benefits from keeping the child, unlike in the previous law, where the doctor had to inform the woman of the risks from the abortion, and if the pregnant woman, after the warning remained on her request, the doctor terminated the pregnancy for which he/she kept a record book. Furthermore, all the documentation that she needs to collect and the bureaucracy to approve the abortion, the 3-days-wait after the decision, complicate and prolong the procedure, trying to influence the woman’s decision and allowing her to decide about her body. This is one of the ways for the state to control the women’s bodies and sexuality, in this context, for ‘the nation’. NGOs reacted that this is degrading for the women, it denies their ability to make decision and it does not take into consideration how she came to that decision (HERE, 2013).

To further increase the pressure for fighting the ‘white plague’ and beating more children, the Law on Child Protection was adopted in 2013, introducing monthly supplement of 8.048 denars for a third born child and 11.267 denars for a fourth child, which will be paid up to the child's tenth year. However, the law gives the right for the supplement only to the mother of the child, and only in exhaustively listed cases can the father use this right. This law was just another method for promoting childbirth and indirectly pressuring women to have more children, because the birth rate is declining. Accompanied by rhetoric that due to this the Macedonians might lose their state, once again putting the women’s bodies in the hands of the nation, emphasizing her ‘natural’ side, her ‘duty’ to the nation and putting her again in the domestic sphere of the society.

3. CONCLUSION

Controlling the woman’s body in the name of the nation dates from the 18th century, however it more and more present in modern-day Europe. The right-wing, populist governments, under the excuse of tradition try to keep the gender division, keeping women in the private sphere, portraying them as mothers and housewives, whose main job is childbearing. The state still tries to control woman’s body, not
allowing her to make her own decision. These ideas are increasingly spreading across the countries of Europe, Macedonia being one of them. Although Macedonia is a country which has one of the highest neonatal mortality in Europe, a country where the employers ask their female employees when they plan on getting married and/or have children, pressuring them to postpone it as long as possible, the state did little to protect them or change this. Instead, the government used legal changes, propaganda and populist measures in the attempted to control the women’s bodies in the name of the nation. Making the administrative procedure to get an abortion more complicated, socially attacking women who have decided to have an abortion, “bribing” parenthood through the compensation for a third and fourth child were just some of the methods to achieve that, and all in the name of the division between “us” and “them”, under the excuse of the “white plague”, nationalism and the alleged extinction of the nation in order to stay in power. Sadly, women are still seen as an object for reproduction of the nation and as part of the domestic sphere of the society, keeping them in an unequal position with men.

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THE DIFFERENCE BETWEEN THE DEED CONTRACT AND THE EMPLOYMENT CONTRACT IN THE MACEDONIAN LEGAL SYSTEM AND ANALYSIS ON EU LAW

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Abstract
The deed contract is a contractual contract, which has been widely used in the Macedonian economic and legal system. Often, there is no difference between the deed contract and the employment contract. This is because both of the contracts work on a particular work provided in the object agreements. The purpose of this paper is, in fact, the difference between the deed and the employment contracts, as well as the implications of their application. Thanks to the deed contract a large number of people who were engaged to perform some work, the contractual relation from the agreed status is transformed to working status. People engaged in the deed contract do not enjoy the rights of the people with established working status, even though they often carry out the same work activities. The disadvantage is not having an established working status. The EU law is more oriented to the establishment of equal treatment of the already employed people and people engaged by part-time contract or with part working time. For that purpose, several Directives were adopted, for which measures for full implementation in the European countries are being taken in the following period. The European countries put the emphasis on the fixed-term contract and a part-time contract, rather than a deed contract. A large number of the brought and completed court cases are proof of the persistence of European citizens who actively seek protection of their rights arising from the contractual or working status by legal action, unlike the Macedonian citizens.

Key words: deed contract, contractual status, working status, equality, work, court protection

1. INTRODUCTION
An integral part of almost all legal systems in the European countries is the deed contract. If we make a hierarchy of the application of the contracts, in the legal system of the Republic of Macedonia, it is indisputable that the purchase agreement is in the first place and immediately after it is the deed contract. At this time when private property dominates, there is no sector in the industry that does not apply the deed contract. It is not even to neglect the application of this contract in the public sector, in the local self- government, in the judiciary as well as all the segments of
the society. What are the differences and similarities between the deed contract and the employment contract, as well as the advantages and disadvantages of the contracts? The benefits of a deed contract, as well as the placement and application of the deed contract in the European countries, elaborated through disputes with which they face or are led by the European workers, all this will be exhaustively elaborated in this paper.

2. DEFINING THE DEED CONTRACT
The deed contract is defined in the Law on Obligatory Relations in article 619, which stipulates that the Deed Contract is a contract in which the employee is obliged to perform certain work for the employer such as making or repairing an object, or carrying out some physical or intellectual work etc. The employer is obliged to pay the compensation to the employee for the work performed (Law on Obligatory Relations, ar.619).

A deed contract is a consensual contract, a double-sided binding, a freight commutative contract and a causal contract. In addition to these characteristics which arise from the legal definition, from the deed contract, in practice, arises another one, adhesion. This contract is also adhesive. It is adhesive because in most of the cases the employer is the one who dictates the working conditions, that is, to the employee, so that he/she either accepts them as given, signs and approaches to the realization of the contract, or does not accept it at all. In this way can be seen the domination of the employer. The position in which the employee is, is only an employee without having given the opportunity to participate in the creation of the contract, while exercising the basic right which arises from the contractual relations, that is the equality of the contracting parties. The equality of the contracting parties does not only mean equality in relation to the employer to complete the work and the employer to pay for it, but it also implies equality in the creation of the contract in his contractual clauses, where the will of the contracting parties comes to the fore. What does the employer actually require, and what does the employee offer?

A deed contract is signed as all the other contracts, in a written form when the contracting parties reach the consent of the wills about the essential elements of the contract. But, what makes this contract different is that under article 623 from the Law on Obligations, this contract can be concluded by bidding (Law on Obligatory Relations, ar.623).

An employment contract and a deed contract are two different contracts, even though they both have the work of the employee as a subject.
3. DIFFERENCE BETWEEN THE LABOUR CONTRACT AND THE DEED CONTRACT

3.1. Characteristics of The Deed Contract

A deed contract is a contract with which the employee undertakes to perform certain work for the employer, and the employer is obliged to pay him/her for the work performed.

Characteristics of the deed contract are:
- Payment of a fee, by agreement or by some tariff
- In the deed contract, the compensation can be determined as a lump sum or in a certain amount
- The contents of the deed contract constitute the rights and obligations of its parties, the handover of the manufactured item, the guarantee for the status of the performed work, as well as the payment of compensation.
- In the deed contract, the employer is obliged to perform a certain work for which the result is of great importance, that is, the final product.

3.2. Intellectual or Physical Work

From the deed contract, in fact, there are two categories of services which need to be performed. The first one is the physical work to which this contract is connected, and the second is the intellectual work.

From the stated, it arises the question: where in the economic-legal transactions should this contract be applied, whether for performing intellectual services or for carrying out physical work?

It is undoubtedly that the employers very often implement the deed contract in their work. In doing so, the theory shows that this contract is for the benefit of the employers. Namely, the employers appear in the role of contractors and the workers are the employees. Employers engage them when they need to perform certain work within their activity and they lack workforce. Then, they hire workers whose employment status in regulated in this way. From the deed contract arise only the positive sides, whereas the negative is on the second contracting party, on the employee. It is undisputed that this type of work is applicable only to those who perform physical work. According to the concluded contract, they perform their duties and the employer pays the appropriate compensation for them. The question is how much of this work can be done in this way?

The deed contract has its own advantages and disadvantages. The advantages are usually on the employer’s side that is the contractor. This is because with a little financial means they will ensure that the necessary work will be done. As far as the employee’s side is concerned, there are most of the disadvantages of this contract. The employee is often in a position where he is only a worker, without
having an opportunity to show his/her abilities and creativity. The employee simply executes the given work by the employer.

The advantages of the deed contract of the contracting authority are:
1. With deed contracts are engaged work employees in number as required to perform the given work
2. The employer hires workers for a fixed amount of time, as long as it takes to perform the given work.
3. The deed contract defines the working obligations to the employee and the period for which it should be performed.
4. The deed contract is based only on a contractual relation for a certain period of time, not a working relation.
5. With the deed contract, the employee works for the name and the account of the employer
6. The employee is not subject to pension, health and disability insurance.
7. The employer can legally hire a great number of employees with minimal taxes to the state
8. Labor shortage is compensated by engaging employees with a deed contract

Negative sides to the deed contract
1. Most often they are on the side of the employee
   - The employee is contractually obliged to perform certain work for a certain period of time
2. The employee does not establish a working relation, but it is agreed upon.
3. The employee is not under pension and health insurance.
4. Most often, it is not distinguished between the deed contract and the contract of an indefinite period of time
5. The employees, by concluding the deed contract are often misled.
6. With the deed contract, the employee is obliged to be in contractual relation mostly three to six months.
7. The employee is responsible for the work performed as well as for the legal and material things.

It is debatable whether this contract can be applied to the intellectual activities. In practice it is applied, but it faces some difficulties for its full implementation in the sphere of medicine and education. The rights and work tasks in the field of medicine cannot always be defined. In addition to what is defined in the deed contract, the type of work causes except for the defined tasks, to be performed other tasks as well, which as such are not provided in the deed contract. An example of this, the patient care is a long-term one and it cannot be stopped only by performing one medical service.
3.3. Characteristics of The Employment Status

The employment contract can also be concluded during a period of time, which is determined in advance (EMPLOYMENT STATUS FOR A DEFINITE PERIOD OF TIME) and an employment status based on an indefinite period of time.

A part-time employee means a person with an employment contract concluded directly between the employer and the employee where the expiration of the contract is determined by the objective conditions: the arrival of a specified date, the completion of a particular task or the occurrence of a particular event.

**Characteristics of the employment status are:**

1. With the employment contract, it is not essential the result of the work, but the employee’s work itself.
2. The employee does not manage his/her work alone, but there is a relation of subordination, where the employee works under the direction of the employer.
3. With the employment contract, the award, the salary is determined in a certain period of time and it is paid to the employee.
4. With the employment contract are engaged the employee’s working abilities.

4. RESULTS FROM THE APPLICATION OF THE DEED CONTRACT

The deed contract as a contractual party which governs the rights and obligations can be applied both in the public sector and in the private sector. The presence of the deed contract was of great importance in the public sector. Whether deliberately or not, or the employers have mistaken the way of engaging a workforce, they have concluded a deed contract, instead of establishing an employment status for an indefinite period of time. A large number of the institutions, including those in higher education, medical centers, local self-government, and public enterprises with deed contract by the end of 2015, engaged a larger group of employees.

In order to solve the employment status on February 12, 2015, was adopted the Law on Transformation into regular employment status.

This law regulates the transformation from employment for an indefinite period of time for the people engaged by a volunteering contract, a deed contract, a copyright contract or any other contract by which the person is engaged to perform work in the state power’ authorities, the area of culture, health, education, child and social protection established by the Republic of Macedonia, as well as the local self-government and the public enterprises, the institutions, the funds and other legal entities established by the Republic of Macedonia.

After the adoption of the Law on Transformation into a regular employment status, an authentic interpretation on the same law was brought, too. According to...
the authentic interpretation, the transformation of the employment status for an indefinite working period will be used exclusively for the people envisaged in article 1 of the same law, who performed the work on the basis of a contract in the period of three consecutive months immediately preceding on 30.11.2014, i.e. the period from 01.09.2014 to 30.11.2014 who had valid contracts at the moment of transformation of the employment status.

With the adoption of this law, the people employed in the public institutions were protected by solving their employment status. The basic condition was only to be engaged with one of the aforementioned contracts and to carry out the work for at least 3 months. The people who are engaged in the institution for a longer period of time are the most advantaged.

This provision is foreseen in the Law of Transformation into regular employment status. Many of the people engaged in public enterprises, under the leadership of the local self-government still continue their contracts every six months, whether it is a deed contract or a volunteering contract, which is contrary to the Law on Transformation into a regular employment status.

Pursuant to article 6 of the same law, the people engaged with a volunteering contract must not perform work for more than six months. But, there is a solution for this provision, too. For those employees who do not change the employment status, instead of engaging contract with the same contractual clauses, a new contract is concluded, which is renamed to another contract as copyright contract, deed contract or some other contract.

The realization of the contracts took place in three quarters, the first group immediately, the second group up to 35% of the number of engaged people came into force from 01.12.2015, and the rest will come into force on 01.09.2016.

In the field of health, over 109 public health institutions, with this law, have transformed the employment status of the employees from agreed to regular employment status. A total number of 3000 people, freelancers, volunteers, people with deed contracts, people with contracts on a definite period of time in the state authorities, cultural institutions, institutions in the field of education, health, public enterprises, and funds whose establisher is the state itself, have transformed their employment status into regular employment.

There was also a certain category of people who were engaged to perform certain work by a deed contract and other similar contracts, and whose employment status was not transformed. The answer to why their employment status was not transformed was the lack of sufficient consent of the Ministry of Finance or that they are in the category of people who are not protected by the Law on Transformation of Employment status. From this arises the question, what about those people? How did the institutions need them before the adoption of the Law on Transformation of the Employment status and now they are not needed anymore?
5. DEED CONTRACT IN THE PRIVATE SECTOR

The adoption of the Law on transformation of Employment Status contributed to the legal protection of the people who were engaged by a deed contract. In view of this law, a larger category of people could solve their employment status and those who were engaged in the institutions established a working relation. This law was concerned only with part of the institutions, which I have mentioned on severe occasions, and not for the people engaged in the private sector. There are a large number of people who are engaged with the deed contract in the private sector too, and for which there is a need to adopt a law with which they could solve their employment status. A legal mechanism would be established, with which the people who have previously been engaged by the employer, the people with the longest period of time engaged by the employer, regardless of their age, would be given a preference. There should be a tax exemption for people over 50 years, in a way that will allow them to work for the employer until they fulfill their eligibility for pension. These are just a few of the suggestions which could solve the employment status of those with deed contracts, as well as a benefit for the employers who will decide to take this step. This is an extraordinary solution to establish equality among the people working in the public sector, as well as for those working in the private sector.

6. APPLICATION OF THE EMPLOYMENT CONTRACT AND THE DEED CONTRACT IN EU

In the contract, since Rome, there is no definition of the term employee. Basically, the employee is involved in a relation based on the inferior where the individual is under the control of the employer. The EC contract in article 2 attempts to give a definition what an employee is, so that according to it, “The employee must be involved in a genuine economic effective activity according to meaning.” Even though, a larger number of activities satisfy this requirement, including playing football, professional training, however in most of the cases it is not so. In the struggle for exercising their rights, the workers from the EU have initiated a great number of court cases in order to exercise their rights. Some of them have been completed, and are also available for the publicity, while some of them are still in court proceedings.

For example, in the case Steuman, a person working in a religious community may be considered as a worker. Another case is when a plumber who was working in the Bhagam community as part of their commercial activities. Whether it is or it is not an employee, the court decided that since the community took care of its material needs and gave him/her some pocket money, it can be
considered that this is an original and effective work, so that Steytman can be considered as an employee.  

From case to case, depending on what kind of work is being performed, it is determined whether a person who performs the work can be considered as an employee. In the European Union countries there is no common definition of what an employee is. The definition varies depending on the area where the definition is applied. However, starting from the definition of the term “employee”, according to article 39 of the EC contract, the court began to notice that the term “employee” used in article 141 of the EC has a broader meaning in the community. Under the influence of article 39, the court decided that the term “employee” must refer to a person who, for a certain period of time provides services for and according to the direction of another person for which he/she receives a certain amount of money for the completed work. From the definition itself, it is clear that the authors of the contract did not intend the term “employee” with the meaning of article 141 (1) to include the independent service’ providers who are not in a subordinate relation to those who are receiving them. However, the court added “the warning that the formal classification of the self-employed person under the national law does not eliminate the possibility of a person to be classified as an employee within the meaning of article 141 (1) EC, if its independence is only in a national framework and thus covers the relation with the employment and belong only within that article.”

The Alnoby case referred to teachers who were directly employed in the College for further education with contracts of continuing working time. Once their contracts expired, they were re-engaged as self-employed through the agency ELS. Alnoby worked on specific work assignments which were agreed by ELS and FS College. The College agreed the fee with ELS for each of the lecturers. Than ESL agreed with Elnabai for the fee which it would receive for the appropriate appointment to a particular position and determined the conditions under which the lecturers should work. The impact of these changes was noted with the reduction of payment to Elnabai. The question which was submitted to the Court was whether basically the lecturers are self-employed. It was decided that it was necessary to separately consider the extent of any restriction on their freedom to choose their own schedule of classes, the place and the content of their work. The fact that they are not obliged to accept any task has no consequence in that context (Barnard, 2010).

31 Law Enforcement of the EE, Catherine Barnard, Academic Press, Skopje, 2010

362
7. EUROPEAN FRAMEWORK CONTRACT FOR PART-TIME EMPLOYMENT

In June 1996, the social partners UNICE, ETUC, CEEP announced their intention to start negotiations. On 6th June, 1997 was voted the European Framework Agreement for part-time working time, which was subsequently implemented through the Council Directive 97/81 EC and transmitted to the United Kingdom through Council Directive 98/23 EC. The Treaty proposal was under the impact of the Convention no. 175 ILO from 1994, which established minimum standards for part-time work and the additional Recommendation 182.

The purpose of the framework agreement was to ensure the elimination of discrimination against part-time employees and to improve the equality of the work done in a part-time. However, as the preamble clarifies, the Directive applies to the principle of non-discrimination of the employment conditions, and not to social protection, so that a significant aspect of the proposal under article 100 has disappeared.

The Directive has two target groups, to facilitate the development of the part-time work in a way which takes into account the needs of both, employers and employees. Thus, the part-time employment Directive is part of the flexibility on the EU’s agenda, which aims to emphasize the adaptation of business and in particular, the modernization of the work in the organization.

The term “part-time employee” refers to an employee whose working hours are considered on a weekly basis or for an average given period of employment up to one year, and are less than the usual working hours of a full-time employee. The clause explains that the term “compared to the full-time employees” means an employee with a full-time work employed in the same enterprise who has the same or similar type of employment contract or employment status, that is involved in the same or similar job/profession, having the right to other things such as a higher status / qualification/ skills. When there is no full-time employee for comparison in the same enterprise, the comparison must be made by reference to the application of the collective agreement or when there is no application of the collective agreement, in accordance with national legislation, collective agreements or practice.

In the Wipple case, the person who is applying is a temporary employee employed with a “demand-dependent agreement”. She launched a procedure requiring equal treatment as well as the full-time employees. Her contract did not specify neither the weekly working hours nor the manner in which her working hours were organized, leaving her to decide whether to accept the job offered by the employer or not. The person to compare with is a full-time employee, who worked according to the contract with precisely determined 38.5 working hours. The full-time employee had to work for the employer for a whole week without being able to refuse the job, which he could not or did not want to perform. Due to the difference
between full-time and part-time working contracts, the Court finds that there is no full-time employee who may be compared to Ms. Wipple.

In the Law of the European Union, the deed contract does not apply much. The Institute of self-employment as well as the demand-dependent agreement are two institutions which resemble to the deed contract which is a part of the Macedonian legal system. Namely, the closeness of the deed contract with the institute of self-employment is that the institute enables people who were previously engaged with contract on a definite period of time to get a job, but not with a contract on indefinite period of time, but with the institute of self-employment. The demand-depending contract resembles the deed contract, especially because the employer is the one who dictates the working conditions, and the employee accepts them as such without having the possibility to participate in the creation of the contract. Another similarity is that they engage employees in this way, depending on when there is a need for a workforce and for the time needed to perform a certain work.

The part-time work Directive is much more precise that the Directive for an employment on a definite period of time. The Directive for an employment on a definite period of time is more substantial in terms of employee protection. Although the Preamble both on the Directive and the Framework Agreement, too, refer to the EES and in particular to the needs to achieve a better balance between the flexibility of working time and employees’ safety. The Directive on working time on a definite period of time has three key employee’s right:

- The principle of non-discrimination was applied. This means that part-time employees are not treated in a less favorable way if they are compared to employees with working time on an indefinite period of time, only because they have a contract on a definite period of time or are related to employment, unless those situations are objectively justified. Where the principle pro rata temporis is applied.

- The second thing refers to the protection whose part of the Directive concerns the protection against the abuse of employees employed with a contract on a definite period of time. In a country such as Great Britain, there is no limit to the number of events on which contracts on a definite period of time can be renewed and especially in some sectors (especially media and universities) is widespread the abuse of the unlimited hours contract.

- The third rule under the Directive relates to the Information. According to clause 6 of the Directive, it is defined that the employers should inform their part-time workers for the available vacancies in the enterprise, or in the appropriate structure, for example through placing a vote at the appropriate place in the enterprise, which will confirm the same opportunity to apply for a certain job position as all other employees. Paragraph 6 (2) of the same Directive provides that
the employers should, as much as possible, facilitate the access of the employees on a definite period of time to appropriate training opportunities and to strengthen their skills in career development and professional mobility.

8. CONCLUSION

The deed contract is an obligation contract. The Legal System in the Republic of Macedonia has found a greater application, both in the public and the private sector. Like other objections, the deed contract has its own advantages and disadvantages, which can most be felt by the people who work, that is, who apply this contract. Even though, many people do not distinguish between a deed contract and a contract on a definite period of time, as well as an employment contract, there is a clear difference. There is a difference in both the regulation of the legal framework, and in the substance of the contracts, too. The deed contract is a obligation-legal contract, which establishes rights and obligations for the contracting parties. The employment contract is a contract with which is established a relation between the contracting parties.

However, in the past period, it has been shown that the deed contract was the starting point for employment. Many of the people engaged with this contract have transformed their contractual status to employment status, which means that their employment status has been solved.

Regarding the law of the European Union, the contract is applied for a limited period of time, and the implementation of the contract is very small. But what the European Law is tending to is to first give a common definition of what an employee is, as well as implementation of the Directives which provide them with equal treatment of the already employed people, as well as for those on part-time basis and a contract on a definite period of time. An institute which resembles a lot to the deed contract, which is incorporated in the Macedonian legal system, is the self-employment and the contract which depends on the market, which is applied in the European countries.

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DECENTRALIZATION AND DEVELOPMENT OF SOCIAL PROTECTION AT THE LOCAL LEVEL

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Abstract
The system of social protection plays a key role in providing of social safety and well-being of the citizens in every social country. During the last two decades, with strengthened intensity from 2000th year, changes are constantly implemented and trials to reform the system of social protection in Republic of Macedonia are done, especially in the domain of social services. The key changes are directed towards decreasing of the role of the country as a direct deliverer and strengthening of its role as a procurer of social services through inclusion of other sectors (private, NGO, religious) as partners of the country according to the pluralization principle. Also, large attention is given to developing of alternative forms of protection for decreasing of the once existing dominant dependence of institutional protection and establishing of the process of deinstitutionalization. One of the largest challenges in the reform processes is decentralization of social services which implies construction of local networks of social services designed according to the specific needs of citizens of each municipality.

In this paper we will analyze the process of decentralization in social protection as to the competencies of municipalities in the domain of social protection taking in consideration global and national directions for developing of social – protective programs at the local level.

Key words: decentralization social protection local programs social services social reform

1. INTRODUCTION

The system of social protection plays a key role in providing of social security and well – being of the citizens in every social country. After its independence Republic of Macedonia has inhabited a system of social protection based on large centralization dominant role of the country as a procurer of protection and in significant participation of NGO private and religious sector in the activities of social protection. Within such system, social protection was mostly accomplished through financial transfers and benefits for the citizens exposed to social risk.
Social services as non-financial measures that have the goal to promote social functioning of individuals and groups exposed to social risk were insignificantly developed and brought to above all institutionalized forms of protection. During the last two decades, with strengthened intensity from 2000 year changes are constantly implemented and trials to reform the system of social protection in Republic of Macedonia are done especially in the domain of social services. The key changes are directed towards decreasing of the role of the country as a direct deliverer and strengthening of its role as a procurer of social services through inclusion of other sectors (private, NGO, religious) as partners of the country according to the pluralization principle. Also large attention is given to developing of alternative forms of protection for decreasing of the once existing dominant dependence of institutional protection and establishing of the process of deinstitutionalization. One of the largest challenges in the reform processes is decentralization of social services which implies construction of local networks of social services designed according to the specific needs of citizens of each municipality.

The implementing of the process of decentralization in the area of social protection depends on the previous experiences and practices in local community under-developed social – protective functions of municipalities and inter-institutional cooperation at the local level when the issue is providing of social services for the citizens. This paper has the goal to analyze the process of decentralization for developing of social protection at the local level.

2. ORGANIZATIONAL STRUCTURE OF THE SYSTEM OF SOCIAL PROTECTION

The constitutional definition of Republic of Macedonia as a social country is realized with the Law on social protection. This regulation establishes the system of social protection determines the measures activities and policies for stopping and overcoming of basic social risks of which a citizen during his life is exposed for lowering of poverty and social exclusion and for strengthening of its capacity for personal protection. The group of social risks includes the following: risk on health (sickness, injury and handicap) risk of old age and aging, risks which fall on single parent families risk of unemployment losing of income for supporting obtained with work etc, risks from poverty and risks from other type of social exclusion.

Beside the system of social protection measures for lowering of poverty and social exclusion should be taken in tax policy employment policy for scholarships housing, protection of family health education and learning in order to secure social safety of citizens. Social protection is achieved through implementing of measures for prevention from occurring and lowering of consequences from social risks for the citizens, providing of finances from the domain of social protection and
establishing and development of services in the area of social protection (services for expertise by expert personnel and teams, accommodating in an institution for institutional or non-institutional protection). (Ruzin 2004, 146)

With the law on social protection, as carriers of social protection are established the Republic, the municipality, city of Skopje and its municipalities. The state achieves its social function through the Ministry of Labor and Social Policy and the network of public institutions for social protection. The Ministry of Labor and Social Policy creates policies strategically plans development manages the system of social protection and observes the legality and implementation of the laws and other regulations in the area of social protection. The system of social protection is composed of a range of institutions and: centers for social work and institutions for institutional and non-institutional social care. The centers for social work are public institutions with public competencies for acting in the area of social protection. They are responsible for administering of financial compensations for social protection and providing of social services. (Pejkovski, 2008, 229)

3. STRATEGIC DIRECTIONS IN DEVELOPMENT OF SOCIAL PROTECTION

Within EU, every country establishes and develops social protection depending on its needs and abilities. However, EU has established joint goals in the area of social protection and social inclusion indicators for comparing with best practices and measuring of the achieved progress in the direction of the established open method of coordination, with the goal to encourage member states and states candidates for EU to strive for lowering of poverty and social exclusion and to establish social cohesion. EU coordinates and encourages national governments to fight against poverty and social exclusion reforms their systems of social protection through a process of in-between learning and asserts which policy functions best. In such context member states of EU cooperate using a frame for political cooperation called open method of coordination (OMK). Development of social services is carried out according to the following criteria: creating of effective services according to the need of users; enabling of available services for users in their residual area; establishing of competitive services in order to improve quality: creating of a possibility for choice of service, enabled by different subjects; enabling of transparency and participation of all affected parties, including direct users in creating of services and their delivery and establishing of economical social services. (Ruzin 2006, 86)

Development of social protection in Republic of Macedonia is implemented through taking of concrete actions targeted toward lowering of poverty and social exclusion of most vulnerable categories of citizens. This process is implemented through constant tracking of the effectiveness and efficiency of the system of social
The protection promoting of legislation and setting of goals in strategic documents and programs in this area. In such direction are implemented many strategic documents that encompass issues from the area of social protection and social inclusion of most vulnerable categories of citizens (old people, people with handicap, homeless children, children victims of sexual abuse, people victims of domestic violence, refugees and foreigners). Also implemented is the Program for subsiding of expenditure of energy and the Program for conditional financial compensation for high school. Within strategic planning on a national scale and for achieving of the set goals a coordinated approach is anticipated and participation of all affected parties. Cross-sectorial cooperation of all relevant institutions, bodies and organizations is predicted in the realization of activities and achieving of the expected results. The national strategy for lowering of poverty and social exclusion 2010-2020 represents a frame for coordinated acting in all relevant sectors (health, employment, pension and health insurance, housing, social and child care, education) to achieve main strategic goals: lowering of poverty and social exclusion in Republic of Macedonia through better allocating of available human and material resources improving of living and work conditions improving of social conditions for all citizens; systematic and institutional coaction in the function of faster development, and achieving of a higher and more quality living standard. (MLSP 2010, 23)

These strategic goals can be achieved through establishing of a modern concept of behavior to socially excluded people and through forming of a new social model which puts personality as prime and not the reason for the exclusion the affiliation (ethnic or other) diagnose disability or any other basis for social exclusion of the person. It supposes a forming of an environment and surrounding accepting all people giving them equal chance and possibilities to express their potentials knowledge capabilities and skills.

The national program for development of social protection 2011-2021 has the basic goal of development of an integrated, transparent and sustainable system of social protection which will enable available efficient and quality measures and services created according to the user’s needs. As special goals this document predicts: restructuring of the institutional placement of the system of social protection in the direction of splitting of administering of the right to financial help and social services; internal reorganization of institutions for social protection for optimal usage of available capacities and promoting of expert work; promoting of the work with users in order to achieve strengthened participation inclusion in planning and decision making strengthening and using of their potentials; redefining of the system for financial help directed toward better targeting (goal setting) more efficient administering and connecting with other systems above all with the employment system; strengthening of non-institutional
protection through developing of existing and implementing of new types of social services according to the citizen’s needs as to the promoting of ways for their providing and delivering increasing of quality of services and creating of conditions for lowering of the dependence on institutional protection through developing of alternative forms of protection; prolonging of existing processes of decentralization, pluralization and deinstitutionalization in social protection; promoting of modalities for realizing of public-private partnership in social protection.

In order to achieve middle and long-term goals in the National program for development of social protection 2011-2021 it is predicted for municipalities to be carriers or participants in large part of the activities. At the same time, it is worth mentioning that to implement this process the Program predicts forming of advisory bodies with participation of all relevant subjects for further development of social protection at the local level. National strategic documents and programs in the area of social protection and social exclusion should influence the improving of protection and availability of services in the local community so a large part of the activities are predicted for implementing at the local level. For these reasons while strategically planning at the local level, municipalities should be guided by the set goals on a national scale, and to translate them in concrete activities at the local level, especially while preparing the programs for social protection of citizens in their area. (MLSP 2010, 46)

4. DECENTRALIZATION IN THE SYSTEM OF SOCIAL PROTECTION

Social protection, beside its role to accept people who weren’t able to secure their social safety through other systems (employment pension health), has an increasing role to help such people to overcome such situation and to enable social inclusion of vulnerable categories of citizens. In such direction on a national scale through the Centers for employment, are taken active measures for employment which include certain vulnerable groups. Conditional financial compensations are secured for children in regular high school education for homes-users of social financial help. For people who had the status of orphans or not having parent care before they became 18 financial help is provided compensation for housing, employment according to a special program and financial help for regular high school education, in order to enable social integration of such people. (Bolton 2007, 55)

The process of inclusion of people with disabilities is supported with implementing of a supplement for blindness or mobility. Social inclusion of vulnerable groups is best achieved with providing of availability to social services in the community developing of services according to the need for help strengthening of the capacity of users removing of obstacles and enabling equal
possibilities for their social inclusion. In this direction, the system of social protection enables establishing of services on a daily level or temporary fostering, improving of fostering of children in foster families strengthening of the potential of biological families for care for their members organized living in housing units with support small group home or other forms according to the needs of users in the community. Beside services ascertained with legislation in this area, innovative services must be created in the community, which will be adequate for help and support of vulnerable groups of citizens.

Starting from the point that the basic goal of social protection is taking measures for lowering of poverty and social exclusion of vulnerable categories through establishing of available services in community the process of decentralization in this area started in the year 2004. The law on social protection determines the competency of units in local government regarding providing of care for vulnerable groups in the community. At the same time municipalities appear as carriers of social protection in performing of effectively transferred competencies and also regarding given opportunities to achieve rights and develop social services at the local level. In order to successfully implement the process of decentralization, pluralization in providing of social services is also enabled. This pluralization implies different subjects to appear as givers of social services. These two processes supplement each other and enable social cohesion through inclusion of all affected sides at the local level in order to achieve more successful and more quality delivery of social services and their greater availability to users.

The municipality City of Skopje and municipalities in the city of Skopje appear as carriers of social protection in local community through delivering of personal programs in the area of social protection, for organizing and implementing of social protection for citizens in their area. At the same time programs of municipalities should be compliant with the National program for development of social protection 2011-2012 and are delivered to the Ministry of Labor and Social Policy for opinion. In this manner coordination of the policies at the local level is enabled with national strategic directions for development of social protection. The opinion of the Ministry has no derogatory character but is in the function to give an insight in what direction are developed social services at the local level in order to coordinate strategic planning at the local and national level for new forms of protection having in mind their even/regional availability.

In preparing and implementing of programs in the area of social protection the municipalities should include all affected parties in community so they can delegate certain things to legal and natural persons including non-governmental sector in their area. In such direction the municipality should encourage private initiative for founding of private institutions for social protection and for providing of the necessary finances for realization of certain project through achieving of
social responsibility of the business community. Municipalities should take measures for raising of public awareness for satisfying of the need for social protection at the local level. This function is in the direction of strengthening of prevention but also in the direction of sensitizing of general and expert public for the need of taking concrete measures for vulnerable groups at the local level. This competency the municipality should realize through organizing of public debates from the affected parties establishing of commissions and competent organs for reviewing of these questions implementing of campaigns preparing and distribution of informative materials etc. (Bornarova 2004, 88)

In order to coordinate activities and to have an insight in establishing of social protection by centers for social protection the Council of the municipality where the Center has its headquarters nominates its representative for a member of the Board of the Center. Centers for social work as institutions with public competencies are individual legal subjects for leading of procedures and deciding on the rights for social protections. They do their activity in community and accept citizens and families from all municipalities. Beside other competencies the centers apply and implement programs and other general acts in the area of social protection established and financed by the municipality city of Skopje and municipalities in Skopje. To do their activities encourage organize and coordinate volunteering activities of the citizens their associations humanitarian organizations in implementing of programs for social protection in the area of the municipality the city of Skopje and municipalities in the city. In the area of competencies for gaining of the right to foster housing municipalities have the authority to give financial compensation for social housing to users of permanent financial help so they should arrange the way of gaining of this right with a rulebook and secure the finances for realization of such.

4.1 Functional decentralization

The term decentralization also signifies a process of transferring of certain functions from a national level to lower levels of state organizations, and to other non-governmental institutions and actors. In such direction the Law on social protection predicts the opportunity for municipalities parallel with social protection provided by the state to include in providing of care for vulnerable groups in their area. In the process, for performing of these functions the municipality should secure a personal administrative and expert personnel and resources for financing.

Municipalities should recognize their social function right in the opportunity to intervene through taking of measures and concrete activities for providing of additional help for most vulnerable citizens in their area. For realization of these functions, an opportunity is given for municipalities to be able to assert a greater range of rights asserted by Law on social protection and other
rights or services in the area of social protection. In overtaking of these functions municipalities can create innovative social services according to the need of most vulnerable categories of citizens and services which they can get in their homes or the community. In such direction should be especially developed new non-institutional forms as help in homes centers for daily fostering of users programs for support of users etc. Units of local governing can establish institutions for institutionalized social protection (besides center for social work and institution for children and youngsters with educational-social problems and children and youngsters with bad conduct) and institutions for non-institutional protection. (Pejkovski 2008, 325)

Municipalities can jointly establish an institution for institutional or non-institutional protection which will provide care for citizens from more municipalities. For this to happen it is necessary to conclude a special agreement for arranging of the way of giving of services and financing of the institution for social protection. Deconcentration of social services from a national level to all other affected parties for delivery of services in local community means that besides municipalities and centers for social work as providers of certain services of social protection also provided are associations of citizens natural persons doing certain work in the area of social protection as a profession, religious communities and religious groups and private initiative and corporative social responsibility of companies in a certain area is also encourages. While doing their competencies, municipalities should establish a coordinated cooperation of all affected institutions, organizations, private and natural persons in providing of social services at the local level.

In regard to providing of social services, the Ministry of Labor and Social Policy starting from 2004 year is cooperating with associations of citizens enlisted in the Register of associations of citizens. Based on the asserted priorities for certain social services a public competition is announced annually where activities predicted for realization are implied in cooperation with associations the amount of resources given and the time period for completion of the work in the area of social protection. It is important to mention that municipalities can establish and develop their functions through cooperation with other subjects in their area with CSW NGO sector and other interested parties. In the area of private initiative especially encouraged should be social responsibility of companies to separate resources for support of certain social activities and measures in the community so participating in the measures for improving of the well-being of its citizens. In such manner is provided more efficient and economical establishing and developing of certain services in the area of social protection at the local level and at the same time are strengthened the capacities of associations of citizens. (MLPS 2014, 59)
4.2 Local programs in the area of social protection

Programs for social protection of municipalities are the basic instrument for performing of social functions of municipalities through planning and engaging in measures for social development and lowering of poverty and social exclusion of vulnerable groups in local community. These programs have the goal of providing of social protection for the population in a community increasing of availability of services and their creating according to the needs of most endangered citizens. This goal can be only achieved if local resources are optimally used (resources of the municipality educational social health cultural and sport institutions private sector NGO and religious and humanitarian organizations). Starting from the concept that programs for social protection of municipalities are embedded in the general direction for lowering of poverty and social exclusion of vulnerable categories such should be based on priory done analysis of the situations in local community. The first step while asserting vulnerable groups at the local level which is more detailed covered in the second chapter where suggested techniques for identification are also given should be related to: identification of traditionally vulnerable groups; identification of new vulnerable groups; asserting of available social services for vulnerable groups; asserting of obstacles for establishing of an approach to existing services and planning of necessary social services for vulnerable groups. (Donevska 2007, 45)

In order to prepare proper and real local programs, it is necessary to establish functional cooperation at all levels here including cooperation at a national regional and local level. Besides the cooperation with existing institutions and NGO sector at the local level the municipalities should also include direct users in the process in order to identify their needs for development of social services at the local level. Including of all actors at the local level as to vulnerable categories of citizens should be done in all phases of the process and in analyzing of needs defining of prioritized problems planning of programs and implementing of concrete activities for their overcoming. Only through a wholesome approach municipality can more responsibly approach planning of the measures for social services for certain vulnerable groups. In this direction it is especially meaningful that certain measures can be implemented through establishing of inter-municipal cooperation in order to unite resources and financed for development of social services at the local and regional level.

Regarding the financing it's important to mention that there are more ways to secure them, and: With resources from the budget of Republic of Macedonia is financed the work of public institutions for social protection, founded by the Government of R.M. But these resources also finance the non-governmental sector by a manner of public competitions. Certain project conducted by cooperation with municipalities are partly financed with these resources: By the municipality’s
budget the city of Skopje, and the municipalities in the city are financed programs for social protection at the local level and project activities by cooperation with the non-governmental sector, as to other acts implemented by the municipality; Part of the financing can be provided with partipance by the user and people who are obliged to care for it based on other regulations, respectively through charging of services; The possibility for gaining of financed based on gifts, legates and other sources according to law can also be used, which will be used for social protection of citizens Additional resources can also be used through donations applying for programs and funds for implementing of project activities. (Gerovska 2008, 101)

5. CONCLUSION

Social protection in Republic of Macedonia, starting from the last decade until now, is characterized by a constant trend of changes, happening above all as a result of: changed social and demographic structure, low economic growth and capacity, permanent high rate of unemployment, as to the increased demand for services of social protection. For these reasons a great number of changes were adopted as in the law legislation so in the ways of financing, administering and offering of services in social policy. These changes were especially visible in the policy of employment, social protection and social insurance. Decentralized providing of social services is a primary characteristic of federal countries in Europe (Britain, Germany), as in Scandinavian, where the local level is a main provider of educational, health and social services. Decentralization of social transfers is a quite more delicate issue, which can carry more risks than benefits for the local population.

In the Republic of Macedonia, the general process of decentralization has started to establish intensively above all because of political reasons initiated with the signing of the Ohrid agreement in 2001 year. However, in social protection this process until now is only initiated in the transfer of obligations from central to the local level only in the domain of protection of old people and child protection. More specifically, this meant a transfer of responsibilities at the local level for 4 public nursing homes for old people, and 51 kindergartens. In the remaining domains all municipalities were given the opportunity to offer social services, according to their personal developed plans and programs depending on specific problems of the specific local community. These activities local communities should finance through personal financial sources. It is notable that from 2004 year until now at the local level are mostly opened daily care centers for work with certain risk groups as street children people with special needs homeless people, public kitchens etc. The fiscal decentralization in social protection follows the same trend and in the moment includes only financial grants for nursing homes for old people and kindergartens. Financing of social financial help at the local level (for example social help) still
isn’t a subject of decentralization. This is why in the moment there aren’t proper law solutions, neither the necessary institutional or economic pre-conditions. Also centers for social work although acting at municipal level aren’t decentralized but still represent deconcentrated units of central authority. Actually, specific problems imposing in the process of a greater decentralization in social protection are: a) the deficit of law regulations in the Law on local governing where there isn’t a determined decentralization of financial transfers; b) not existing of a body for implementing of a second degree procedure at the local level, as to c) deficit of human resources in a greater part of centers for social work in managing and administering of social transfers and giving of social services.

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PUBLIC-PRIVATE PARTNERSHIPS AND ACCOUNTABILITY
A CASE FROM THE AIRPORT INDUSTRY

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Abstract
Public-Private Partnerships (PPPs) are seen as cooperative institutional arrangements in funding and maintaining public services. While many scholars have analyzed the effect of public-private partnerships in terms of efficiency, their impact on accountability remains surprisingly scarce. This study uses a single case study approach to analyze the relationship between PPPs and accountability. The study makes a distinction among legal, professional, and political accountability. Then, it hypothesizes that the PPP contract undermines these three types of accountability. The research focuses on a Design - Build - Finance - Operate - Transfer (DBFOT) project in the Airport industry. The standard contract, internal, and external evaluations of the project are analyzed. In addition, seven semi-structured interviews were conducted with key stakeholders involved in the case. A coding technique for qualitative data is used to test the hypotheses. Findings suggest that in the absence of professional bureaucrats, the PPP contract can have an impact in legal and political accountability; however, they indicate that the PPP contract does not hinder professional accountability by any means.

Key words: Accountability, Legal, Privatization, Professional, Reform

1. INTRODUCTION
Public-Private Partnerships (PPPs) are seen as cooperative institutional arrangements in funding and maintaining public services. Ideologically, they are justified mostly among neoliberals who seek to reduce the role of government and increase the role of the private sector calling upon inefficiency of government (Linder 2000, 23-25). PPPs are not only being considered as cost-efficient and effective mechanisms for the implementation of public policy across different areas, they tend also to benefit in their own right the development of socially inclusive communities.

There is no agreement within the literature on a precise definition for PPPs as the policy logic of this model varies according to the context being analyzed, participants of interaction, their roles and allocation of powers matureness of governance systems and markets, political situation, and public management environments (Osborne 2000, 1-348; Skietrys, Raip and Bartkus 2008, 46-48).
However, in general, and as it is the case in this study, PPPs can be best defined as contractual agreements between the local authority or a central-government agency and a private consortium, by which the private firm takes the responsibility for the design, construction, finance, operation, and maintenance of public projects and facilities for a specific period of time (Bovaird 2004, 199-215; Savas 2000, 3-327; Garvin and Bosso 2008, 162-78; Garvin 2010, 402-11). Contrary to traditional forms of public procurement where the tasks for building and managing a public facility are delegated to private contractors, in public-private partnerships the tasks are bounded (Hoppe and Schmitz 2013, 56-74). An often-heard argument in favor of PPPs encompasses both instrumental and normative aims. From an instrumental viewpoint, PPPs can provide governments technical expertise and resources. On the incentives side, partnership with private sector underlines a clear goal of importing “businesslike” practices and thinking (Brinkerhoff and Brinkerhoff 2011, 2-14). Hence, the ultimate rationale of PPPs as new forms of public management is to enhance governance effectiveness (Osborne 2000, 1-348; Bovaird 2004, 199-215).

However, the rational approach behind the cooperation between public and private sector has been subject of scrutiny. The subject of accountability has attracted growing scholarly interest in the field of public policy and administration as PPPs reflect a unique collaboration between states’ agencies and a private firm. As some authors state, while the government maintains ultimate responsibility for the delivery of the good or service, it becomes a partner with the private sector in decision making and delivery (Hoppe and Schmitz 2013, 56-74). On the public side of contracting debate, concerns have arisen about the loss of public sector accountability. Due to their differences from traditional bureaucracies, inter-organizational networks in general, and public private-partnerships in particular, present significant challenges to traditional norms and forms of accountability (Muhittin 2002, 27-44).

More fundamentally, partnership between public and private actors poses problems with regard to the state’s capability to hold private partner accountable for its actions (Romzek 2000, 21-44). In that respect, in network forms of governance, the direct democratic accountability of policy makers is weakened (Papadopoulos 2007, 469-86). In PPP projects, the private firm has an advantage with regard to information which may allow it to exaggerate costs (Vickerman 2004, 315-22). In some cases, the cost-savings claims disseminated to the public in support for long-term public-private partnerships have been discredited when subjected to close scrutiny by independent evaluators (Bloomfield 2006, 400-11). Analysis in some other contracting out services have shown mixed results with regard to accountability shading assumption (Romzek and Johnston 2005, 436-49).

Advocates of the integration of public sector in developing public services, however, have long claimed that accountability level is higher in partnerships rather
than in traditional forms of privatization. The PPP contract enhances control over contracted activity as it enables performance monitoring, imposing financial sanctions, or abandonment in cases of outright performance failure (Domberger and Jensen 1997, 67-68). Hence, the institutional arrangement of PPPs can ensure the protection of public interests despite the delegation of authority to private firms because “[the design of appropriate governance mechanisms] creates constraints on the agency of private actors, reducing possibilities for self-interested behavior at the state’s expense” (Skelcher 2010, 1). In sum, the resulting effects of institutional arrangements on accountability are not clear from a theoretical perspective. Empirical evidence is limited and fails to provide any clarification on the issue.

Therefore, this study aims to analyze the relationship between public-private partnership contracts and accountability. The study makes a distinction among legal, political, and professional accountability. Then it hypothesizes that the PPP contract undermines these segments of accountability. To elaborate the hypotheses, a single case study approach in the Airport industry is used. An airport is a central component of a state as it helps connect people and products all around the world. An efficient airport affords important economic incentives which help states to prosper and improve the quality of life. The privatization of seven airports in United Kingdom in 1987 marked the beginning of the new managerial forms in the airport industry. Many countries began to initiate the involvement to the private sector in the ownership and management of the airports. Governments that have not embraced the standard privatization approach have retained the ownership of airports by commercializing them through transferring their management and operation to private consortia under long-term lease contracts (Oum, Jia Yan and Yu 2008, 422-35). Public-private partnership model has served well in executing concession contracts. From 1990 to 2014, PPP projects were executed in 141 Airports worldwide, 68% of which were implemented in the present century (Farrell, Sheila and Vanelslander 2015, 329-351). Hence, the Airport industry appears to be the exact locus to analyze the impact of PPPs on accountability. Empirical evidence driven from this sector can help understand the likelihood that these contractual arrangements have to succeed in other areas as well.

This study consecutively deals with the concession of Prishtina International Airport “Adem Jashari” through Design - Build - Finance - Operate - Transfer (DBFOT) model. Prishtina International Airport “Adem Jashari” (PIA) is a commercial airport in the Republic of Kosovo, a country located in southeastern Europe. PIA started to operate in 1965 and was primarily designed for military use. In 2008, the Government decided to undertake a public-private partnership for the operation and expansion of the country’s main airport after analyzing investment and operating costs. The decision was justified on the basis of an investment-grade feasibility study. The report was based on future traffic forecasts. The study
likewise analyzed infrastructure requirements needed to meet expected failure demand at acceptable levels. In June 2010, after developing the tendering procedures, a foreign private consortium was announced as the winner of the Contractual Structure Design - Build - Finance - Operate - Transfer (DBFOT). In 2011, the consortium took the responsibilities for managing the airport for the next 30 years, whereas, the government took over the risks mainly related to: air control service, the regulatory, political aspect, property related issues, whilst the force majeure risk it was determined to be shared between the parties. To date, there is no empirical study that has analyzed the effects of this contract in accountability.

| Tab 1. Summary of Public-Private Partnership Agreement in Prishtina International Airport |
|---------------------------------|------------------------------------------------------------------------------------------------|
| **Investments**                | New site for the Terminal with the capacity of 25,000 m²; due to reasons that relate to the Terminal’s construction location the plan was changed and the new Terminal was constructed of 42,474 m² and the cost covered by the PP; |
| **Performance criteria**       | Performances; PIA AJ will achieve the “C” level of quality in line with International Air Transport Association (IATA C); |
| **Scope of Services**          | All functions of the PIA, with the exemption of the Air Control Services (ACS) which will be Kosovo’s state owned property in a form of a Public Enterprise, will be carried out by the Private Partner. |
| **Employees status**           | Under the AIP AJ PPP Agreement employees are guaranteed with a 3 year employment period as full time hired; |
|                                | Private Partner will pay to Government the concession fee of average 39.42% of gross revenues and which starts to be applied from the second year with 18% reaching to 55% of the gross revenues in the last year. The first fixed payment was made in 2012. |
| **Concession Fee**             | Private Partner will be subject to the tax system of the country; |
| **Taxes Ownership of the assets** | Assets remains in the public sector as they are only given for use during the duration of the Agreement. |

The standard contract as provided by the Ministry of Finance as well internal and external evaluations of the project have been analyzed. In addition to that, seven semi-structured interviews were conducted with key stakeholders involved in the case to elaborate the impact of the contract on the accountability. To analyze the collected information coding technique for qualitative data is applied. Findings suggest that in the absence of professional bureaucrats, the PPP contract can have an impact in legal and political accountability. Whereas, they indicate that the PPP contract does not hinder professional accountability by any means.

The paper is structured as follows. Next section explains the distinction among legal, political, and professional accountability, and hypotheses. The methods section explains in a greater detail the means for collecting data and the approach behind coding them. Findings are discussed in the following section. The conclusion and study limitations are left for the last section.
2. DEFINING ACCOUNTABILITY AND SETTING HYPOTHESES

In a broader definition, accountability can be referred as a mechanism through which citizens can hold their representatives to account and enforce certain behavior from public servants (Bovens Schillemans and Hart 2008, 225-42). Accountability has been always a challenge for public management and it is even more so in time of reforms when new multi-organizational networks and partnerships are introduced (Muhittin and Robertson 2004, 331-44). As it was mentioned in the introduction, an often heard argument is that public sector reforms might threaten accountability because the decision-making authority, or the responsibility for the execution of public service delivery, belongs to private firms rather than public servants. The rhetoric reform usually poses questions of accountability in terms of whether government employees are less accountable after the reform than they were before. An analysis of the accountability relationships in the new forms of public management requires first an understanding of governmental accountability. In that respect, the most influential model is arguably network accountability framework (Romzek and Dubnick 1987, 227-238). Founders of this model elaborate four different accountability relationships—bureaucratic, legal, professional, and political—which encompass the level of internal and external control. This study follows the same analytical framework, with the exclusion of bureaucratic accountability as it does not fit the context.

<table>
<thead>
<tr>
<th>Type of accountability system</th>
<th>Analogous Relationship (Controller/Administrator)</th>
<th>Basis of Relationship</th>
</tr>
</thead>
<tbody>
<tr>
<td>Bureaucratic</td>
<td>Superior / Subordinate</td>
<td>Supervision</td>
</tr>
<tr>
<td>Legal</td>
<td>Lawmaker/law executor Principal/Agent</td>
<td>Fiduciary</td>
</tr>
<tr>
<td>Professional</td>
<td>Layperson/Expert</td>
<td>Deference to expertise</td>
</tr>
<tr>
<td>Political</td>
<td>Constituent/Representative</td>
<td>Responsiveness to constituents</td>
</tr>
</tbody>
</table>

Source: (Romzek and Dubnick 1987, 227-238)

Bureaucratic accountability refers to mechanisms used to manage public agency expectations (Romzek and Dubnick 1987, 227). Under this approach, supervising control is applied to a wide range of agency activities. The bureaucratic accountability involves two simple components: a relationship between a superior and a subordinate in which orders must be obeyed; and a close supervision of
operating procedures, rules, and regulations. Since the aim of this study is to elaborate the impact of a DBFOT project in accountability as a whole, focusing on individual performance evaluations does not fit the context. Through the PPP model, the responsibility for managing the public facility and delivering public services is transferred to private sector, therefore, the applicability of bureaucratic accountability would require the elaboration of employee-employer relationship within the private consortium. Legal accountability, whereas, involves the application of control to a wide scope of public administration activities. In contrast to hierarchical accountability, legal accountability is based on external monitoring of performance. Although the supervision can be anticipatory, particularly through informal inquiries, legal accountability is typically reactive. It is usually conducted through detailed investigations, such as legislative oversight, financial or program audits, and employment grievances reviewed by monitoring agencies (Romzek 2000, 21-44).

 Turning to public-private partnerships, concerns with respect to legal accountability rise as the responsibility for the execution of public service is no longer on the hands of public servants. Changing the status of a government-owned firms means changing the communication line and reporting procedures as well. Theoretically, it has been argued that contracting out services enhances accountability in three different ways: by promoting reviews of standards and service specifications, by introducing rigorous performance monitoring, and by setting up mechanisms for redress in cases where individuals or organizations have suffered loss or damage (Domberger and Jensen 1997, 67-68). Accordingly, it can be said that public-private partnership contains proper mechanisms to take into account legal accountability as it establishes restraints on the agency of private actors, reducing partisan benefits at the state’s expense (Skelcher 2010, 292-304). Public and private partners agree to specify the outputs and the monitoring plan by which the latter has to provide, monthly, quarterly, and yearly reports to the public procurer (Reynaers 2013, 41-5). However, it exists a fear of a “democratic deficit” from a possible shortfall in the accountability arrangements in PPP cases as the complexity of contractual partnerships’ financial structures might hinder legal accountability. The information provided may be inadequate, inaccurate, or misleading (Bloomfield 2006, 400-11; Papadopoulos 2007, 469-86; Brown, Potoski and Slyke 2006, 323-31).

 Hence, it is hypothesized that legal accountability will be more difficult to achieve when the responsibility for managing a public facility and providing services is transferred to consortia.

 Professional accountability is characterized “by placement of control over organizational activities in the hands of the employee with the expertise or special skills to get the job done” (Romzek and Dubnick 1987, 229). Under this
accountability type, standard personnel are examined whether their performance is consistent with norms derived from professional socialization, personal conviction, organizational conventions, or work experience. Public employees are expected to be held accountable for their actions and performance. If they fail to meet satisfactory levels of performance, it is assumed they can be reprimanded or fired.

Theoretical and empirical evidence on the forms of contracting out, including public-private partnerships, points out a caveat that the professionality in offering public services may be flawed in certain circumstances. In cases when private firms are required to conduct various public tasks, decision-making might be irrational and efforts will be focused to increase productivity at the expense of the quality of services (Savas 2000, 3-327; Brown, Potoski and Slyke 2006, 323-31). Scholars, however, have argued that clear demand from public procurer forces private firms to conduct their tasks in a professional fashion and provide high quality (Domberger and Jensen 1997, 67-68). In a more recent study, change was not found in quality of services in a DBFFMO project (Reynaers 2013, 41-50). As the author puts, “despite the administrative overload, public servants are generally satisfied with the quality of the asset and services delivered” (Reynaers 2013, 47). It is quite realistic to assume that the level of professionalism and the quality of services cannot be divided. It is unclear, however, whether professionality on managing a public facility will remain the same once it is taken over by private sector.

Therefore, it is hypothesized that professional accountability will be more difficult to achieve when the responsibility for managing a public facility and providing services is transferred to consortia.

Political Accountability afford managers the discretion (or choice) of “being responsive to the concerns of key stakeholders, such as elected officials, clientele groups, and the general public (Romzek 2000, 21-44). This type of accountability emphasizes the need for public managers to respond to the wishes and agenda of others by reflecting mutual adjustment between stakeholders and administrators. Such officials serve as “political bureaucrats” administrators who look outward for political signals and support; conversely, they face external sources of expectations and are answerable to external groups (Romzek 2000, 21-44).

In the contracting context, the ability of public servants to determine, influence, or adjust public service delivery becomes questionable. Private partners become responsible for public service delivery, but do they take it seriously? Partners are not only responsible for the partnership itself but represent the other share or stakeholders too. The complicated organizational composition, i.e. the fact that many actors partake, make PPPs difficult and vague and also increases the risks of decision-making processes and pose a difficult managerial challenge for the
involved members (Klijn and Teisman 2003, 137-46). A visible tension between the existing institutional structures and rules which set the standards and means for delivering public services in one hand, and the preferred means of actors in the other hand. There is a potential risk that this tension might lead to divisions between networks and between actors, which make joint-decision making even more difficult (Klijn and Teisman 2003, 136-46). A potential “blame game” in which public officials point to the consortium and vice versa is likely to occur (Hood and McGarvey 2002, 21-35).

Another issue with political accountability is that PPPs are intended to last for longer periods of time compared to other contracting out services, therefore, they may be confronted with new policies which derive from new appointed governors and which do not fit for purpose in a new socioeconomic context. In cases when deviations from contractual specifications are required, it remains unclear whether a consensus among public and private partner will be reached. A potential risk is that once the private firm has been awarded a contract, it will have considerable bargaining power over it. Private firms with their incentive to maximize profit may take the opportunity to increase their price during the course of contract renegotiations. This puts the public entity in a delicate position because a potential decision to go back to market can be very high (Guasch Laffont and Straub 2003, 421-442; Jensen and Stonecash 2004, 1-32).

Hence, it hypothesized that political accountability will be more difficult to achieve when the responsibility for managing a public facility and providing services is transferred to consortia.

3. METHODS

3.1. Case Selection and Data Collection

The findings and arguments in this paper derive from a case study in the Republic of Kosovo conducted between June and August, 2016. This research strategy focuses on understanding the dynamics present within single settings (Eisenhardt 1989, 532-550). The power of case study approach rests on the ability to use all methodologies within data-collection process and to compare within case and across case for research validity to provide description, test theory, or generate theory (Anderson 1983, 201-222; Dooley 2002, 335-54; Pinfield 1986, 365-388). The empirical evidence on the impact of PPPs, in particular DBFOT projects, in accountability remains scarce. In order to fully understand the impact of PPP projects in accountability it is necessary to include the following types of accountability: legal accountability, professional accountability, and political accountability. At the moment of case selection, this was the only PPP DBFOT project in operation in Kosovo, therefore the amount of projects that could be selected was strictly limited. As for the case, in 2009, the Ministry of Finance
signed a DBFOT contract with a private consortium that is responsible for the design, maintenance, operation, and finance of country’s main usable airport.

By means of data collection, it is referred to standard contract as provided by the Ministry of Finance, as well internal and external evaluations by authorities in charge. For instance, the study analysis internal passenger satisfaction surveys on services provided by private consortium as well as those provided by state authorities such as security screening. In addition to administrative data, seven semi-structured qualitative interviews were conducted with key practitioners involved in the case: contract managers within the Ministry of Finance, consortium members, Civil Aviation Authority members, representatives from National Audit Office, and officials from Air Navigation Services. During the interviews, respondents —which with the exception of National Audit Office—are all involved in the daily operations of the airport, were asked about their personal experiences with the public-private partnership project. Main questions were focused toward the financial and work reports, quality of constructions and services, and partners’ response to contingencies. Then, the respondents were asked to identify any contextual condition that might influence the level of accountability.

3.2. Data Analysis

This qualitative study is not completely inductive nor deductive. Therefore, the study adopts the “framework approach” which has been applied by scholars for studies similar to this one (Reynears 2013, 41-5; Reynears and De Graaf 2014, 120-28). The approach involves a systematic process of sifting, charting, and sorting materials according to key issues and themes. When identifying a thematic framework, a variety of components are considered such as: issues identified by the original research aims and introduced via the topic guide, emergent issues raised by the respondents themselves, and analytical themes arising from the recurrence or patterning of particular views or experiences. Then, to analyze the data, a “coding” or “indexing” technique is used. The thematic framework is systematically applied to the data in their textual form. Having finished coding, a picture of data as a whole is built up consisting of attitudes and experience for each issue or theme. Once all the records have been categorized according to core themes, the data are pulled together and interpreted as a whole. In this study, the framework contained the following themes: legal, accountability, professional accountability, and political accountability.

4. FINDINGS AND DISCUSSION

Having applied the thematic framework, three forms of accountability, legal, professional, and political were evaluated within seven different groupings encompassing both primary and administrative data. The level of each
accountability account was measured based on three conditions: achieved, unachieved, and exposed. The label “achieved” has been used in cases when a particular form of accountability had been reached i.e. if it was found that financial reports were submitted on time. On the contrary, if, for instance, the constructions’ quality criteria had not been reached, the label “unachieved” was used. The term “exposed” applied in cases when findings initiated that a potential threat to accountability had been managed or it is likely to occur in the future. In sum, findings indicated that professional accountability was largely reached, whereas some concerns were detected with regard to legal and political accountability. Therefore, data regarding these two accountability systems were further examined in order to identify the potential causes.

As explained earlier in this paper, legal accountability with respect to public-private partnerships is defined as the availability of state’s monitoring agencies to have access on financial, technical, and operational aspects of the project implemented by the consortium. Overall, for the first five years of the project implementation, public members involved in the partnership appeared to be satisfied with regard to legal accountability. Contract specifications seemed to have served well the purpose of limiting wrongdoings on the private side. According to administrators in charge, no errors were detected regarding financial or work reports provided by the private partner, and communication among stakeholders have been of a high professionalism. Hence, in the first glance it seemed that legal accountability has not been hindered. However, a vague process has characterized the project monitoring by the public side during the constructions phase. The Unit for Contract Monitoring (UCM) foreseen in the PPP contract was not established for the first four years of contract implementation. Instead, the supervision of the project was conducted by the public-private partnership department within the Ministry of Finance.

Two implications related to legal accountability are unfolded. First, the failure to establish the unit for contract monitoring presents a contract violation by the public partner as an important norm set to protect legal accountability was abended. Second, it remains unclear whether the public-private partnership department was capable to evaluate the project with the same appropriateness as the specific unit composed by professionals would have done. The lack of capacities and non-experience with public-private partnership projects of the similar nature were highlighted as the main reasons causing the accountability flaw. Therefore, based on the findings related to legal accountability, it cannot be concluded with full accuracy that well-defined PPP contract has eliminated chances for misconducts. A conclusion to be driven, however, is that the protection of legal accountability is conditioned by the level of professionalism among state agencies responsible for supervising the PPP project.
Professional accountability in the context of public-private partnerships is measured based on the level of quality of constructions and services provided by consortia. Findings from the case of Prishtina International Airport do not indicate a quality shading hypothesis. State agencies emerged to be very active in holding the private partner accountable regarding the quality level of works. Constructions were certified only once they met the criteria set by relevant institutions. The institutional design of the PPP contract had served, at large, as an instrument to ensure the level of professionalism. For instance, hiring for positions related to safety issues at the airport facilities had to be first approved by Civil Aviation Authority. Also, findings highlight a general belief among stakeholders that investments in infrastructure by the consortium have led to better customer services, and consequently to a greater number of flights and passengers. This study confirms an increased trend in the number of passengers, however, it does not assume that the same happened due to changes in the management. Moreover, findings emphasize the role of the contract duration in professional accountability. The long-term character of the project was found to strongly incentive the private consortium to provide high-quality services.

The label “political accountability” in the context of the present study refers to the private partner responsiveness toward other stakeholders’ interests and contingencies. Findings indicate a fair collaboration between the consortium and public agencies, as well between consortium and street-level bureaucrats. While the consortium is responsible for commercial affairs, activities such as security screening are managed by state authorities. Data analysis have not revealed a blame game between private partner and any of public agencies included in the study. However, similar to legal accountability, the construction phase has been characterized with events that could hinder political accountability mainly because the state failed to fully fulfill its commitment to consortium. The PPP contract states clearly that the government should provide the consortium the right to use the real property for construction purposes. However, a year after the contract was signed, the consortium was asked to stop the constructions as an international security organization claimed the ownership over a part of land dedicated for the construction of the new terminal. The dispute has been solved through negotiations between the government and consortium. Both parts agreed to change the location of the new terminal by adding no additional costs to the project. Findings suggest that the solution was found since no financial harm was posed to private consortium by changing the location. It is beyond the present treatment whether the involved members would be able to find a solution had the private partner been harmed financially by changing the initial construction design. However, this study notes that such a dispute could be avoided had the government analyzed in depth the status of real property. Once again, the need for professional policy analysts is
The study also emphasizes that failure to reach an agreement in the particular case could fail the whole project causing the government enormous financial loss.

Accountability effectiveness is enhanced when it is comparatively easy to generate performance data and reports or, conversely, when barriers to obtaining performance information are minimal (Romzek and Johnston 2005, 436-49). A natural option to strengthen a partnership between public and private sector is to set up an institutional framework through a specific contract. That sets limits to unilateral regulatory changes, and by doing that, it mitigates the potential for wrongdoings (Spiller 2008, 1-28). Based on the analysis driven from this study, the integrated project nature, the setting of standards, the opportunity to expend reputation for the consortium, and the nature of project all seem to facilitate and even improve the quality of constructions and services. However, it can be argued that the preservation of legal and political accountability in public-private partnerships depends on the level of professionalism in the public side rather than contractual design per se. Therefore, institutional quality plays a crucial role in enhancing these two segments of accountability. That means that public-private partnerships are more likely to succeed in an environment when rule of law is enforced, corruption practices are not present, and a professional bureaucracy is in place (Galilea 2010, 102-9).

5. CONCLUSION AND STUDY IMPLICATIONS

Public-private partnerships present a practical solution towards the provision of public services in a more efficient manner than under the traditional form of public management. This model enables private firms to bring their expertise in managing public assets while the government retains the ownership. Transferring the operational responsibilities of Airports to private consortia is a good example of an ideal PPP. However, changing the managing status of government-owned’ firms from public to private possess challenges towards the accountability. Concerns arise regarding whether the consortium will comply with ethical, political, and professional standards. Theoretical and empirical literature does not give a definite answer to this question. This study has applied a single case study approach in the Airport industry to check whether the PPP contract harms three segments of accountability.

Findings are in line with the theoretical assumption that the PPP contract per se cannot affect accountability. Legal accountability still remains in place though the reporting format changes. Whether the oversight will be held professionally depends on the level of expertise among states’ monitoring agencies. The same holds true for political accountability. Private consortia are always profit driven. The long-term character of PPPs tends to incentivize private enterprises to
seek for solutions in cases when the amendment of contract is required. However, political accountability can be seriously threatened if policy makers fail to consider events that can endanger the implementation of the PPP project. It should be noted that this study is limited in considering implications with regard to national interest i.e. employment, flight prices, and flight destinations. Only a detailed study compassing ex post benefit-cost analysis and risk perception analysis could shed some light into that issue.

As it is theoretically argued, private firms bring their expertise in the public-private partnership projects. Accordingly, no professional accountability flaws could be identified. However, work affairs in the field of aviation are strictly regulated. Therefore, the findings from this study should not be considered conclusive. The project is still being implemented and the accountability status might change in the future. A comparison of these findings with other results from similar projects would add valuable empirical evidence to the topic. The case takes place in a relatively newly established and developing country, therefore, generalization from its findings can mainly apply to states with similar characteristics.

6. REFERENCES


RULE OF LAW THROUGH INVESTIGATING ORIGINS
OF PROPERTY-SUGGESTIONS FOR REFORM IN THE
REPUBLIC OF MACEDONIA

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Abstract

„Fiat iustitia ruat caelum”
Origins of property is always subject of interest, both from economic (societal) and
criminal aspect. From criminal perspective, subject of interest is the way of
obtaining the property, to be more specific-the main question is is it gained by
committing a crime, are the primary social interests violated, are the rights of others
jeopardized?
Everything that is acquired on illicit way, undermines the basic principle on which
the modern democratic society rests, and that is the rule of law.
This paper gives an overlook on the legislation that is regulating the area of criminal
aspects of the origins of property and also gives answers to the eternal and
interesting questions what is the best way for discovering property that is acquired
by committing a crime? State institutions, such as Ministry of internal affairs, public
prosecutor’s office and state commission for preventing corruption are merely an
option for solving this issue.
The paper also encourages the auditorium and the scientists to think in terms of new
wave of changes. Finally, we should also note that the majority of laws in this area
are excellent on paper, but we need their consistent implementation in practice.

Key words: rule of law, reforms, illicit property, corruption, origins of property

1. INTRODUCTION

It is a notorious fact that professional and habitual criminals frequently take
steps to conceal their profits from crime (Becker, 1999). Illegally obtained property
as the main source from which there is a risk (reasonable doubt) for further new
criminal activities, has become a challenge for dealing, both from domestic and
international character especially in the beginning of the new era, when new
international conventions were adopted. Particularly important was the adoption of
the Criminal Convention on Corruption, the Convention against Transnational
Organized Crime (Palermo) and the UN Convention against Corruption.
With this phenomenon, the corruption has close relations and actually the corruption I prerequisite for obtaining illegal property.

The Republic of Macedonia with a set of legislative solutions from 2003 till nowadays, has tried to regulate this area in some way, especially with the Law on Prevention of Corruption, the amendments to the Criminal Code, the amendments to the Personal Income Tax Law and the adoption of the new Law on Criminal Procedure. Although the legal-normative perspective as basic assumption has been fulfilled already, the practice proves that the legal framework still has some inconsistency. Also, the laws that are in force are not fulfilling the expected results that are needed (Kambovski, 2013).

The institutional chain of activities related to the prevention of corruption and illegally obtained property starts at the State Commission for Prevention of Corruption, continues with the Public Revenue Office and ends with the Ministry of Interior, the Prosecutor's Office and the courts in our country.

In the text that follows, my main focus will be on the legal solutions in this area, their weaknesses and inconsistencies, as well as the proposals for eventual reform.

It should be emphasized that the citizens and the state are those who ultimately suffer social, economic, legal and political consequences as a result of the abuse of state capital and resources by certain structures.

2. ORIGINS OF PROPERTY

Origins of illegally obtained property has been subject of interest for the criminal justice science for years and the intensity gets larger especially after 2000 year. As Lord Steyn noted in one the of the UK’s leading asset recovery cases (R v Rezvi1), no illegally obtained asset should remain in filthy hands (2010).

In our legislation, as was previously mentioned, the amendments to the existing and the adoption of new regulations have been made after the adoption of some international documents that are considered as pioneers in this area, as well as after the recommendations and receiving the candidate status of our country for member of the European Union in 2005. As the first step, amendments to the Criminal Code of the Republic of Macedonia were made (2004 novella), which introduced a new crime "Covering the origins of disproportionately obtained property" - Article 359-a. This crime was systematized in the chapter of crimes against official (public) position and abuse of authority. With this step in some way the intention was to send a message that special monitoring and accent were placed on the illegally obtained property through abuse of state capital resources by officials.

Previously in 2002, the Law on Prevention of Corruption was adopted, which was amended several times-in 2004, 2006, 2008, 2010 and 2015. This law
was intended to introduce new measures, standards and principles in the process of practicing power and public authorizations as well as obligations and measures for officials which need to be respected in the light of a conflict of interest and suspicions of corruption.

In 2009 a new amendment to the Criminal Code of the Republic of Macedonia was made again, introducing another, new crime against the official position and public authorization-„Unlawful acquisition and concealment of property”-359-a, which replaced and upgraded the crime which was introduced in 2004. From legal-normative aspect, the two crimes are with almost the same description of the unlawful actions, which can lead to theoretical and practical confusion. This error must be corrected by the legislator.

There were also amendments in the Law on Personal Income Tax (1998), which introduced a procedure for investigating the origins of property by the Public Revenue Office, which caused a series of reactions from both the expert and the wider public.

Despite all the above mentioned legal interventions, however, no regulation in this area defines, nor does it clearly distinguishes what is meant by „origins of property” or „illegally obtained property”. In conditions of non-existence of legal definition and a clear and precise notion that will not lead to arbitrary actions by state institutions, by means of deduction, from the two crimes in the Criminal Code, it can be concluded that the illegally obtained property is a property that exceeds the legal and reported revenues for taxation to a significant extent by an official or responsible person in a state institution or institution that performs public authorizations or assets acquired by committing a crime and for which public duties are not paid (claimed by law) to the state. In wider context, under illegally obtained property, we can say that enters property for which the legal inconsistencies in the regulations were abused and as a consequence that property passed the so-called "filter" through the institutions and which is freely used further in the legal and daily operations. Some authors, say that illegally obtained property is every asset obtained against the law (Williams and Sickles, 2010), but this is far too undefined definition.

Reasonable question that arises is-why the laws are applied only to illegally obtained property through abuse of state capital? Corruption does not involve just crime or exploitation for gaining benefits in the state sector!!?? Why is the private sector exempted? The practice has shown that on a number of occasions private businessmen are susceptible to corruption and illegal acquisition of property. Under sign questionmark is brought the whole political desire for practical and complete implementation of the regulations or the sincerity of the legislator (the assembly) when the law was introduced.
2.1 Articles from the Law on prevention of corruption regarding illegally obtained property

In order to examine the origins of the property, the law stipulates an obligation to the elected or appointed officials and responsible officials in the enterprises that have state capital as well as the public servants employed in state institutions and bodies, within 30 days from the day of appointment or employment to fulfill and submit a questionnaire with a detailed inventory of all movable and immovable property that is in their possession or ownership of the members of his / her family (Article 36). In addition, the legal basis for acquiring the property should be stated, as well as a notarized statement that the person waives the banking and business secret in all domestic and foreign banks.

The legal treatment for the elected and appointed persons, unlike the officials and civil servants in the state bodies, is different. The first ones are submitting the property questionnaires to the State Commission for Prevention of Corruption and the Public Revenue Office and the second ones only to the bodies and institutions where they are employed.

In order to have control and insight on the assets of the persons employed or appointed in the state institutions, Article 34 of the Law on Prevention of Corruption also stipulates an obligation to report changes in the assets status of persons in the amount of over twenty average net salaries in the previous three-month period in the country (around 6,700 Euros). Documents that are the basis for the acquisition of the property are also submitted to the application for changes. As a finalization of this whole process, after the termination of the function or employment in the civil service, the persons are obliged to submit a property registration form to the relevant institutions within 30 days.

Having in mind these legal obligations, the main question arises - how will the truthfulness of the data entered in the asset declarations (questionnaires) and their changes be monitored? In order to introduce transparency and accountability, a Registry of Assets Status of appointed and elected officials has been established, which has public character and is available on the website of the State Commission for Prevention of Corruption. But in practice, the law's inconsistency in this section is used and the asset declarations of officials are kept only for a certain time after the termination of the function and they are removed from the public access to the website. In the future, it should be considered that the legal amendments must be in the direction of permanent storage and availability of data to any person that has been selected or appointed, because this is the only way to protect the public interest and the interest of all citizens. On the other hand, it is also problematic that there are other managerial positions in the state institutions that can be abused and used to achieve personal goals and interests, and there is no publicly accessible register for them and their property data.
The diction of Article 36 of the Law states that „a procedure for examining property can be initiated against an elected or appointed official, as well as another official and responsible person in a public enterprise, public institution or other legal entity that has state capital and resources. condition, especially if the person did not submit a questionnaire or in the asset declaration:

• has no any data,
• Has given untrue or incomplete data or
• if it did not report a change of property according Article 34 or it has given false and incomplete data.

In the second paragraph of the same article, an opportunity is given to initiate a procedure against the person if it is established that during his public duty’s length his property is disproportionately increased in relation to the regular and taxed income.

The procedure is conducted by the Public Revenue Office (PRO) and the request for initiation of such procedure can be submitted by the State Commission for Prevention of Corruption. Since it is not explicitly specified who might be the initiator of such a procedure, it should be treated (from practical aspects) that such an ex officio procedure can be initiated by the Public Revenue office itself as well as at the request of any person having a legal interest (citizen). But from practical aspects, there are several problems here. Firstly, the law does not define what is „disproportionately increased property in relation to regular income“, which can lead to arbitrariness in the process lead by the Public Revenue Office. Theoretically, it is possible to initiate a procedure against a person that will be randomly chosen. Furthermore, I think that a major flaw of the law is that with the very initiation of the procedure for examining the property, the PRO also submits a proposal to the court for pronouncing a temporary measure for prohibition of disposal of property. Having in mind all of this, the principles of presumption of innocence and free value of evidence were not taken into account at all. What will happen if the measure is pronounced, then after a couple of months, possibly a yearly solution, the evidence leads to conclusion that the property was legally acquired? In this case, the party is entitled to claim damages for lost and missed profit for the entire period.

The critics regarding the legal authorizations and the procedure in the PRO are in the direction of the paradox of transferring judicial powers and authorizations into a state body that is part of the tax administration. Namely, with this way of conducting a procedure in which a person is obliged to present the evidence and sources of income for the property to the PRO, the PRO is actually a para-court. De jure and de facto the PRO decisions have the court verdict force, which is contrary and against the Constitution of the Republic of Macedonia and to the Law on the courts. From the aspect of the burden of proof, it is problematic and unfair that it is transferred to the party, that is-the person against whom the procedure for
examining the property is being conducted. If, during this procedure of examining origins of property, the evidence proves that the property is acquired as a result of undeclared and non-taxed income, then a decision for taxation with a personal tax is made at a rate of 70%. Then, if the property is increased in „large amount”, then a criminal charge is filed to the Ministry of Interior. The Law on Prevention of Corruption does not provide a definition of what constitutes property in, large amount”. According to my opinion, with the rules of legal analogy, starting point in this case should be the assumption that the definition in the Criminal Code in Article 122 - damage, property gain or value on a large scale (large amount) is the one that corresponds to the amount of 250 average monthly salaries. But the Criminal Code is also unreliable! What are 250 average wages - net or gross? Such an undefined definition can lead to practical problems, because there is a big difference between gross and net salary.

2.2 Crimes in the Criminal Code related to illegally obtained property

The United Nations Convention against Transnational Organized Crime (Palermo 2000), as well as the Penal Convention on Corruption adopted by the Council of Europe in 1999, have in some way caused an obligation for reforming some articles in the Criminal Code in our country.

Thus, in addition to certain leveling and specifying the existing criminal offenses against the official (public) position and authority, first step that was taken with the novel of the Criminal Code from 2004 was introducing a new criminal act - „Covering the origins of disproportionately obtained property” Article 359-a.

The aim with the introduction of this crime was to complete a set of norms, together with those provided in the Law on Prevention of Corruption, that will punish behavior that is contrary to the official position of the persons.

Paragraph 1 of this crime stipulates that „An official person and a responsible person in a public enterprise or a public institution who, contrary to the legal duty to report the assets, gives false data on their income, or when it is determined that his property significantly exceeds his legal and reported taxation revenues covering his true sources, he will be punished with imprisonment of six months to five years and with a fine.” In correlation with article 36-a paragraph 5 of the Law on Prevention of Corruption and with the content of Article 63 of the same law, it can be concluded that this crime is at least in collision with these provisions.

The crime has two forms, two prohibited actions:

• The first part of the crime, (one form of the crime) in the Criminal Code, is fulfilled when an official or a responsible person in a public enterprise or institution which, contrary to the legal duty (Law on Prevention of Corruption), gives false data on its revenues and the second part
is fulfilled when it is determined that his property significantly (value of 50 monthly average salaries) exceeds the legal and reported revenues.

For reminder, the law on prevention of corruption foresees in Article 36 that against a person who does not submit true data on the property and property situation can be initiated a procedure for examining the property and if later during the procedure it is determined that the property has been enlarged on a large scale (large amount), criminal charges must be pressed to the prosecution. Additionally, in the penal provisions of the same law, a misdemeanor fine of 500-1000 Euros in denars equivalent is stipulated, which will be imposed on a person who will not file a mandatory application for property, a change in the property status or other data.

There are no clear boundaries between what constitutes misdemeanor and what criminal behavior (crime).

The second criminal act that was introduced, that changed and supplemented the previous one from 2004, was with the 2009 novel in the Criminal Code titled „Illegal acquisition and concealment of property”. The actus reus of the crime consists of activity of an official person or a responsible person from a public enterprise or other legal entity that consists of state capital, contrary to the legal duty of reporting property situation or its change. Also, the unlawful actions consist of giving false or incomplete data on its property or the property of members of his family who in significant values exceeds his legal income. More severe form and punishment comes with the size of the property, if it is on a large scale, then a prison sentence of one to eight years is prescribed and a fine. Legal basis was given that the perpetrator of the offenses will not be punished if in the procedure before the court he gives an acceptable explanation of the origin of the property.

Regarding the critics about this crime, it can be said that there are also inconsistencies and possibilities for abuse of the unlawful action of this crime. Also, this crime did not completely remove the confusion that had the previous one, and all the criticism that were valid before, are still valid.

The most troublesome is paragraph 5 of Article 359-a, which states that the property that exceeds the revenues that the perpetrator legally made and for whom he gave incomplete or false information or hid his real sources is confiscated. This provision is in direct collision with the provision of Article 36-a of the Law on Prevention of Corruption, which stipulates that if in the procedure for examining the property it is not proven that it has been acquired from legal and taxable income, taxation on illegal property is at rate of 70%. Does this mean that the property will be confiscated without taxation, or will it first be taxed and then confiscated?

The legislators had to pay more attention to the adoption of such crimes that directly exposes the court to practical problems.
3. CONCLUSION (SUGGESTIONS FOR REFORM)

The concept of research and the detection of illegally acquired property must not and cannot be limited to regulating behavior just within the legal norms. A wider dimension is needed, multidimensional actions from a preventive aspect, that are not just relying on the repressive function of the provisions of the Criminal Code.

Reforms need to be made in the direction of institutional strengthening, as well as legal and normative regulation of the existing crimes and misdemeanors.

Institutional reforms that need to be taken are the following:

• establishing of a special Register in the Real Estate Agency for the property of elected and appointed persons,
• linking the Register from the Real Estate Agency to the Register maintained within the State Commission for Prevention of Corruption,
• establishing and connecting of the Electronic Registry with the Register of Birth and
• establishing of a special department in the State Commission for Prevention of Corruption to detect exclusively illegal acquired property.

Regarding the first and the second reform, it is necessary for the Register of elected and appointed persons to be connected electronically with the Register in the Agency for Real Estate, where all immovable assets will be listed and registered in the existing register ex officio. It is also necessary to establish an electronic register for the possession of motor vehicles and other vehicles at the Ministry of the Interior, from which also data will be collected ex officio. This way it will be easy to see if people fully report their property.

Furthermore, in the Directorate for birth, death and marital status, it is also necessary to establish an electronic Registry, which will be connected with the previously mentioned two registers and who ex officio will list and record the property of the spouses of the persons and family members.

The establishment of a special department within the State Commission for the Prevention of Corruption for detecting illegally acquired property is essential, because only with a narrower specialization of the persons working on this issue, it can be contributed to the suppression of this type crime. The persons who will work in this part, it is obligatory to be from different educational profiles.

The second type of reforms - of a legal normative character that need to be made - is aimed at further specifying and adjusting the already existing provisions of the laws. First of all, it is necessary to define what constitutes a „family member” of an elected or appointed person. The Law on Prevention of Corruption and the Criminal Code of the Republic of Macedonia do not provide an accurate definition. Hence, practical problems arise with the interpretations. The following question here arises - is a family member a person who is, for example, situated at the same address with
the selected and appointed person, and is physically and de facto absent in another city or outside the country where he lives and works? Is a family member a person who is still at the same address with the elected or appointed person, and has been married and actually lives at another address? All of this can lead to practical problems and different interpretations from which the existence of the unlawful being, that is, the very crime itself depends.

It also needs to be defined directly with a legal definition that exactly describes what is illegally acquired property; although it can be defined by deduction from the description of the criminal act itself in the Criminal Code. When we are already at the essence (unlawful action) of the crime, it should be emphasized that it is vaguely and imprecisely stated and leads to confusion when comparing the articles of the Law on Prevention of Corruption - especially Article 36.

The theoreticians and part of the practitioners, go so far that because of the impossibility or perhaps the insufficient will in the last years for the detection and prevention of the crimes related to the illegally acquired property, they propose that this crime should be decriminalized and moved only in the misdemeanor area with higher fines. They especially emphasize the fact that for the illegally acquired real estate, the trace can easily be detected, but what happens to the property benefit in the form of cash that is being acquired? - remains in the sphere of dark (undiscovered) crime (Annan, United Nations, 2001).

Sublimated in the end, it can be said that there are still challenges in terms of regulation of this area - both institutional as well as legal-normative. They should be taken as soon as possible, in order to stop the undermining, the foundations on which the modern democratic society should rest-the legal state and the rule of law.

4. REFERENCES

IDEALISM VS. REALISM: CONCEPTS FOR WAR AND PEACE

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Abstract
As two specialists have written in the study of international politics -Haas and Whiting, since the appearance of International Relations as an academic discipline, there have been two different theses on the approach of the international scene: idealism and realism. Or as another specialist in international politics -Hans J. Morgenthau-, said "the history of modern political thought is the story of a dispute between two Schools of thought, that differ fundamentally: in their conceptions of the nature of man, of society and of politics "

Idealism is when the human being is inclined to see things in an ideal or perfect way. Realism, on the other hand, tends towards a more pragmatic and real view of a situation. The two concepts can, in simple terms, be considered from different perspectives, but idealism focuses on "what could be" and realism focuses on "what it really is".

In the present article we will present the definitions of these two prevalent theories with the purpose of pointing out the most outstanding differences that exist between their concepts for war and peace. In the absence of domestic literature dealing with this issue, the author will try to contribute to its enrichment, using the existing domestic and most foreign sources of information on the subject.

The purpose of this disquisition is to carry out a preliminary systematization, and to clarify the meaning of the most relevant concepts in the field of the International Politic: Realism vs Idealism. Is intended, to reveal the nuclear role that political realism and idealism plays in the study of international politics on explaining how the states achieve peace and prevent war.

The methods that will be used in this research are: the historical descriptive method, analytical methods, qualitative methods, quantitative methods, research methods etc.

Key words: realism, idealism, Morgenthau, Aristotle, peace, war.

1. INTRODUCTION

Because of the complexity of the world, there have been many attempts to create a system so that it can explain the way in which international relations are
developing and functioning. Many theories have been produced, many have failed, and several have proved to be closest to the truth.

The theory of international relations is a set of ideas that explain how the international system works. Unlike ideology, the theory of international relations is at least substantiated by concrete evidence. Different theories offer different models of reality or glimpses of the world (http://www.sparknotes.com/us-government-and-politics/political-science/international-politics/section2/).

Most theories of international relations are based on the idea that states always act in accordance with their national interests. State interests often include self-preservation, military security, economic prosperity, and influence on other countries. Sometimes two or more states have the same national interest (Ibid).

In contemporary society, it seems that war remains a relevant way of using force in international relations, and the main change is in finding new ways to justify it. In this sense, this paper aims through explaining and delineating the concepts of idealism and realism, to make an attempt to portray a different approach from the two opposing views regarding the justification of war as a way of resolving conflicts between states, bearing in mind that collateral damage and the international law, faces the risk of being completely neglected.

This research aims to provide a brief and general history of realism and idealism as concepts, explaining their postulates while comparing and identifying their similarities and differences in approaches, but also linking them to the situation in contemporary society, current trends and current developments in international relations, not neglecting the current developments at the national level.

During this scientific research, methods appropriate to the topic will be used: historical (descriptive) method, comparative methods, inductive and deductive methods, and will also use normative approach and empirical research approach.

Realism is the dominant theory in international relations, because it provides the most powerful explanation for the military situation in the international system (Baylis, Smith & Owens, 2008). According to realists, wars interrupt from time to time in order to prepare for a future war. Realists tend to believe that morality and virtues are an obstacle to the exercise of national power, and that the effectiveness of policies should be judged on the basis of serving national interests rather than adherence to the principles outlined above.

The end of the First World War marked a paradigmatic revolution in the studies of world politics.

Several perspectives on international relations have competed for attention, such as Marxism and National Socialism (fascism). But the perspective, known as Political Idealism, led by Woodrow Wilson, began to dominate studies of international relations.
The idealists shared a common perspective for a world based on certain beliefs: individuals are good in nature, and their interest in collective well-being stimulates economic and social development through possible collaboration and institutional and individual assistance. Idealists tend to believe in altruistic human nature, the opportunity to improve civilization, the inevitability of war, and the need for multilateral international efforts to eliminate war and injustice in the world (http://www.sparknotes.com/us-government-and-politics/political-science/international-politics/section2/).

Most of the theories of international relations fell to the most important test by failing to foresee the end of the Cold War. So the question arises as to how well these theories can help scientists and theorists in understanding the world after the Cold War. The dramatic events of the late 1980s posed serious challenges for several theories at the system level. In 2002, only a decade after the collapse of the Soviet Union, and a year after the September 11 terrorist attacks, it was confirmed that it was particularly important to understand the claim that the catastrophic events of history were irreversible.

2. IDEALISM: CONCEPTS OF WAR AND PEACE

Idealism originates from the old part of political philosophy and texts by ancient authors. One of the first examples of this tradition is Aristotle, who has looked into the world of ideas, virtues through which people act with ethics. For Aristotle, ethics is not just knowledge, but freedom. Aristotle's policy is that man is essentially a social and political creature. For the Greek philosopher, justice is the greatest virtue, and it is a perfect virtue. In anticipation of this, Aristotle's doctrine of justice will exert a long and strong influence on the basic political concepts from its time to the beginning of the Middle Ages (Green, 1991).

For the idealists, the pursuit of peace will be the main goal. In the Middle Ages, Dante Alighieri's De Monarchia treatise became one of the first and most powerful calls of Western political literature to form an international organization that would make peace respect. In his de facto De Monarchia, he glorifies King Henri of Luxembourg, who, according to Dante, is the man who will free the world from war and lead universal peace "as the most beautiful of all things." In favor of the establishment of a world state under the power of the omnipotent emperor, Dante concludes that "in many rulers lies evil, and therefore they should be subordinated to one prince." (Maleski, 2000).

The idealists also rejected the idea that conflicts are a natural state of relations between states and that they can only be overcome by the balance of political power and the formation of alliances against nations that threaten the world order. From this idea, in the seventeenth century, the need to build institutional structures was needed to prevent states that in one way or another put the
international order at risk. At the time, it was required to subordinate the will of the state to a state that was superior and agreed with consensus. Some of the defenders of the Confederation or the League of Nations were Jean Jacques Rousseau, Jeremy Bentham and Immanuel Kant. Kant is considered a great idealist of the Enlightenment. Kant thought that if the decision to use force was taken by the people, instead of the ruler, then the number of conflicts would be drastically reduced (Baylis, Smith, Owens, 2008).

Pioneers of idealism, such as Rousseau and Kant, refused to believe that human nature is evil. Instead, they argued that in the nature of man is to be cooperative and to be able to reach a solution with negotiating peaceful ways. Thus, the war was not the next logical step of conflict or disagreement; was only a matter of providing appropriate tools for individuals and states to be able to come to a peaceful, mutually beneficial resolution of all conflictual situations (Gashi, Hidri, 2018).

In the nineteenth century, Richard Cobden refined even more former concepts and argued that the advancement of freedom depends on the preservation of peace, the expansion of trade and the spread of education, and not the work of governments and foreign ministers. Therefore, from this century the concept of idealism is based on strengthening peace through the natural order, harmony of interests in international political and economic relations, mutual dependence of states and self-determination (Jackson, Sorensen, 2008).

In the beginning of the twentieth century, in order to avoid war, the idealists demanded the construction of a new international order, governed by the world organization capable of regulating anarchy. Idealism began with the idea that international relations are in a natural state, an international anarchy, and that their projects are aimed at overcoming it, based on the conclusion of a social agreement on the international level that will settle those relations.

However, the catastrophes caused by the First World War (1914-1918) and the failure of the mechanisms of collective security, through the creation of the League of Nations in 1919, opened the debate between the idealists and the realists about the appropriateness of their approaches to the preservation of the international order, and marked the growth of realistic theory (Baylis, Smith, Owens, 2008). Despite the decline of idealism in the decade of the 1930s, this did not mean that this line of thought disappeared from the international theory, only that the realism transformed itself into a dominant position.

Therefore, the academic climate after World War I determined the idealists to worry about preventing another war, from an alleged harmony of interests at the community level, based on the interest of the individual and national self-determination. At the same time, liberal idealists have admitted that peace is not a natural condition of the state, but something that was to be built. Thus, idealism
claimed that if any country has one authority in charge of maintaining order, there should be an international body for regulating relations in the world. In this sense, the idea of a collective security system stood in defense.

Nevertheless, as the Second World War (1939-1945) was closer, the gap between idealism and current events spread. The failures of the League of Nations in the thirties cast doubt on the alleged harmony that should prevail in the international system, seemed to be more tailored to the interests of the victorious powers, and thus satisfied with the status quo, of the glaring needs of the countries seeking a strategic position and greater power on the world stage (Baylis, Smith, Owens, 2008).

In addition, national self-determination did not always produce representative governments, on the contrary, the overthrow of the old monarchical order gave rise, in many places, to totalitarian states that adopted ideologies such as fascism, communism and Nazism. These events have ruined Wilson's thesis that democracy will triumph in the world to create a safe place.

The idealists shared a common perspective for a world based on certain beliefs:

- Individuals are good in nature, and their interest in collective well-being stimulates economic and social development through possible co-operation and institutional and individual assistance.

- The anarchic nature of the international system is not unchangeable and permanent, and it can be changed or extinguished by the establishment and strengthening of international organizations and international law.

- Generally speaking, democratic states do not require military and territorial expansion.

- It is necessary to guarantee individual freedom and to protect people from abuse of power that can be made by rulers on behalf of their institutions and the general interest.

- War can be avoided. International society should be reorganized to recognize war as one of the major international problems and eliminate those institutions that promote it in favor of those who promote peace (Gashi, Hidri, 2018).

In other words, the idealists proposed peace through democratization, in which citizens are given individual freedom and the right to have a voice in the activities of the state; and through the establishment of international law, which will be implemented through international institutions and organizations (Ibid).

Idealism, as a theoretical approach, denies the right to war, because it considers it possible to establish an authority capable of maintaining peace. But while such authority is not set up globally, it requires a strict adherence to the rules of war in order to minimize the consequences of the war.
3. REALISM - CONCEPTS OF WAR AND PEACE

In the forties and fifties, the so-called classical realism developed in response to the political and intellectual failures of the interwar period and the catastrophic experiences of the Second World War. His starting point was to examine idealistic arguments with a different approach, that is, studying the international system as it is, and not as it should be. The first realist authors include classical policy makers such as Thucydides and Machiavelli; and in the contemporary epoch, realism is represented by Hans Morgenthau, Henry Kissinger, George Kennan, and Robert Gilpin, among others. Realism starts from the assumption that bad human nature leads to conflicts, but also to the inability to solve them because of the selfishness of a man who sees his own enemy in the other. Hence, the significance of military and state power is crucial, from the aspect of this theoretical approach. For the so-called classical realism, conflict and anarchy are quite normal phenomena in international relations, setting power as the main theme of the realistic conception (Jackson, Sorensen, 2008).

Thucydides is the father of realism, a theory that many people use when talking about international relations and when they do not know they are using a theory. Many of today's rulers and analysts refer to realistic theory, although they have not heard of Thucydides. Thucydides was one of the participants of the Athens elite and lived in the brightest time of the Athens state. For Thucydides, the Peloponnesian War was inevitable and that the justifications for the defense of small city-states are not the root causes, but that the real reason was the rise of Athens's power and the fear that this growth brought to Sparta.

Philosophers such as Machiavelli and Hobbes painted a dark, pessimistic picture of the world, with almost no hope for a peaceful future. Although the two scientists lived at different times and in different places in Europe, the two rationalized in a similar way. In the 16th century Machiavelli, in the interests of the security of the state, allows the ruler to be cruel. He claims in the "Prince" that: "It is better to fear you, than to love you." (Maleski, 2000).

Just like other realists, they saw human nature as if they were essentially evil and selfish, and they believed that military readiness was all the time essential to the state. The key elements behind this particular theoretical system lie in the belief in anarchy, the bad human nature, the military power, and the meaning and power of the state. For classical realism, states are considered to be the main players in world politics, characterized by being rational and unitary. The goal of everyone is to maximize power, thereby rejecting the harmony of interests between them and recognizing that conflict and anarchy are inherent in the international system. Politics among nations is becoming a constant game, whose goal is to increase the maximum power in the anarchic system. Therefore, power is the main theme and the key to a realistic conception. The existence of an anarchic system implies a lack
of centralized power, which increases competition and power, and co-operation between entities becomes very difficult, as there is a self-help system, called selfhelp (Jackson, Sorensen, 2008).

Realistic policies are determined by calculations of power in the exercise of national security. Countries that are satisfied with their situation tend to monitor the status quo, countries that are dissatisfied tend to be expansionists, and those that make and break alliances on the basis of the requirements of "real-politics" (Baylis, Smith, Owens, 2008).

Realist tradition says that states are committed to war. Cooperation will be possible only as much as serves the interests of each country. The fact that all countries must follow their national interests means that other countries and governments can never rely on them completely. All international agreements are temporary and conditioned by the readiness of states to respect them. All states must be prepared to sacrifice their international obligations on the altar of their own interest if both are in conflict. It makes the agreements and all other conventions, customs, rules, laws, and so on among the member states only meaningful arrangements that can be set aside if they conflict with the vital interests of the state. There are no international obligations in the moral sense of the word - that is, bonds of mutual responsibility - between independent states. As stated above, only the basic responsibility of states is to promote and defend national interests (Jackson, Sorensen, 2008).

For realism, the conflict in the world is not an evil that can be eradicated, but only a result of the inherent forces of human nature; conflicts arise as a result of a continuous shock experienced by states, because of their intentions to survive, to dominate, and to spread.

While realists are also interested in the ideals in conflict management, realists are less optimistic about the effectiveness of international law and the organization and the level of international co-operation to achieve it. Realists believe that the approach to peace should be done through the balance of power and military readiness and strength.

"The international ambience characterizes a nation's egoistic race to promote its national interest. The very horizontal structure of international society dictates the rules of the game. The first rule is that it is a self-help game, in which power and wealth are the primary goals that the state aspires to.” (Maleski, 2012). According to prof. Maleski, there is a rule that there is no common international interest, capable of subordinating and coordinating the individual national interests of the states. Moreover, there are major economic inequalities, cultural differences and desire for domination among states, as well as the absence of effective mechanisms for peaceful resolution of conflicts. Although the rule "everyone for
each other" is dominant, there is cooperation, which the states, however, see as a way of achieving their national interest.

According to the theoretician of international relations, Hans Morgenthau, world peace is completely dependent on the balance of power. But not directly, but indirectly, through what in his work "Politics among nations: the struggle for power and peace," Morgenthau calls it political realism (Morgenthau, 2002). According to him, political realism is not identical to the real politics, but is related to it. Political realism does not stem from real politics, but real politics arises from political realism. When real politics moves within reality, and when, due to excessive pragmatism, it loses the sense of reality, it is possible to determine it only with the help of the principles of political realism.

Despite its theory of political realism, the ultimate limitation of the ethical correction of real politics (especially the international), which "tops to the bottom is woven with evil," Morgenthau ultimately decides on the ethical dignity of politics, or politicians. In other words, the national interest should be placed in brackets wherever his advocacy demands a violation of fundamental moral principles. When it comes to human lives, the goal does not justify the means.

The theoreticians of political realism, such as Hans Morgenthau, despite the strict conspiracy of the principle of that realism, never fall into the pragmatic model of real politics. Equally strictly as political realism advocates ethical principledness when it comes to use of violence.

Writing about the agreement on good neighborly relations between Macedonia and Bulgaria, Dr. Denko Maleski in one of his columns states that Misirkov's most frequently used word in his "For Macedonian Matters" is the word "interest", explaining that he himself underlines the interest as a notion and states that in that way, through interest, the true scholar explains the international politics and the position of Macedonia in it.

4. CONCLUSION

Based on these two brief descriptions, it is noted how the two theories are contradictory to each other, in other words, idealism and realism have many different approaches to explaining and understanding the world and the way it works, and the concepts that both have for the emergence of wars and the achievement of peace.

However, both theories have confirmed their views over the years with the critical events that have already occurred in the past and have drastically altered the history of the world.

Both theories have drawbacks and advantages in order to meet their differences.
The diversity of theoretical postulates of idealism and realism, starting from completely different views of war and peace, nevertheless, after critical events in the past, confirm their views.

Both theories have their own advantages and disadvantages. Thus, realism failed to explain the importance of interstate relations, the erosion of state borders in the globalized world, in a state of ever-growing numbers of new international organizations that play a role in maintaining peace and security on a world level.

The idealists, for their part, provide an explanation of the mentioned aspects but fail to explain why there are so many conflicts despite the creation of new international organizations, nor do they explain the increase in poverty and the great inequality in the world.

From the perspective of the idealists, wars are caused by egoistic interests of state leaders, at the expense of the interests of the citizens. In this sense, the idealists consider it necessary to guarantee personal freedom and to protect people from the consequences of their abuse of power by their leaders. The existence of laws and international organizations, for the idealists, is inevitably in the world of international politics. That is, the society should raise to the pedestal those organizations whose goal is the protection and promotion of peace and security in the world and to eliminate those who only declaratively promote peace.

For the idealists, wars in the international community are largely caused by individual and selfish acts of certain state leaders on the back of the population. They can be controlled by laws and international organizations structured according to ethical standards. It is necessary to guarantee individual liberty and to protect people from abuse of power that can be made by rulers on behalf of their institutions and the general interest.

As we have seen in the above, the main theses of the idealists for the avoidance of war consist mainly of three groups. One called for the creation of international institutions to replace the anarchist balance-of-power system that dominated the pre-World War I period. This new system was based on the principle of collective security, which means that any act of aggression by any state would be considered aggression towards all states. The League of Nations embodied this principle, reflecting the idealistic emphasis on the possibility of international cooperation as a key mechanism for solving global problems.

The second group of idealistic programs emphasized the legal control of the war. Disputes were required to be settled through legal mechanisms, such as mediation and arbitration. Examples of these programs were the Permanently Elected Court of International Justice, as well as the ratification of the Kellogg Briand Pact in 1928, which banned the war as an instrument of national policy.

The third group of idealistic programs focused on reducing arms exports, through weapons control agreements, and other means. Idealism originated mainly
as an attempt to make people aware of their actions after experiencing horrors in World War I. However, several years after the end of the war, World War II broke out and idealism loses great credibility, and more relational theory has intensified.

According to them, states will coexist in the international system in a constant state of affairs and conflict of interest. The ego-centric character of states in the international system stems from the innate desire that is almost insatiable, which the man has for power.

For realism, conflicts in the world are not evil that can be eradicated, but only results from the inherent forces of human nature. Power will never be distributed in the international system, rightly, there will always be great powers that dominate and subdue other states under their influence. The ability to change this selfish nature of states is zero; However, conflicts can be prevented through the diplomacy of states. Diplomacy will be responsible for ensuring that there is a balance of power, that is, a single force can not be able to dominate the international system altogether.

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PROTECTION OF HUMAN RIGHTS IN POLICE PROCEDURE

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Abstract
The idea and concept of human rights and freedom appears and develops as a result of the vision for creating a humane and fair society, where people will be aware of their individual and collective human rights. Today, the legal basis and concept of the human rights is written in form of norms and standards as a part of the international law. Human rights have to be incorporated in every modern country legal system and their implementation and control must be guaranteed.

The valuation of human rights and freedoms as a part of the international legal acts is a basic criterium for the existence of today's modern state and their law systems. However, the law does not exist only through the existence of legal norms, but even more through the legal remedies for their protection with the meaning of the maxim ubi jus ibi remedium (where is a law there is a cure). Freedoms and human rights like standards must be respected and included in all areas of human existence and the country must promote and guarantee as its primary obligation to the citizen. The state needs to provide instruments and mechanisms for their protection, especially where they are sensitive and most susceptible to injury and it is in police procedure. This paper work explains the theme of protection of human rights and freedoms in police procedures when they are abused by police officers when they are taking official actions using police powers in the police action. First, we will give a short overview of human rights and freedoms and the concept of torture and further development will focus on the prohibition of torture, mechanisms and instruments for prevention of torture.

Key words: human rights and freedoms, international legal acts, police abuse, torture, police procedure

1. INTRODUCTION
As a result of the evolution of the human goal of creating a humane and just society in which a person as a free being realizes his individual and collective rights inherent in his human nature, the idea and the concept of human rights and freedoms emerges and develops. Human rights are the highest achievement in the development of the human values system, which is a sublimation of the human dimension of all previous teachings (religious, philosophical, legal) and a measure of the achieved development of mankind.
Human rights mean respect for every single human life and dignity - which can be found in most major world religions and philosophies. Human rights cannot be bought, earned, or inherited - they are called "inalienable" because no one has the right to take it away for any reason. This means that they are inherent in every human being, regardless of race, color, sex, language, religion, political or other opinion, national or social origin, property status, status after birth or other status.

Human rights and freedoms are contained in international legal acts and documents and are accepted by a number of states as an integral part of their national legislation. The starting points of the whole concept are: the life and dignity of the human being. It is the nucleus around which the whole concept of human rights and freedoms is built.

In this paper we will elaborate the topic of protection of human freedoms and rights in the police procedure, when they are abused by the police officers, we will give a brief overview of the term torture, we will continue to hold the prohibition of torture and the mechanisms and instruments for protection from torture.

2. HUMAN RIGHTS AND FREEDOMS

Human rights and freedoms are basic criteria that reflect the role of man and citizen in a society. An ideal for human rights can be summarized as prima facie or everyone has an equally, legitimate right to tangible and intangible goods and benefits that are essential to human well-being (Ford, Greer, 2005). Human rights have their legal basis in international law, in the form of written legal norms and standards, as well as relevant institutions that guarantee and control their application and respect. They are incorporated in the national legal systems of modern states that should guarantee and ensure their respect for the everyday lives of citizens. The concept of human rights and freedoms, as the basic concept and basic principle of the modern democratic society, appears after the end of World War II with the establishment of the United Nations in 1945 and the adoption of the Universal Declaration of Human Rights in 1948. "All human beings are born free and equal in dignity and rights. They are endowed with reason and consciousness and should treat each other in the spirit of brotherhood "(Article 1, Universal Declaration of Human Rights, Paris, 1948).

3. PROTECTION OF HUMAN RIGHTS IN THE POLICE PROCEDURE

Interesting is the attitude of police officers that they themselves are in charge of combating corruption in the police. First of all, this means that it is necessary to continue the construction work to a responsible police officer, who has
the qualities to adequately provide services to his citizens and which by such behavior depicts an institution where there are clear procedures of determining responsibility, democratic oversight and control, and the protection of human rights. In this case, it is needed to "attack" the illegitimate influence of political parties on police work. In addition to such a positive reasoning, there is a negative one. The view that the cops themselves are in charge of the fight against corruption and violating human rights in the police can be seen as solving problems within their own "home", where no external actor is required to mediate or directly influence the reduction of the occurrence of corruption in the police like an example of violating of this rights.

This negative attitude is a direct consequence of the existing police culture in some countries, which implies on their own dealing with the problem, without mediating external actors that can impair the environment in which police officers work.

2.1. **Internal control is one that needs to reduce violating of human rights**

Citizens and police officers understand the strength and role of internal police units in the fight against violating of human rights. The role of internal control in the fight against violating of human rights is confirmed in many papers by the answer to the question of what is the basic work of this part of the police. The majority of citizens consider that their priority activity is the fight against corruption in the police itself. It is interesting that the majority of citizens, if they decide to report a case of violating of human rights in the police, would do just that by submitting the application to internal control.

2.2. **Prohibition of torture**

When taking police powers that have a consequence limitation or deprivation of freedom of movement, such as reference, apprehension and detention, the police officer is obliged to meet him the person about the reasons for which he assumes such authorization in a language understandable to the person, to learn about the right to counsel with counsel or the right to remain silent, the right to a defense counsel during the proceedings, the right to medical assistance when needed or when the person is seeking it, the right to be a notified person from the family or a close person (Code of Police Ethics). If the person is detained, detained or deprived of liberty for the sake of the existence of grounds for suspicion that he is a perpetrator of a crime, the police officers against such a person behave with respect to his dignity and individual needs. In the course of police action, they must not encourage, cause or support any activities or provocations they have for an act of
torture, torture or inhuman or degrading treatment or punishment against persons on whom police actions are taken.

2.3. Protection of human freedoms and rights from the police abuse in the domestic legal system

The protection of human rights constitutes the obligation and responsibility of the state towards its citizens that it needs to fulfill, building a system of legal norms that will enable full implementation, respect, promotion, but also prevention and sanctioning in the case of their own violation, especially in the field of police affairs where the red line the overdraft is at a very low level. In that sense, there are two segments in the Republic of Macedonia, either perhaps two concepts, the protection of fundamental freedoms and rights of abuse in the police procedure, which complement each other and cooperate in the achievement of the common interest and the achievement of the same goal - respect and protection of human rights and freedoms. The first concept is realized within the state institutions themselves, where the protection of fundamental rights and freedoms is exercised as obligations based on the legal framework in accordance with their competencies, goals and objectives the role they have in accordance with the Constitution of the Republic of Macedonia and systemic laws and by-laws. This includes the police, The Ombudsman, the Public Prosecutor's Office and the Courts, the Permanent Inquiry Committee for Human Rights at the Assembly of the Republic of Macedonia The second level is realized within the civil society, where citizens, through forms of association as the main subjects of the civil or civil society, associate and organize in associations in which they are they conceptualize the goals and tasks of such association in order to achieve common interests, which is the protection of fundamental rights and freedoms guaranteed by the Constitution and domestic and international legal acts.

In theory there are opinions that police ethics is one of the pillars on which the democratic processes lie in one state and, for the sake of it stability and advancement of these processes, the necessity of symbiosis is imminent between the state, the citizens and the police. An example of such a symbiosis is the establishment of rules of professional and ethical behavior in the execution of police duties and powers in the performance of police work. Exactly the professional attitude and behavior of the police officers, based on the provisions of the Code of Police Ethics, is the best protection and guarantee against the abuses of the underlying human rights and freedoms in the police procedure. Unethical phenomena and forms of behavior, such as: police brutality expressed through unnecessary use of coercive measures, physical and psychological torture, insolent and non-cultural behavior, police dishonesty expressed through abuses of police uniform and badge, racial and national prejudice police treatment, use of police
privileges which contribute to the development of corruption behaviors, police unkindness and inadequate behavior, as well as indifference and inefficiency in police treatment, resulting in violations and violations of civil rights and freedoms should be brought to the level of incidents cases.

As the main sources of international law that relate and have the greatest influence in the adoption of the Code of Police Ethics passed from the Minister of the Interior of the Republic of Macedonia, in which the rules for professional ethical behavior of the Macedonian policeman, is the Code of Ethics the conduct of the officials responsible for law enforcement, adopted in 1979 by the General Assembly of the United Nations and The European Code of Police Ethics passed on September 19, 2001. from the Committee of the Ministers of the Council of Europe, whose provisions are incorporated into Code of Police Ethics.

3. THE OMBUDSMAN

In accordance with Article 2 of the Law on the Ombudsman, the National the Ombudsman is a body of the Republic of Macedonia that protects the constitutional and legal rights of citizens and all other persons when they are violated by acts, actions and omissions of actions by the state administration bodies and by other bodies and organizations that have public authority. This means that any person on whom in police action by a police officer was abused human freedoms and rights that after The Constitution, laws and international acts belong and are guaranteed to him, they can to initiate proceedings before the Ombudsman for the protection of his own violated rights. The procedure is initiated by filing a complaint to the Office of the Ombudsman, both written or verbal in the minutes in the text itself Office of the Ombudsman or his deputies. If police treatment has resulted in such a violent personality human rights and freedoms in an obvious and unequivocal manner doubts that it was their abuse, in such a case the People's Party the Ombudsman can himself initiate a procedure on his own initiative for the purpose of determining violations and protection of rights and freedoms. The form of the complaint is not strictly determined, however, when it is submitting in writing should contain the basic elements of the written submission, and the personal data of the applicant, for which organizational unit of The Ministry of the Interior or for which official is concerned the complaint. If the name, surname or nickname of the official person is not known, then enough specific data describing the official is given person, about his appearance, the work tasks he was doing and others notes that will enable detection for which official is concerned the complaint. Furthermore, all the circumstances and facts that need to be explained are explained supported by evidence to determine whether the official acted contrary to the law and by-laws and, if so, to determine the type and nature of the abuse of police authorizations. Same so, the applicant may further indicate in the complaint the
international ones and domestic standards that he believes have been violated in the police acting in violation of human rights and freedoms.

4. ASSOCIATIONS IN THE PROTECTION OF HUMAN RIGHTS IN THE POLICE PROCEDURE

Civic associations or non-governmental organizations (NGOs) as main one’s subjects of the civil society through their work and activities may be the greatest guarantees and protectors, or defenders of human freedoms and rights and react to their abuse. This concept of protection of human rights exists in the Republic Macedonia, as a free civil society in which the role of the non-governmental sector in the fight for the protection and respect of human freedoms and rights, although not seriously understood, is essential, together with others institutional forms of the state apparatus that are in function of protecting basic human freedoms and rights under the auspices of the state institutions. The right of every citizen to submit a complaint to state and other public organs, as well as after receiving them answers, is guaranteed by the Constitution of the Republic of Macedonia.

On this basis, a Human Rights Support Project was started, in which frameworks are undertaken for the project activities whose main goal is the protection of human freedoms and rights in the police procedure of citizens in situations when police officers abusing their powers in the police work. Started with implementation in January 2004 by three non-governmental organizations, as follows: Tetovo region is covered by the non-governmental organization Center for Democratic Development (CDR) from Tetovo, in Kumanovo. NGO Forum for Roma Rights ARKA from Kumanovo and Informative Center for Civil Society Skopje (ICKO) for the region of Skopje. The project is financially and technically supported and assisted by the Observation Mission of the Organization for Security and Co-operation in Europe in Skopje (NM OSCE). The main goal is to provide free legal aid to citizens who are victims of abuse by police officers in the police act and seek protection of their rights through the available ones administrative and legal mechanisms.

5. CONCLUSION

From this topic it can be concluded that the adoption of the European Convention on Human Rights, and thus the establishment of the European Court of Human Rights, has played a major role in the history of the efforts of many countries to adopt a kind of instrument for wider governance of basic human rights. With the very fact that the Convention has been signed by a number of states on the European continent, including Russia, this document, which has a written form in a formal sense, gets the power of a constitution of constitutions, while the European
Court of Human Rights could be called court of the courts. In the end, I want to finish this paper with a message: We all have a responsibility before ourselves and before our future generations to contribute to the realization of the common goal, which is the complete eradication of torture, cruel and inhuman treatment and punishment. To create a better future for future generations, a world free of violence, suffering and torture. A world free of torture means a world free of deliberate pain and the use of those cruel means from one person to another.

6. REFERENCES
CONFLICTS IN INTERNATIONAL POLITICAL RELATIONS

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Abstract
Conflicts in international political relations are one of the aspects of foreign policy and international diplomacy. The reasons for their occurrence are as numerous as the number of conflicts and wars in the world and when it comes to their treatment and resolving it is often very difficult to find one definite solution that will be able in the future to live both parties involved in the conflict. At the end use of force leads to situation of winner-loser and the defeated party immediately begins with planning the revenge. The opposite of that, dialogue, negotiation and conversation can lead to achieving an optimal solution (compromise), a solution which will contribute to the real end of the conflict and the end of violence between both parties. The preventive diplomacy has been promoted as a special set of actions since 1960s by the United Nations.

Key words: dispute, conflict, preventive diplomacy, United Nations, war, dialogue, negotiation.

We must build world order based on the effective multilateralism (...) As a fundamental framework of international relations should serve the UN Charter.

Javier Solana (former EU High Representative for Common Foreign and Security Policy and former NATO Secretary General)

1. INTRODUCTION

The international legal and political system is characterized by high level of ability to resolve conflicts and struggle for power between sovereign states. Other entities such as: technical groups, multinational corporations, international governmental and non-governmental organizations are also struggling for accomplishing their interests and ideals.

This paper’s aspiration would be to provide an overview of the several strategies used to treat and resolve international conflicts.
When we write and talk about conflicting interests, conflicts, disputes and resolving them, the fundamental question that arises is the definition of conflict and its delineation from the disputed situation.

The term „conflict” in international relations as well as in internal relations of each state is actually part of the term „dispute”.

A dispute is the situation where at least two entities, two parties, claim to be in a dynamic clash of interests that they consider incompatible.

The conflict is that phase in the dispute when a clash of interests, which is a normal phenomenon in democratic systems and relations, tends to become violent, there is a threat of using force, or there is de facto use of force, which means the conflict is that „violent” phase in the dispute (Frckoski 2010, 24-25).

In order to assess situations in internal clashes and effective conflict management, it is particularly important to separate the term conflict from the term dispute and potential conflict. A key determinant of the existence of a conflict situation is the dynamic movement of the clash of interests. It is necessary to actively and specifically oppose the attitudes and interests of the subjects in the international relations. It is not enough just to claim that there are incompatible interests because it is a situation of potential conflict that can but doesn’t have to be activated. This is important in order not to make wrong assessment and to replace potential conflicts with conflicting situations. The wrong assessment leads to the application of inadequate measures for resolving the conflict. The conflict also involves perception of the group on who the possible „enemies” are and how to neutralize their intentions and objectives (Frckoski 2010, 26-28).

In the spirit of the Charter of the United Nations (henceforth referred to as: the UN Charter), the international, the world Constitution, all UN Member states have an obligation to contribute to the maintenance of international peace and security. A fortiori they are obliged to undertake collective measures for preventing and eliminating threats to peace and stability in the world, to resolve their misunderstandings and international disputes with peaceful means, in accordance with international legal norms and principles, in a way that the international peace and security will not be disturbed (the UN Charter, article 1 and 2, 1945).

Conflicts involving states and ethnic groups can be at very low level, without being killed or wounded. For example, the conflict between the Kingdom of Norway and the Kingdom of Sweden at the beginning of the past century. Namely, they were in a common union from 1814 to 1905 (Kval, Mellbye and Tranoy 2006, 149). In 1905, Norway declared independence on the basis of the right to self-determination, following a previously adopted declaration of independence, voted in the Oslo Assembly. This resulted in sending five thousand soldiers of the Swedish army forces on the border with Norway. For its part, Norway responded with partial
mobilization of its own army. Although there was a threat of using force, military action wasn’t taken. At the end, the two Prime Ministers reached a mutual agreement (compromise), and the conflict was avoided.

There is also a series of conflicts with killed and wounded persons which cannot be subsumed under the concept of war, for example the conflict between Turks and Kurds in Turkey. Ultimately, we have conflicts that de facto represent war in which the number of death individuals reaches at least a thousand victims over a year and lasts a certain period of time. For example, the war between Eritrea and Ethiopia in the late 1990s (Kval, Mellbye and Tranoy 2006, 150).

Physical violence is the starting point of conflict, but it can become a part of the hostility, according to the principle “violence brings new violence” or said in French “la haine attise la haine”. We are often talking about a spiral of violence in which violent actions are expected with revenge, with a new wave of violence etc. When a number of interest and / or ethnic groups in society are discriminated against in a systematic way, they are being inflicted with injustices, the basic and internationally protected human rights are grossly violated, then it is a matter of structural violence regardless of the fact that members of such groups suffer direct physical damage.

Conflicts between individuals, as well as between governments and people are the result of misunderstandings which are always caused by the inability to appreciate mutual opinion.

Nikola Tesla

2. THE CAUSES OF WAR AND CONFLICT

The causes of wars and conflicts are as numerous as the number of conflicts in the world. In general, it can be said that there are the following types of conflicts:

- Regional wars
- Ethnic conflicts
- Economic conflicts
- Religious and ideological conflicts

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32 Etymologically, the term “compromise” comes from the French word compromis, which means a formal agreement between two subjects, the concrete disputable situation being subject of arbitration. Thereby the tribunal (arbitrator) which will decide is determined, the principles of the arbitration procedure are also settled down. Before the French, this term was used by the old Romans – compromissum, which means an agreement in Roman civil law (ius civile). It was a treaty between individuals (personae physicae) in which a clear consent of the subjects’will was expressed, the dispute between them to be resolved by a third party.

33 The conflict is known as the „Kurdish issue“. It is characterized by deep historical and cultural roots dating back to the Ottoman Empire.
• Inter-civilizational conflict (consequence of the clash of civilizations that arose after the terrorist attacks in the United States since 2001 and the US invasion in Iraq and Afghanistan) (Kval, Mellbye and Tranoy 2006, 152-156).

The basis of the world wars lies precisely in the regional wars. Germany, France, the Russian Federation, the United Kingdom and Spain have been leading large-scale wars in the past century with millions of victims. In East and Southeast Asia, similar wars are still being waged between big and small Asian states, between China and Japan, North and South Korea. The conflict in Middle East between Israel and Palestine is still active as well as the conflict between Arab states (Kval, Mellbye and Tranoy 2006, 150).

Ethnic conflicts are those in which ethnic groups are fighting against one another. Maybe the worst conflict in 1990s was that one in Rwanda (1993-94), between the tribes Tutsi and Hutu where more than 800,000 people were killed in a very short time. Europe also had its own ethnic conflict at the time of the dissolution of the former Yugoslav Federation with tens of thousands people killed (the secessionist civil war of 1991-2001).

In his recent blog „Humanitarian Interventionism is dead, long live humanitarian interventionism” professor Robert Mason considers that the Syria conflict has highlighted the difficulty of getting governments to accept responsibility for their actions and the actions of other agents within their borders. If we are to accept the principle of non-interference in the internal affairs of sovereign states, then surely state responsibility must be a pre-requisite. Since this cannot be guaranteed, interventionism of some kind should be conscionable. Examples abound where states are simply not interested in relieving the suffering of their nation or are actively engaged in their persecution, at times amounting to genocide. Samantha Power (diplomat who served as the U.S. Ambassador to the United Nations from 2013 to 2017) talked about historic situations where the U.S. had failed to act in her book A Problem from Hell, from not protecting the Jewish citizenry in Europe, to the Armenian genocide, Cambodia, and “ethnic cleansings” in Kosovo.

The Russians and Chinese are both opposed to humanitarian or liberal interventionism because it can be used as grounds for unjustified regime change and potentially be directed at illiberal states such as themselves. President Putin noted in his 2015 UN General Assembly speech the “conceit” of those at the top of the global power pyramid who continue to act with exception and impunity. NATO interventions in recent years have supported the view that anarchy is spreading in the Middle East and North Africa and that this is somehow the wrong course of action.

The NATO intervention in the former Yugoslavia was and remains questionable to Russia, the U.S. intervention in Iraq was a disaster by most metrics,
and UNSCR 1973 on Libya may have avoided a bloodbath in Benghazi but in no way addressed the underlying problems of transition which has led to bloodshed since. NATO enlargement and the intervention in Libya also led to a Russian backlash against perceived NATO encroachment in eastern Europe and in the Middle East respectively, which has helped to sustain the intractable conflict in Syria. Whilst human rights and humanitarian interventionism has grown in popularity in western foreign policy, it is often derided by its critics as self-serving, selective and at times, ineffective.

Any measures aimed at tackling human rights abuses brought before the UN Security Council must be more cognizant of ‘the day after’. What will the response to the measures specifically? What will happen if the regime stays in situ? What will happen if it is toppled? The consequences of poorly implemented measures can be dire so it’s not just a responsibility to protect but a responsibility to implement effective policy. Sanctions, oil for food programs, aid and investment reductions, visa denials, cutting diplomatic relations and arms embargoes will not cut it anymore. Proportional response is not the issue, effectiveness is. The permanent members must work harder to find new common ground. There is a necessity to be more consistent in the application of a universal human rights based approach throughout each member’s sphere of influence (and others) in a multi-polar world, otherwise it will continue to undermine the whole norm. Consensus is key (Mason, 2017).
The war of resources is often called an economic war. Conflicts are conducive to the conquest of territories rich in water, oil or fishery resources. When Iraq invaded Kuwait in 1990, the main reason was the sources of oil. In the Middle East, water is a constant source of conflict, for example between Turkey and neighboring countries from the south of the country, as well as between Lebanese and Israeli people. The Kingdom of Norway had an intensification of misunderstandings with its neighbours for the sources of fishing (Kval, Mellbye and Tranoy 2006, 150).

Perhaps the most famous religious conflict in Europe is the one between Catholics and Protestants in Northern Ireland. We can find a number of examples of this kind of conflict in many countries, as in India between Muslims and Hindus and the conflict between Christians and Muslims in the Philippines (Kval, Mellbye and Tranoy 2006, 150-151).

The Cold war between two major powers, the USSR and the USA, in many ways represented the ideological conflict. Religious and ideological conflicts are typical conflicts of values while economic conflicts are typical conflicts of different interests emerged.

The conflicts very rarely or rather can never be subsumed to this or that type. They lend tendencies of both types which direct them into conflicts of values and interests. Ethnic conflicts, such as the one between Tutsi and Hutu tribes, relate not only to differences between cultures but also extended to who will manage the community and along with this the opportunity to give preference to their group. The religious conflict in Northern Ireland refers to the economic differences between Protestants who feel some kind of belonging to the British Crown and the Catholics who are traditionally associated with the poor Ireland. Regional wars are also at the level of economic conflicts which relate to the control and management of territories and resources (Kval, Mellbye and Tranoy 2006, 151).

Today in international (political) relations there is a „Copernican reversal” that could be described in the following way: as it was established in the 17th century that the Sun does not revolve around the Earth, but vice versa, so it is now established that the whole world does not spin around a single „superpower” but more global and regional forces (which are actually separate civilizations) circle around the international multilateral political axis trying to impose their power over the others. This means that nowadays the world is in phase of multi-polar power and international polycentric development.
3. HANDLING AND SETTLEMENT OF CONFLICTS

To find one, definitive solution to the conflict which can live with it both sides in the future often it is very difficult. In most cases the international community (henceforth referred to as: the community) needs to take care, first of all, that the conflict does not turn into a spiral of violence and the violence doesn’t spill over into neighbouring countries (Kval, Mellbye and Tranoy, 2006, 151).

When using the term „international community” the following subjects should be taken into account: the leading Western democratic countries, EU institutions, international organizations such as the United Nations, the OSCE (the Organization for Security and Cooperation in Europe), NATO, the Council of Europe, the UNHCR (United Nations High Commissioner for Refugees), more powerful international non-governmental organizations and the Organization of the Petroleum Exporting Countries (OPEC), China, India and the Russian Federation.

This third party (the community) which is not directly engaged in the conflict should concentrate on calming the tensions and thus can contribute to strengthening the foundation for definitive solution of the conflict emerged. The measures that should be taken in this sense depend on series of relationships and depend on the phase in which the conflict is. Conflict passes throughout the following phases: disputing, appearance of hostilities, beginning of hostilities, ending the hostilities, renewed contesting, and ultimately the resolution makes up the last phase of a conflict (Frckoski 2010, 66-67).

During the dissolution of the former Yugoslavia, in 1991, Bosnia and Hercegovina was affected by a bloody civil war. After several threats and attacks performed by NATO forces, in 1995, the Serbs interrupted their military actions. A series of measures were taken over the conflict (Kval, Mellbye and Tranoy 2006, 151). Today the Serbs have partial management of one part of BiH (Republika Srpska). Whether this is a permanent solution or the conflict is interrupted ad interim, it is still very early to determine. Interethnic relations continue to be characterized by mistrust and accusations. Hostility still exists regardless of the violence being interrupted.

In its advocacy for the prevention of wars and conflict resolution, the UN has, in principle, an „open road”. This applies to all its instruments and mechanisms, from mediation and peacekeeping forces to coercive measures such as economic, diplomatic sanctions and military intervention (Kval, Mellbye and Tranoy 2006, 152).

The legal order in the UN system allows respect and application of international law, international legal protection of fundamental human rights and freedoms, condemnation
and punishment of countries (the International Court of Justice in The Hague) and individuals (personae physicae) (The International Criminal Court also in The Hague, the Netherlands) for gross infringement and violation of ius cogens international legal norms.

It’s not only military conflict between states that has been declining for a very long time, but violence by husbands against wives, parents against children, and street criminals against their victims, each of which may tick up or down from month to month or year to year, but all of which are generally trending downward and have been doing so for a rather long time. Harvard professor Steven Pinker offers several causes for the long-term downward trend in violence:

- establishment of governments that can work to monopolize (and thus to some extent to control) violence;
- the growth of commerce, which makes other people more valuable alive than dead;
- the gradual replacement of „honor” cultures by „dignity” cultures (in which avenging honor is less important than maintaining one’s self control and dignity);
- the humanitarian revolution of the Enlightenment, with its emphasis on the value of human life, both one’s own and the lives of others;
- the emergence and growth of international organizations, both of civil societies and of governments, to promote diplomacy and mediation, rather than war;
- the increasing role of international exchange, investment, and travel in creating interests in the maintenance of peace;
- the greater acceptance of „the agenda of classical liberalism: a freedom of individuals from tribal and authoritarian force, and a tolerance of personal choices as long as they do not infringe on the autonomy and well-being of others;
- the increasing importance, again fueled by the growth of commerce and technology which helps people to embrace general principles that are supportive of classical liberal ideas of universal rights (Palmer G. Tom 2014, 104-105).

Lasting peace is possible and it mustn’t be delayed. Toleration and coexistence, contract and cooperation, property and exchange have to a very great degree (but by no means entirely) replaced persecution and extermination, theft and slavery, war and conflict as moral ideals. The movement that has changed the world and replaced war with peace, intolerance with toleration, looting with exchange has been known by different names at different times, but the most common is „liberalism” which in English-speaking countries is now called „classical liberalism” or „libertarianism”. Libertarianism is a philosophy that embraces peace. Peace is at the very core of libertarian thought, for it is at the core of the idea of liberty. „Liberty is to be free from violence by the others” as the influential philosopher John Locke declared (Palmer G. Tom 2014, 105).
4. TYPES OF CONFLICT RESOLUTION

According to the view of Johan Galtung, a Norwegian scholar on issues relating to peace, conflict may have one of the following resolutions:

- One side to win through war, threats, convincing etc.
- Withdrawing of the parties, overcoming the conflict;
- The parties are ahead of reaching an agreement;
- The parties are faced with a new, creative solution which was not initially thought by any of the warring parties, but now both are satisfied with it (Kval, Mellbye and Tranoy 2006, 152).

The use of force ultimately leads to victory of one party, while the other party stands as defeated. The defeated party will quickly begin planning its revenge. The opposite of that, negotiations can lead to agreement (compromise) which the two parties can live with it.

The dialogue between two parties, among the citizens of the world in general, can open up new perspectives and creative solutions, thus contributing to a real end of the conflict between involved parties. Dialogue (dia – through, leading through something; logos – word, reason) in its original meaning was conceived as use of words, a conversation by which the parties, through mutual interaction, come to discover new meanings (Frckoski 2010, 128). It is collaborative, the parties cooperate trying to find out jointly how to solve the problem, but not in a way that one party be an absolute winner or loser. It necessarily leads to reconsidering of its own starting positions, an opponent’s assessment, adjusting its own behaviour, in the light of the arguments presented to the other party. In this context, John Steward Mill says that you cannot know your own true arguments, until you hear the counterarguments to your own position (Frckoski 2010, 129). Maintaining that empathy, sympathizing with the positions of the other is a key atmosphere that should be held through negotiations in the dialogue between parties.

Negotiation is the most recommendable way of peaceful resolution of conflicts because it doesn’t rely on foreign intervention and because it can lead to a long-term resolution of the conflict and strengthening the relations between parties that were involved in conflict, in accordance with democratic standards and practices. Only when the parties themselves can’t solve the problem they should seek and accept assistance from third party (the community) in the form of mediation or arbitration. All these methods are used between Palestinians and Israelis, for example exchanging cultures to reduce hostility, frequent mediations to pinpoint the conflict and suggesting solutions that support both parties (Kval, Mellbye and Tranoy 2006, 153).

Preventive diplomacy allows parties to be engaged in dialogue and reaching an agreement by taking a non-violent set of diplomatic actions aimed at localizing
the dispute or the conflict from a wider scale. It is promoted as a special set of actions from 1960s by the UN (Frckoski 2010, 139).

(…) Preventive diplomacy includes governmental or non-governmental diplomatic, political, economic, military and other efforts that are undertaken in the early stage of the dispute in order to deter countries or groups from threatening, using force or coercive measures as a way of resolving political disputes arising from the destabilizing effects of national and international changes. It aims at discouraging or reducing hostilities, calming tensions, addressing differences and creating conditions for resolving the dispute – this definition was given by Dr. Michael Lund, United States Institute for Peace (…) (Petreski 2014, 88).

Preventive diplomacy can be used in three situations:

- To prevent conflict – efforts are directed to preventing the outbreak of violence between the parties involved;
- Preventing escalation of an already launched conflict – efforts are being made to prevent expansion of clashes by additional means, in further or wider territory or by additional actors;
- Post-conflict rehabilitation and prevention – efforts are directed to preventing a renewed resurgence of violence when a peace agreement is reached and is already being implemented. To be effective, preventive diplomacy in the background should be backed by diplomacy on the threat of use of force during the conflict in order to separate the warring parties (diplomatic pressure). The engagement of the United Nations and the European Union in the Balkans clearly shows the need for such connection (Frckoski 2010, 139-140).

Reconciliation is a longer-lasting process of creating relations of cooperation between people and groups that have been participants in previous conflict. Such a process involves reconstruction of society and creating favorable conditions for normal, peaceful life and cooperation. Reconciliation should „liberate” the victims from the desire and need for revenge that results in psychological pain and suffering.

One part of the reconciliation process refers precisely to the trials of war criminals under jurisdiction of the International Criminal Court (ICC) located in The Hague, the Netherlands, who investigates and, where warranted, tries individuals (personae physicae), not the states, charged with the gravest crimes concern to the international community: genocide, war crimes, crimes against humanity and the crimes of aggression (Article 5, Rome Statute of the International Criminal Court, 2011). Another part of the reconciliation process refers to the formation of investigative commissions for the purpose of fact-finding and telling the truth to the families of the victims and the general public. In this way it opens the possibility to hear the voice of the victims and to give them justice. In doing so, domestic and international experience has shown that should be no insistence on
full reconciliation between victims and perpetrators of atrocities. The official disclosure of truth about the atrocities that took place and a symbolic gesture of apology will be enough to build the path to peace and stability. No less important element of reconciliation are educational programs that renew the collective memory of groups, „recreating” the history, so that groups re-study it together. For example, in the Republic of Macedonia in all textbooks for primary and secondary education, as of 2001, there are no contents related to the 2001 conflict (Stanoeski 2013, 17).

5. CONCLUSION

International conflicts should not be seen as a victory-defeat situation, in which one party should be an absolute winner and the other one to be defeated. Instead, civilizations in the world, the United Nations, the European Union, the OSCE, NATO, the Council of Europe and all the other subjects in international political relations should look for ways of creating win-win situation in which both parties will have personal benefits from the found solution. The resolved conflict is victory of reason and humanity.

The democratic form of governance requires, as much as possible, a high level of well-being, social security, justice (each one according to the possibilities and needs, but also according to the values and capabilities) and safety of the citizens themselves. If this is achieved then, in a significant part, the chances and bases for outbreaking of conflict are diminished.

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ELDER ABUSE IN THE REPUBLIC OF MACEDONIA

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Abstract
According to the calculations and projections of the United Nations, every tenth person in the world is an elderly person over the age of 60 years. According to the same data, by 2050, every fifth person is expected to be an old person, over the age of 60, and in 2150, every third person will be over the age of 60 (MTSP). In creating an image for the old population, the Republic of Macedonia is not missing at all. Although young in her independence, she has recently passed the threshold of demographic age. With 15% of the elderly population over 60 years of age, at the 2002 Census, the Republic of Macedonia exceeds the coefficient of old population by 12% (CKRM).

Older people should integrate in society in many ways. Thus put on the social margins, they can be in a very vulnerable position from several aspects of the type of crime, isolation, exclusion, etc. Potential obstacles to equally active participation of older people include poverty, poor health, low levels of education, lack of transportation, access to services and discrimination based on age.

The elderly people, due to their condition, daily face various risk factors that contribute to their victimization. In some cases, strained family relationships may worsen as a result of stress and frustration, as the old person becomes more dependent. On the other hand, the dependence of the care provider on the dwelling or financial support may be a source of conflict. Social isolation also represents a significant risk factor for an old person to suffer ill-treatment. In a large number of cases, isolation occurs due to physical or mental weakness, as well as the loss of friends or family members.

This research article will explain the elder abuse concept. Abuse of the elderly can be divided into psychical or emotional, physical, financial, sexual, neglect and self-neglect. The authors of this paper believe that in these types of abuse should be included and institutional abuse. Each of these categories will be explained in more details and most importantly, the ways they are manifesting will be specified, especially in the direction of violation of their rights and freedoms contained in accordance with the basic fundamental rights, freedoms and principles of the Constitution of the Republic of Macedonia, guaranteed also by the Universal Declaration of Human Rights, as well as the International Covenants on Civil and
1. INTRODUCTION

Age should be different from aging. Aging is a process, and old age is a product of that process. Due to the individual differences in the pace of aging, the psychological periodization of old age is difficult. The elderly belong to the age group over 65 years. Aging is a normal physiological process that starts with a birth, and the more important occurs after about 50 years of life when there is a weakening of the body functions due to the change of the tissue itself.

Changing the tissue itself leads to a series of changes in the organism and thus results in biological, social and psychological changes in the elderly. Risk factors are, in general, characteristics (of a personal, familial, school, work, social or cultural nature) whose presence raises the probability of a certain phenomenon occurring. Risk factors of violence, in particular, are variables that make someone vulnerable to violent behaviors and attitudes. It is necessary to know the characteristics of elderly people that may cause situations where they are at special risk for abuse (Spain Report, 2008). However, current thinking holds that a person’s risk of suffering abuse is more strongly related to the characteristics of the perpetrator (Bazo 2004), especially certain pathologies and the psychological dependency between perpetrator and victim, as we shall see (Pillemer 1993).

The risk factors themselves explain the vulnerability of this group of citizens and the complexity of the way of life they face. Hence, on the social margins, the elderly need legal protection that will fully protect their rights and provide them with a safe and stable old age.

2. DEFINING THE CONCEPT OF ELDER ABUSE

Elder abuse can be defined as “A single, or repeated act, or lack of appropriate action, occurring within any relationship where there is an expectation of trust which causes harm or distress to an older person “. Elder abuse can take various forms such as financial, physical, psychological and sexual. It can also be the result of intentional or unintentional neglect (WHO).

Based on available evidence, WHO estimates that 15.7% of people 60 years and older are subjected to abuse. These prevalence rates are likely to be underestimates as many cases of elder abuse are not reported. Globally the numbers
of people affected are predicted to increase as many countries are experiencing rapidly ageing populations.

On the other hand, US politician Martin Josef O'Malley defines the elder abuse as: “Intentional inflicting physical pain, injuries or mental pain, unreasonable restriction or deprivation by the service provider that is necessary for the maintenance of the mental and physical health” (Peter, Frank 1997).

Numerous remarks arose about the definition of this concept (Peter, D., Frank G., 1997). But generally accepted definition of abuse of elderly adopted in the UK, and also by the INPEA organization, states: “A single or repeated action or lack of appropriate action that appears within any relationship where there is a pending trust, which actually causes harm or anxiety in an elderly person” (WHO).

3. TYPES OF ELDER ABUSE

There are many types of abuse such as: physical, psychological, financial, sexual, neglect and self-neglect.

Psychic (emotional) abuse involves attempts at dehumanization and underestimation of the elderly. Any verbal or non-verbal behavior that reduces self-esteem is misuse: Threats to use violence; Threats to be abandoned and left alone; Intentional intimidation, for example, will not receive food; Lying; Mocking; Insulting; Treat the elderly as if they were children or servants; Social isolation and ban on visits; Denial of the rights of the elderly (right of choice, opinion and privacy); Ignoring; Excessive criticism and ordering; The constant imposition of death questions and deliberate discussions on this subject.

Financial abuse involves financial manipulation or exploitation and includes fraud, blackmail, and abuse. It refers to the use of money or property of the elderly, or the use of property for its own benefit. Any action without permission in a way that is unacceptable or against the lawful use of someone's property or money is a financial abuse: Theft of money, values or pensions; Selling property without consent; Forcing the elderly to transfer property or money to a third party; Abuse of the power of attorney; Lying about the real price when buying old-age goods - they “charge” more; Signing documents instead; Change of will, and the elderly person is not familiar with the situation; Do not allow an elderly person to move, for example, at home, so that abusers may continue to abuse them.

Lately, the sale of products and services over the telephone or over the Internet is often a deception, with the elderly being a targeted target.

Physical abuse is manifested by inflicting pain or injury, physical force or physical limitation, or drug prevention (Kostic 2010). Deliberate causing pain or injury, resulting in bodily injury or mental pain, is considered abusive: Punching; Pushing; Slapping slaps; Setting the hills; Spitting; Forcing the elderly to stay in bed.
or on a chair, forcing them to remain in the room or locked; Decrease the prescribed dose of medication or administer it in large quantities; Restriction of freedom.

**Sexual abuse** includes various forms of sexual behavior, harassment and harassment (sexual harassment, assault and embarrassment) without their will and without their consent. It includes: unwanted touching (older people often cannot express their dissatisfaction) and all types of sexual violence such as rape, sodomy, nudity and photography.

**Neglect and self-neglect** is the failure of caregivers to fulfill their obligations to provide the necessary protection. Ignorance may or may not involve conscious and deliberate attempts to inflict physical or emotional pain on the old person (Kostic 2010). The same can be motivated by financial gain (for example, the guardian should inherit it) or reflects interpersonal conflicts. “Passive” neglect refers to situations where the guardian is unable to fulfill his or her obligations as a result of illness, disability, stress, ignorance, lack of maturity, or lack of resources. Self-neglect refers to situations in which there is no offender and neglect is the result of an elderly person when refusing care. This includes: Indifference; Absence and denial of food, medicine, water; Lack of clothing, footwear, furniture; Lack of hygienic resources; Lack of mobility aids; Lack of health care; Disabling access to necessary services; Lack of care, leaving the elderly to sit in the urine; Social isolation and lack of social contacts; Denial of rights.

**Abandoning** - the leasing of an elderly person, by an individual who has taken responsibility for providing care of the same.

The beginning of the 21st century brought a new kind of domestic violence to the elderly, which in psychology is called “grandmother’s slave syndrome”. It is a new phenomenon, and it refers to older women who voluntarily carry a heavy burden in the family. Factors that affect the emergence of this syndrome are the obligations of older women, such as keeping grandchildren, household chores and commitments around a member of the family who is disabled or ill (Petrušić, Todorović, Vračević, 2012).

4. SIGNS THAT POINT TO ABUSE

Recognition of signs and symptoms of violence and neglect is often not easy. Older people, in Macedonian society often have obstacles to reporting violence for various reasons, such as: Denial of violence and neglect in the family; “What others will think” - family, friends, neighbors; Traditional culture; The feeling of embarrassment and discomfort; Fear that if the violence is reported, they will be placed in an institution; They fear that violence will continue and be more aggressive; Fear that they will not be trusted; Fear that there will be no one else to look after them; Fear that they will be isolated from family members, friends and
neighbors; Feeling guilty that the abuser will be punished and taken to prison for them; Doubt that the situation will improve.

Therefore, certain signs of abuse will be explained below:

- **Signs of physical abuse:** bruises, bruises from compression / gingivitis, broken bones, burns, bruised hair, repetition of injuries, anxiety behavior when someone is approaching.
- **Signs of psychological / emotional abuse:** an elderly person is upset, depression, fear of people, changes in mood, poor appetite, insomnia (insomnia).
- **Signs of economic abuse:** a sudden change in a bank account, raising a large sum of family members or a third person, unusual money transfer to the accounts of family members or a third person, the sudden disappearance of valuable things.
- **Signs of sexual abuse:** anxiety behavior during dressing, bruises around the chest or around the genitals, sudden vaginal or anal bleeding, sudden infection.
- **Signs of neglect:** sudden loss of weight, dehydration, poor personal hygiene, poor hygiene in the dwelling, lack of social contacts - social isolation.
- **Signs of violence** are also depression, fear, anxiety, passivity, indifference, suicidal ideation, changes in the character of a person.

5. LEGISLATION IN THE REPUBLIC OF MACEDONIA

➢ **Criminal Legislation**

Bearing in mind that the Macedonian criminal legislation does not have specific criminal acts related to the abuse of elderly people. The abuse, regardless of which of the mentioned, is sanctioned with the following crimes:

- **Psychological violence** is sanctioned by criminal acts against the freedoms and rights of the individual and the citizen, such as: Coercion (Article 139 of the Criminal Code); Unlawful arrest (art. 140 of the CC); Endangering security (Article 144 of the CC).

- **Financial abuse** is sanctioned by criminal acts against property: Theft (Article 235 of the Criminal Code); Severe theft (Article 236 of the Criminal Code); Robbery (Article 237 of the CC); Armed robbery (Article 238 of the Criminal Code); Taking away another's objects (Article 241 of the Criminal Code).

- **Physical violence** is sanctioned with crimes against life and body: Murder (Article 123 of the CC); Momentary murder (Article 125 of the Criminal Code); Bodily injury (Article 130 from the Criminal Code); A grave body injury (Article 131 from the Criminal Code); Deserting a feeble person (Article 135 from the Criminal Code).

- **Sexual violence** is sanctioned by criminal acts against gender freedom and sexual morality: Rape (Article 186 of the CC); Statutory rape of a helpless
person (Article 187 of the Criminal Code); Statutory rape with misuse of position (Article 189 of the CC); Satisfying sexual passions in front of others (Article 190 of the Criminal Code); Procuring and enabling sexual acts (Article 192 of the CC).

Constitutional Legislation

Apart from the Criminal Code of the Republic of Macedonia, which refers to the sanctioning of criminal acts, in this case the elderly, it is important to cite and some articles of the Constitution of the Republic of Macedonia, which do not leave room for paraphrasing or free interpretation in what it means of life, reliability, physical and moral integrity, achievement:

Article 8
The fundamental values of the constitutional order of the Republic of Macedonia are:
- The fundamental freedoms and rights of the person and citizen recognized in international law and established by the Constitution;
- The rule of law;
- Humanism, social justice and solidarity;
- Respect for the generally accepted norms of international law.

5.1. Main Freedoms and Rights for Man and Citizen
1. Civil and political freedoms and rights

Article 9
- The citizens of the Republic of Macedonia are equal in their freedoms and rights regardless of sex, race, skin color, national or social origin, political and religious belief, property and social position.
- Citizens before the Constitution and laws are equal.

Article 10
- Man's life is undeniable.
- The physical and moral integrity of man is inviolable.
- Everything forbids any form of torture, inhuman or degrading conduct and punishment.
- Forced work is forbidden.

Article 12
- The freedom of man is inviolable.
- No one can be restricted by freedom, except by a decision of the court also in cases and in a procedure established by law ...

Article 25
- Every citizen is guaranteed respect and protection of privacy of his personal and family life, of dignity and reputation.

Article 26
- The inviolability of the home is guaranteed.
- The right to inviolability of the home can only be limited by a court decision when it comes to detecting or preventing crimes or the protection of human health

Article 27
- Every citizen of the Republic of Macedonia has the right to move freely on the territory of the Republic and freely choose the place of his own habitat...

2. Economic, social and cultural rights

Article 30
- The right to ownership and the right to inherit are guaranteed.
- Ownership creates rights and obligations and needs to serve well the individual and the community.
- No one can be deprived of his property or limited rights deriving from it, except in the case of public interest determined by law.
- In case of expropriation of ownership or in case of restriction of ownership guarantees a just compensation that does not may be lower than the market value.

Article 35
- The Republic takes care of the social protection and social security of citizens in accordance with the principle of social justice.
- The Republic guarantees the right to help the powerless and the incapable of work for citizens.
- The Republic provides special protection for the disabled and conditions for their inclusion in the social life.

Article 40
- The Republic provides special care and protection to the family.
- ... Children are obliged to take care of the elderly and frail parents...

➢ Other International Human Rights Documents

Other international human rights documents that regulate human rights and freedoms and thus the rights of the elderly, and are crucial for their protection and security, are:
- Universal Declaration of Human Rights (UDHR) - Declaration adopted by the General Assembly of the United Nations on 10 December 1948, in the Château Palace in Paris. The Declaration emerged directly from the experience of World War II and represents the first global expression of rights to which all human beings are entitled in their nature. The Declaration consists of 30 members elaborated in later international agreements, regional human rights instruments, national constitutions and laws.
- International Pact for Economic, Social and Cultural Rights - Adopted and open to ratification by a resolution of the UN General Assembly 2200A of 16
December 1966. It came into force on 3 January 1976 after the deposit of 33 ratifications.

- **International Covenant on Civil and Political Rights** - Adopted and opened for signature, ratification and accession by General Assembly resolution 2200A (XXI) of 16 December 1966. Entry into force 23 March 1976, in accordance with Article 49.

- **The European Convention on Human Rights (ECHR)** - (formally the Convention for the Protection of Human Rights and Fundamental Freedoms) is an international treaty to protect human rights and fundamental freedoms in Europe. Drafted in 1950 by the then newly formed Council of Europe, the convention entered into force on 3 September 1953.

According to Art. 8 and Article 118 of the Constitution of the Republic of Macedonia, the international human rights law is part of the legal order of the Republic of Macedonia, and it cannot be changed by law.

### 6. CONCLUSION

The paper is divided into two parts. The first part explains what kinds of abuses exist, how they are manifested. The second part of the paper refers to the criminal and constitutional legislation, that is, to members who sanction the violation of the rights of the elderly.

First part refers to different types of abuses, such as:

- Psychic (emotional) abuse involves attempts at dehumanization and underestimation of the elderly.
- Financial abuse involves financial manipulation or exploitation and includes fraud, blackmail, and abuse.
- Physical abuse is manifested by inflicting pain or injury, physical force or physical limitation, or drug prevention.
- Sexual abuse includes various forms of sexual behavior, harassment and harassment (sexual harassment, assault and embarrassment) without their will and without their consent.
- Neglect and self-neglect is the failure of caregivers to fulfill their obligations to provide the necessary protection.

Second part enumerates the articles from Constitutional and Criminal Macedonian Legislation, which assent the abuse. There are also mentioned incorporated ratified international agreements, regional human rights instruments, national constitutions and laws.
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FOREIGN FIGHTERS IN UKRAINE - A CHALLENGE FOR INTERNATIONAL LAW AND SECURITY

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Abstract
Conflicts and wars that produce international crisis are often conducted beyond the norms adopted by the international community through the mechanism of bilateral and multilateral treaties or conventions. The phenomena of foreign fighters is as old as the wars themselves, and the last examples are the wars in Syria, Iraq and Ukraine, which attracted the largest number of foreign fighters. Besides Ukrainian and Russian armed forces involved in the Crimean crisis, many foreign soldiers and fighters were active in the ongoing conflict and war. The war in Ukraine showed that both warring parties have accepted foreign volunteers, so there were examples where fighters from one state are being on opposing sides. According to the statements of some of the participants in the war in Ukraine, the motives for going to the foreign battlefield were different, from adventurism through support for political reasons, to a purely mercenary motive.

Because of the specificity each war carries, it is difficult to decisively determine in accordance with international legal regulations and the roles of foreign fighters in Ukraine, but it is evident that some countries are carrying out sanctions for returnees from foreign battlefields.
This analysis will provide answers on the legality of their involvement and responsibility under the international law. As this the war in Ukraine was covered in details by representatives of international media and non-governmental organizations, which supplied the public with useful reports numbers and nationalities of foreign soldiers and fighters on the Ukrainian territory.
For the preparation of this paper, the author will use the method of content analysis, comparative and descriptive method, as well as the survey method.

Key words: Security, International law, Foreign fighters, Ukraine, Violent extremism

1. BACKGROUND OF THE UKRAINIAN CRISIS AND WAR
Among the major global crisis focuses in the world is the Ukrainian crisis, which is primarily a geopolitical conflict. Due to the number of victims and the material damage caused by the war, the Ukrainian conflict was also marked as the worst conflict in Europe after the conflict in the former Yugoslavia. The historical
legacy and the resulting context, and especially after the independence of Ukraine and the exit from the Soviet Union boundary, in 1991, led to polarization within Ukraine with pronounced ideological divisions among the citizens. With such divisions of the society and with external influences, there were also the first riots and the outbreak of conflicts, and as the official start of the Ukrainian crisis is February in 2014.

According to assessment made by US intelligence community, the conflict in eastern Ukraine is likely to remain stalemated and marked by fluctuating levels of violence. A major offensive by either side is unlikely in 2018, although each side’s calculus could change if it sees the other as seriously challenging the status quo. Russia will continue its military, political, and economic destabilization campaign against Ukraine to stymie and, where possible, reverse Kyiv’s efforts to integrate with the EU and strengthen ties to NATO. Kyiv will strongly resist concessions to Moscow but almost certainly will not regain control of Russian-controlled areas of eastern Ukraine in 2018. Russia will modulate levels of violence to pressure Kyiv and shape negotiations in Moscow’s favor. (Coats, 2018:24)

2. FOREIGN SOLDIERS AND FIGHTERS IN THE UKRAINIAN WAR

A result of a complex political and ideological background of the Ukrainian revolution and war was a large-scale battlefield. Numerous domestic and foreign military troops, soldiers, and fighters got involved in a war, fighting for they own causes or because of an affiliation either to pro-Ukrainian or pro-Russian side. In 2017, Ukrainian Parliament adopted the law allowing a foreign troops to conduct military exercises, which was related to a collaboration between Ukraine and the U.S. Considering a loss of Crimea and the strength of Russian armed forces, Ukraine was forced to urgently open its borders for an assistance and intervention of Western allies. As Sputnik reported, the law has clearly defined the following: “Ukraine's legal system prohibits any kind of military units from operating within the country without legal permission. Moreover, it prohibits the establishment of foreign military bases, therefore all foreign troops have to be admitted on the territory of Ukraine via special legislation, as advised by the president.” (Sputnik, 2017)

Even though legal precautions existed, borders were easily crossed by foreign soldiers and individual fighters from EU and non-EU countries.

A communication by using social media is well established practice among the foreign fighters. They very often share pictures and videos from different battlefields within the Ukrainian territory. These tools are also flexible for recruiting or inviting new volunteers and groups of foreign fighters who are affiliated with both, pro-Ukrainian and pro-Russian side. It is reasonable to expect that social
media will serve as an important starting point in investigating war crimes by domestic or foreign institutions. In a research article published in 2016 by Digital Forensic Research Lab it was stated that numerous investigations showed that there is sizable presence of far-right fighters, but not all of them are neo-Nazis or Russian separatists. This does not mean that only far-right or neo-Nazis fighters are linked to allegedly committed war crimes- it refers to all foreign fighters who probably are in a position to make military assessments and actions by themselves, due to disorder in military control over pro-Ukrainian forces. (Jackson, 2014)

Pro-Russian military groups and separatists who invaded and entered the Crimean Peninsula have a foremost support from the Russian government. As BBC reported, it was estimated that at the beginning of the war there were around 4,000 Russian citizens helping the separatists. Ukraine’s Security and Defence Council reports have detected high-rank military and rebels marked as “Russian troops” in the eastern part of country. In July, 2014, Russian government reported that there are around 20,000 volunteer soldiers. Pro-Russian separatists are divided into two main groups: Donetsk People’s Militia and Luhansk People’s Militia, which further consists of many other battalions and brigades. (Gordon, 2015)

Ukraine’s provinces of Donetsk and Luhansk have their military commanders and leaders. In his analysis, Vladimir Socor explained the functioning of Cossack’s administration: “The incumbent mayors, district chief executives, and police chiefs (town commandants) variously include those elected under Ukrainian law prior to 2014 as well as those appointed unlawfully by “LPR” authorities. The atamans tolerate the presence of incumbents in most places, resulting in a semblance of dual power. In practice, however, ataman-led forces are far stronger locally, and rule their respective fiefs unchecked. They hold de facto police powers; apply informal criminal justice through detention, corporal punishment or community labour; levy taxes on business for “people’s needs” or the “self-defence forces’ needs”; administer food-rationing in their localities; and redistribute humanitarian assistance goods received unofficially from Russia.” Therefore, this clearly indicates that an operative connection between Russia, Ukrainian separatists, and foreign fighters is visible as a network within which a command line exists.

3. FOREIGN FIGHTERS FROM THE BALKANS REGION

A significant number of foreign fighters in Ukraine comes from the Balkans region. It is noted that many of those are citizens of Serbia. The Chetnik unit counts 46 members in Ukraine, fighting on the pro-Russian side, also including members from Bulgaria. The field commander of this unit is fighter named Zivkovic, who has an experience from the Yugoslav wars back in the 1990s. Zoran Andrejic, deputy president of the Serbian Chetnik movement, confirmed that they are not sending inexperienced fighters to their allies. According to the reports of a former prime
minister, and current President of Serbia, Aleksandar Vucic, 95% of Serbian fighters are mercenaries. (Rujevic, 2014) Slavisa Djokic is also a member of the Chetnik Movement and a volunteer fighter in Crimea invited by Cossack formations. (Fadilpasic, 2014)

Security Service of Ukraine (SBU) in October 2017, has released personal data of three citizens of Serbia and three citizens of Bosnia and Herzegovina, in relation to which collected the evidences of “Wagner” members. Serbian citizens are – Alexander Milovanovic, Dragan Mirkovic and Zoran Radovanovic, while Dusko Lukic, Nedo Stojanovic and Davor Savicic are from Bosnia and Herzegovina. 34

Picture 1: Six citizens from Serbia and BiH as Wagner members

Since October 2017, SBU has handed over the names of 103 Serbs, who are participating in the military conflict in eastern Ukraine. Furthermore, the names of 23 Serbs (included in the list of 103 persons) are serving under the Russian private military company Wagner. 35 One of the 103 Serbs, Simunyak Oleh Vitaliyovych, 36 in 2004-2005 recruited Ukrainians to carry out terrorist acts in European Union member state. Vitaliyovych, born in 1968, a citizen of the Russian Federation and the Republic of Serbia. Participated as a mercenary in the combat operations in Georgia (1992), Bosnia (1993-1995), Kosovo (1999), and Macedonia (2001). After the Balkan events, he became the close associate of the Russian citizen Hirkin-

36 https://ssu.gov.ua/en/news/1/category/1/view/4555#.va04QU01.dpbs

Source: Security Service of Ukraine
“Strelkov” (currently on the wanted list, accused in creating a terrorist organization) and Aleksandr Kravchenko (head of radical Russian-Serbian organisation “Kosovo Front”, a key recruiter of Serbian contractors for combat operations in Eastern Ukraine and Syria).  

Although SBU has delivered information officially to the Serbian government, SBU has not got any official respond. In October 2017, around 300 Serbs were serving in the Wagner private army and SBU has a lot of information about each of them.

A name of Davor Dragolobovic Savicic appears within security agencies in Bosnia and Herzegovina. Bosnian police sources have emphasized that Moscow is seen as a centre of fighter’s gatherings after which they are deployed to the Ukrainian battlefield. (Ristic, 2016) It is assumed that Serbian fighters are registered as temporary workers in order to cover up their movement towards the battlefield.

As Guardian reporting, Russian-trained mercenaries are helping to establish a paramilitary unit serving the Serb separatist leader in Bosnia, which was confirmed by the Bosnian security minister, comes at a time of mounting western anxiety about Russian efforts to destabilise the Balkans and resist Nato enlargement in the region. (Borger, 2018)

On the other hand, Croatian volunteer fighters took part in pro-Ukrainian battles and all of them are mercenaries - considering the reports from 2015, it was estimated that around 25 Croatian citizens are in Ukraine.  

As many Croatian fighters find ideological connection with the far-right groups in Ukraine, they usually become members of the Azov Battalion. Denis Seler is a Croatian citizen who joined the Azov battalion. At the beginning, volunteers were not paid, but later on they have received fees in the amount of 175,00 euros. Some media indicate that members of Azov are paid 150,00 euros per month and it is understandable why Ukrainins are being part of Azov, but it is not understandable why Croats are its members also. Croatian members of Azov state that they are not mercenaries and do not fight for money but that their only motive is to help the Ukrainian people who are victims of Russian aggression.

Furthermore, on Picture 2, which was posted on Facebook, Croats who joined Azov battalion were recorded in the so-called croatian army digital uniforms. These uniforms cannot be obtained without the presentation of a military identity

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37 Ibid.
38 http://balkans.aljazeera.net/vijesti/economist-borci-sa-balkana-sirom-svijeta
39 http://www.priznajem.hr/izdvojeno/ekskluzivno-donosimo-pricu-hrvata-se-bori-redovima-ukrajinske-vojske/
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446
card, which means that they were procured for the regular composition of Croatian armed forces.  

Picture 2: Croatin legion in Ukraine – Croatin members of Azov

As croatian media reporting, it seems that the Ukrainian authorities began to "clean up" their armed formations from foreign fighters, most of whom came from various European extremist right-wing groups and movements. Furthermore, the Croatian citizens, members of Azov, were banned from entering Ukraine. One of the most prominent foreign members of Azov is Gaston Besson, a French legion who fought in the Croatian War of Independence, and survived it. Gaston after the war remained to live in Croatia, and thanks to him most of the Croatian volunteers went to Ukraine. (Kavain, 2016)

In the annual report on the state of security in Bosnia and Herzegovina, published in 2016, it was stated that the official number of Bosnian citizens and volunteer fighters in Ukraine is nine. In 2017, there was one arrest in Banja Luka by State Investigation and Protection Agency (SIPA) regarding departure to foreign battlefield in Ukraine. The suspect is linked to the departure of the Ukrainian

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foreign battlefield and the involvement in armed conflicts in that area.\textsuperscript{43} Besides this example of departure BiH citizen to Ukraine foreign battlefield, there is one more, Dimitrije Saša Karan, born in Foca in 1993, who died in Syria fighting in the ranks of Russian volunteers.\textsuperscript{44}

Bosnia and Herzegovina, Serbia, Croatia, Macedonia and Kosovo made efforts in an attempt to decrease the number of their citizens on a foreign battlefield by imposing new laws. This was partially successful since in some parliaments passing of the law has stopped. It was also discussed that the proposed law has many gaps, as it is difficult to integrate those fighters in the society because they represent the threat. This is complicated in cases where it is almost impossible to prove whether an individual was active as a fighter and mercenary.

An important final judgement was delivered on May 22, 2017, by the Court of Bosnia and Herzegovina, in which the accused Mehmed Tutmic was sentenced to four years of imprisonment because of his participation in the Syrian and Iraqi battlefields.\textsuperscript{45} A citizen of Montenegro, Marko Barovic, was sentenced to six months of imprisonment because he fought in Donetsk area with the pro-Russian separatists in 2014 and 2015.\textsuperscript{46} According to media reports in 2016, nine Serbian citizens have been sentenced to imprisonment and found guilty for participating in the Ukrainian war as foreign fighters. However, while analysing additional Serbian media reports from the same year, 24 citizens who have been fighting in Ukraine made an agreement with the prosecution to plead guilty - three of them were sentenced to imprisonment for a period of six months.\textsuperscript{47} Security Information Agency concluded that there are between 20 and 25 Serbian citizens, which is different from media reports and possibly an actual number.\textsuperscript{48}

But, we can say that social media, i.e., Facebook posts from the Ukrainian battlefields have been invaluable in enabling prosecutors in Serbia and Montenegro to prove the illegal military action of their nationals in Ukraine. Social media profiles did not only help the authorities in Serbia and Montenegro to secure convictions; Ukrainian authorities have also used them to issue arrest warrants against the remaining Serbian fighters in the country. (Ristic, 2017)

\textsuperscript{43} https://www.nezavisne.com/novosti/hronika/SIPA-pretresla-stan-u-Banjaluci-priveden-osumnjiceni-zbog-ratovanja-u-Ukrajini/449056

\textsuperscript{44} http://nap.ba/new/vijest.php?id=36546

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\textsuperscript{47} http://www.newsweek.rs/srbija/79395-ni-jedan-u-zatvoru-gde-su-srbi-koji-su-ratovali-u-ukrajini.html

\textsuperscript{48} https://www.cdm.me/hronika/psi-rata-van-kontrole/
All of judicial decisions will serve as a useful guideline for imposing sanctions and sentences for volunteer fighters in different wars across the world, but also for decreasing a general number of departures.

What is particularly interesting in terms of potential security threats for Bosnia and Herzegovina is that some members of the Wagner organization participated in the aggression against Bosnia and Herzegovina, as well as in the war in Kosovo. Together with other citizens of Serbia and BiH, members of Wagner, as well as some other extremist organizations from Serbia and Russia, these foreign fighters, participate in the current conflicts in Syria and in Ukraine on the Russian or Pro-Russian side. Due to the complexity of political relations in BiH, and the pressure on the work of the competent institutions, but also because of the support which these "foreign fighters" have from some political options in BiH, it is sometimes difficult to monitor, take legal and operational measures and actions against them. After Bosnia and Herzegovina is faced with security risks posed by returnees from the Syrian-Iraqi battlefields, who were members of a terrorist organization ISIS and other extremist groups, there is now a new security risk. (Global Analitika, 2018)

4. INTERNATIONAL LAW ASPECT - RESPONSIBILITIES, VIOLATIONS, AND SOLUTIONS

In a period from 2014 to 2016 the Ukrainian war left nearly 9,300 dead and over 1.5 million displaced.49 According to the United Nations Security Council’s report, delivered in February, 2017, a number of dead is estimated to be around 10,000, from which over 2,000 were civilians, while 23,000 were injured during the battles.

Both, Ukraine and Russia, are also signatories of the Charter of the UN, according to which they have agreed to respect the promotion of international peace and the suppression of acts of aggression or other breaches of the peace.

Investigations and sanctions of armed groups, battalions, and foreign mercenaries will be most probably a compound process. It is inevitable that dozens of cases must be investigated by countries from which foreign fighters actually have arrived to the Ukrainian battlefield. This means that domestic courts will be obliged to impose punishments, once when peace is settled, if a status of a fighter, who is a mercenary on a foreign battlefield, is recognized by domestic law.

Since the war in Ukraine is still ongoing, it is unreasonable to expect that domestic courts will have enough capacity to investigate, prosecute, and impose final decisions for war crimes that were committed in areas of Crimea and eastern

Ukraine. However, it is expected from the International Criminal Court to make an initial step in ending the war, as well as in prosecuting pro-Ukrainian and pro-Russian armed groups, including foreign fighters, for their involvement in war crimes.

5. CONCLUSION

The phenomenon of foreign fighters and their departures to different battlefields worldwide remains a threat to international security. An adequate control over the conduct of foreign fighters, which are very often mercenaries, is hard to impose due to a significant number of those who are still involved or invited to foreign battlefields. When it comes to a specific example of war in Ukraine, it is expected that both sides in conflict will be prepared to investigate the conduct of foreign fighters and the facts about allegedly committed crimes. It is also evident that behind the departure of foreign fighters stands political propaganda and their ideological background or affiliations. As it was abovementioned, many foreign fighters decide to join the foreign battlefield, including the Ukrainian, due to historical connections either with Ukraine or Russia. In such cases, foreign fighters represent useful assets for, so called, “dirty war jobs”. That is why legal sanctions from domestic and international courts in the upcoming period would be important. Judicial precedents might enable an effective response for decreasing the percentage of departures to new foreign battlefields. However, this is not only a question of setting legal measures. It is closely related to economic and social issues that different countries face with. While analysing departures from the Balkans region, many of those fighters are mercenaries, meaning that they have agreed to join a certain armed group because of their poor financial status. It is definitely positive that, from 2016 and 2017, legal systems in Bosnia and Herzegovina, Serbia, and Montenegro started with imposing sentences and sanctions to volunteer fighters and mercenaries. That remains to be done in Croatia as well, since a numerous volunteers left this country to join the Ukrainian battlefield. Thus, foreign fighters will use gaps for departures as long as there is no systematic approach in imposing sanctions, but also their integration in the society.

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THE LEGAL DETERMINATION OF PRETRIAL DETENTION IN THE MACEDONIAN CRIMINAL LEGISLATION

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Abstract
Application of pretrial detention suspends fundamental rights and freedoms of the citizens and therefore this measure is constituted in the Constitution of the Republic of Macedonia. Pretrial detention is not a sanction, but is a coercive measure that serves and is intended exclusively to ensure the presence of the defendant and for the successful conduct of the criminal procedure. It is a coercive measure that results in the temporary restriction of a person’s liberty, when there is grounded suspicion that the person perpetrated a criminal offense. The main objective of ordering pretrial detention is to ensure the uninterrupted enforcement of procedural measures and the uninterrupted course of the criminal proceedings, in full and consistent compliance with the principles of morality, immediacy, adversarial proceedings, fairness, and the principle of determining the material truth, which could not be guaranteed without the defendant’s presence. The court needs to have objective evidence that the defendant will escape, will influence witnesses or the investigation and will continue with the perpetration of the criminal offense when ordering pretrial detention. When there is no basis for ordering pretrial detention, the same should be repealed immediately. The duration of pretrial detention should be in correlation to the expected sentence.

Keywords: pretrial detention, coercive measure, criminal offense, criminal procedure, human rights.

1. INTRODUCTION
Application of pretrial detention suspends fundamental rights and freedoms of the citizens and therefore this measure is constituted in the Constitution of the Republic of Macedonia.

Pretrial detention is not a sanction, but is a coercive measure that serves and is intended exclusively to ensure the presence of the defendant and for the successful conduct of the criminal procedure.

Pretrial detention is a measure that has been examined in international law from an aspect of human rights and inevitability for use as an instrument for exercising the function of the criminal procedure. Many international legal acts (setting criteria for legal detention, setting limits on its acceptable limitation and
other standards of the international community) determine the forms of deprivation of liberty and the measure of detention, justification, admissibility, conditions, and the sanctioning of the perpetrators of criminal acts with these measures that are not acceptable to a democratic society.

The most important sources of international law that directly or indirectly relate to deprivation of liberty (detention or imprisonment) are: the Universal Declaration of Human Rights (UDHR) of 1948, the International Covenant on Civil and Political Rights (ICCPR) of 1966, the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment of 1987, Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment; Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) of 1950, European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment.

2. THE LEGAL DETERMINATION OF PRETRIAL DETENTION IN THE MACEDONIAN CRIMINAL LEGISLATION

Pretrial detention in the Macedonian criminal legislation starts from the Constitution of the Republic of Macedonia, which proclaims that the freedom of the person is inviolable and no one can be restricted to freedom, except by a decision of the court and in a procedure established by law. This constitutional determination elaborates and specifies the Criminal Procedure Code determining the grounds and procedure for applying this measure (the conditions, the duration, the shortest time necessary, duty of all authorities to respect the rights of the detainee, this coercive measure should be repealed as soon as they cease the reasons for ordering pretrial detention).

Pretrial detention can be determined only under the conditions provided for in the Criminal Procedure Code (CPC). The duration of pretrial detention must be reduced to the shortest time necessary. It is the duty of all authorities participating in the criminal procedure and the bodies that provide legal assistance to deal with special urgency if the defendant is in pretrial detention. In deciding on the pretrial detention, especially for its duration, a special account shall be taken of the proportionality between the severity of the committed criminal offense, the sentence that can be expected according to the data available to the court and the needs for determining and duration of the pretrial detention. During the entire procedure, the pretrial detention shall be repealed as soon as the reasons on which it was determined are terminated.

Pretrial detention is ordered on the basis of a written and justified motion submitted by a prosecutor, to which the prosecutor is obliged to enclose and submit to the judge the order to conduct an investigation (except in summary proceedings),
and all material evidence collected. (Buzharoska, Andreevska and Tumanovski 2015, 13).

Before ordering pretrial detention, a judge of the previous procedure must be convinced of the following two aspects:

- that there is grounded suspicion that the defendant perpetrated the criminal offense he/she is being charged with and
- that there is sufficient evidence to substantiate the grounds for ordering pretrial detention in the motion submitted by the prosecutor. (Buzharoska, Andreevska and Tumanovski 2015, 15).

According to the Criminal Procedure Code (Article 165), if there is a reasonable suspicion that a person has committed a criminal act, if pretrial detention is necessary for the uninterrupted course of the criminal proceedings; a person may be detained if:

- Is hiding, if his identity cannot be established or if there are other circumstances indicating the danger of escape;
- There is a founded fear that it will hide, forge or destroy the traces of the criminal act or if particular circumstances indicate that it will obstruct the criminal procedure by influencing witnesses, expert witnesses, accomplices or coverts;
- Special circumstances justify the fear that he will repeat the criminal act, or he will complete the offended criminal act or that he will commit a criminal act with which he threatens;
- The duly summoned defendant obviously avoids arriving at the main hearing, or if the court has made two attempts to properly summon the defendant, and all the circumstances indicates that the defendant apparently refuses to receive the summons.

When the pretrial detention is determined solely because the person's identity cannot be determined, it lasts until this identity is determined. When there is fear that he will hide, forge or destroy the traces of the criminal act, the pretrial detention will be repealed as soon as the evidence for which the pretrial detention is determined is provided. When the pretrial detention is determined when the duly summoned defendant apparently avoids arriving at the main hearing, it lasts until the announcement of the verdict, and for a maximum of 30 days.

Pretrial detention will not be determined if the defendant made a statement by which he acknowledged the guilty of fear of hiding, forgery or destroying the traces of the crime, would interfere with the criminal procedure.

A deficiency of the CPC is the fact that there is no provision to stop the proceedings in cases, where the judge, assessing the submitted evidence enclosed to the motion for pretrial detention, finds that there is no sufficient evidence that the defendant perpetrated the criminal offense he/she is being charged with. In such a case, instead of stopping the proceedings (which should be the logical conclusion, having in mind
the judge’s role to act as a protector of human rights and freedoms), the most a judge can do is to reject the motion for ordering pretrial detention. (Buzharoska, Andreevska and Tumanovski 2015, 15).

3. THE LEGAL DETERMINATION OF PRETRIAL DETENTION IN THE INTERNATIONAL LEGAL ACTS

In Article 9 of the International Covenant on Civil and Political Rights (ICCPR) of 1966 is provided that:

1. Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.

2. Anyone who is arrested shall be informed, at the time of arrest, of the reasons for his arrest and shall be promptly informed of any charges against him.

3. Anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release. It shall not be the general rule that persons awaiting trial shall be detained in custody, but release may be subject to guarantees to appear for trial, at any other stage of the judicial proceedings, and, should occasion arise, for execution of the judgment.

4. Anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that that court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful.

5. Anyone who has been the victim of unlawful arrest or detention shall have an enforceable right to compensation.

In Article 5 (Right to liberty and security) of Convention for the Protection of Human Rights and Fundamental Freedoms of 1950 is provided that:

1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:
   a) the lawful detention of a person after conviction by a competent court;
   b) the lawful arrest or detention of a person for non-compliance with the lawful order of a court or in order to secure the fulfillment of any obligation prescribed by law;
   c) the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so;
   d) the detention of a minor by lawful order for the purpose of educational supervision or his lawful detention for the purpose of bringing him before the competent legal authority;
e) the lawful detention of persons for the prevention of the spreading of infectious diseases, of persons of unsound mind, alcoholics or drug addicts or vagrants;
f) the lawful arrest or detention of a person to prevent his affecting an unauthorized entry into the country or of a person against whom action is being taken with a view to deportation or extradition.

2. Everyone who is arrested shall be informed promptly, in a language which he understands, of the reasons for his arrest and of any charge against him.

3. Everyone arrested or detained in accordance with the provisions of paragraph 1.c of this article shall be brought promptly before a judge or other officer authorised by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release pending trial. Release may be conditioned by guarantees to appear for trial.

4. Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful.

5. Everyone who has been the victim of arrest or detention in contravention of the provisions of this article shall have an enforceable right to compensation.

4. PROCEDURE FOR DETERMINATION OF PRETRIAL DETENTION

The pretrial detention shall be determined by the court upon a written and elaborated proposal to an authorized plaintiff and only on the grounds specified by the authorized plaintiff in the proposal.

The pretrial detention is determined by a written decision containing mandatory elements. The pronouncement of the pretrial detention order contains:

- name and surname of the person deprived of liberty;
- the crime for which he is accused;
- information on the order for conducting an investigative procedure;
- the legal basis for determining pretrial detention;
- the period at which the pretrial detention was determined;
- the provision for calculating the time for which the detained person was deprived of liberty prior to the adoption of the pretrial detention decision;
- the name of the institution in which the pretrial detention measure is carried out;
- the instruction on the right to appeal the pretrial detention decision. (Article 167 of Criminal Procedure Code).

In the explanation of the decision for pretrial detention, it is obligatory to state:
- all facts and evidence from which the reasonable suspicion arises that the accused committed the crime;

458
- justified reasons justifying each separate basis on which the pretrial detention is determined and
- the reasons why the court considers that the purpose of pretrial detention cannot be achieved by any other measure for securing presence.

The decision shall be certified with the official seal and signature of the judge determining the pretrial detention. With the decision determining the pretrial detention for justified reasons, the execution of the pretrial detention may be ordered to be conducted in a detention unit in another penitentiary institution. If the defendant does not appoint a counsel, together with the decision, a defense counsel will be appointed *ex officio* (when the accused is deaf, deaf or unable to successfully defend himself or if he is prosecuted for a criminal offense for which the law stipulates punishment for life imprisonment, must have a defense counsel even during the first examination, when pretrial detention is determined for the duration of the detention, if the accused does not take a defense counsel in the cases of compulsory defense, the president of the court will appoint a defense counsel *ex officio* the local course of criminal proceedings until a final judgment when the defendant is assigned a counsel *ex officio* after the indictment). If the president of the court is prevented, the counsel shall be appointed by the judge of the previous procedure.

### 4.1 Bringing up before the judge of the previous procedure and determination of a defense counsel

The right to be brought before a judge who will decide on the lawfulness of the arrest, known as *habeas corpus*, is the first guarantee in the history of human rights established for the first time in the legendary *Magna Carta Libertatum* ("the Great Charter of the Liberties") of 1215.

The judge of the previous procedure shall examine the two parties and the counsel for the circumstances of relevance for the pretrial detention, and the arrested person shall immediately inform him that he may take a defense counsel who may attend his examination and, if necessary, will help him find a defense counsel. If the person deprived of liberty declares that he does not want to take a defense counsel, the judge of the previous procedure is obliged to question him without delay. If in the case of a compulsory defense a person deprived of liberty does not take a defense counsel within 12 hours of the hour when he is taught for this right, or declares that he does not want to take a counsel, a defense counsel will be appointed *ex officio*. Immediately after the hearing, the judge of the previous procedure will decide whether the person arrested will detain or release him. (Article 168 of Criminal Procedure Code).
4.2 Submission of the decision for pretrial detention and the right to appeal

The decision for pretrial detention shall be handed over to the person to whom it refers immediately, but not more than 6 hours from its bringing up before the judge of the previous procedure. The records must indicate the hour of bringing up before the judge of the previous procedure and the hour of the delivery of the decision. The detained person may appeal against the decision determining the pretrial detention to the council within 24 hours from the hour of delivery of the decision. If the detainee is first examined, after the expiration of this time limit, he may lodge an appeal at the hearing. The appeal with a transcript of the minutes for questioning, if the detainee is questioned, and the decision for pretrial detention is submitted immediately to the council. The appeal does not retain the execution of the decision. Against the decision of the judge of the previous procedure rejecting the motion for pretrial detention, an appeal is allowed within 24 hours to the council. The appeal does not retain the execution of the decision. Against the decision of the council, which determines pretrial detention, the accused has the right to appeal within 24 hours for which the council of the higher court decides. The Council that decides upon the appeal is obliged to make a decision within 48 hours. The public prosecutor and the counsel may request to be informed about the session of the council and to present them orally and explain their proposals at the session. Their absence does not prevent the holding of the session. (Article 169 of Criminal Procedure Code).

4.3 Short-term detention

The judge of the previous procedure may, upon a proposal from the public prosecutor, to order a detained person with a written and reasoned decision to detain a person for up to 48 hours from the bringing of the arrested person before the judge of the previous procedure in case he finds that there is a reasonable suspicion that the person is a perpetrator of a punishable offense charged with it and that there are grounds for determining the pretrial detention measure (it is hiding if its identity cannot be established or if there are other circumstances indicating the danger from escape, there is a founded fear that he will hide, forge or destroy the traces of the criminal act, or if particular circumstances indicate that he will hinder the criminal procedure by influencing witnesses, experts, accomplices or cover-keepers and special circumstances justify the fear that he will repeat the crime, or complete the crime or to commit a crime which threatens it), if the public prosecutor against the person has not yet issued an order for conducting an investigative procedure. If the public prosecutor does not submit a motion for determining pretrial detention on the previous grounds after the deadline of 48 hours, the defendant shall be released. In
cases involving a greater number of defendants or other particularly complex cases upon a reasoned request by the public prosecutor, the judge of the previous procedure may extend for a maximum of 48 hours. The decision for a short-term pretrial detention shall be handed over to the person against whom it is determined and submitted to the competent public prosecutor. An appeal against the decision for a short-term pretrial detention is allowed within five hours from the appointment to the council, which is obliged to decide upon the appeal within three hours. (Article 170 of Criminal Procedure Code).

4.4 Duration of pretrial detention in the investigative procedure

The pretrial detention procedure is determined by a decision of the judge of the previous procedure or the pretrial detention that was first determined during the investigative procedure with a decision of the council can last for a maximum of 30 days from the date of deprivation of liberty. Any deprivation of liberty shall be counted during the duration of the pretrial detention. Following an elaborated proposal by the public prosecutor, the Chamber may extend the pretrial detention in the course of the investigative procedure for a maximum of 60 days. If the investigative procedure is conducted for a criminal offense for which according to the law a prison sentence of at least four years may be imposed, upon an elaborated proposal by the public prosecutor, the pretrial detention should continue for a maximum of 90 days. The total duration of detention in the investigative procedure, taking into account the duration of the arrest before the decision of pretrial detention, may not be longer than 180 days, and the detainee shall be released immediately upon expiration of that period. Prior to raising the prosecution motion in a summary procedure, the detention may last as long as it takes the investigative actions to be carried out, but not more than eight days. An appeal is allowed against the decision of the council for extension of the detention within 48 hours to the immediately higher court. The appeal does not retain the execution of the decision. (Article 171 of Criminal Procedure Code).

4.5 Duration of detention after approval of the indictment

The duration of the detention after approval of the indictment until the completion of the main hearing, upon the proposal of the parties, detention can be determined, extended or abolished only with a decision of the council. After the effectiveness of the indictment, the detention may last up to:
- one year for criminal acts for which can be imposed a prison sentence of up to 15 years;
- two years for criminal acts for which can be imposed a prison sentence life imprisonment.
Upon proposal of the parties and *ex officio*, after the expiration of 30 days from the effectiveness of the last decision for detention, the council shall be obliged to investigate whether the reasons for detention still exist and to adopt a decision for the extension or revocation of the detention. The appeal against the decision for detention determined by a decision of the judge of the previous procedure or the detention that was first determined during the investigative procedure with a decision of the council can last up to 30 days from the date of deprivation of liberty, the investigative procedure is conducted for a criminal act for which according to the law can be imposed a prison sentence for a period of at least four years, upon an elaborated proposal by the public prosecutor, the council of the immediate higher court may, after the expiration of the deadline, extend it for a maximum of 90 days, does not retain the execution of the decision. A separate appeal is not allowed against the decision of the council rejecting the proposal for determining or abolishing the detention. If the defendant fled from detention, the terms of detention from this article will begin to run again. (Article 172 of Criminal Procedure Code).

**4.6 Repeal of detention**

The detention is repealed by a decision and the defendant will be released when the court assesses that one of the following conditions is fulfilled:

- when the reasons for which the detention was determined, i.e. prolonged, cease to exist;
- if further detention would not be proportionate to the proportionality of the committed crime;
- when the same purpose for which detention is determined may be achieved by some other measure;
- when the release of the detention was proposed by the public prosecutor before the indictment was filed;
- if the accused is released from the indictment or is found guilty and is released from the sentence or is sentenced only to a fine, or has been given a court reprimand or conditional conviction, or because of the calculation of the detention, the punishment has already been served or if the charge has been denied, except in cases when it is rejected due to lack of jurisdiction of the court;
- when the deadline of the detention will expire or
- when the detention is determined in accordance with Article 165 paragraph 1 item 2 of Criminal Procedure Code, and the defendant has given a statement for acknowledgment of guilt or after all the evidence has been obtained, due to which the detention on this basis was determined, and at the latest until the completion of the main hearing.

Against the decision for prolonged detention and when the reasons for which it was determined, or extended, an appeal is allowed within 24 hours to the
council, i.e. the council of the higher court, which within 48 hours must decide upon the appeal. The appeal it is delaying the execution of the decision. (Article 173 of Criminal Procedure Code).

It must be noted that the provision of Article 144 paragraph 3 CPC, governing that measures for securing presence shall be terminated *ex officio* when the legal requirements for rendering the measures cease to exist, or shall be replaced with another, more lenient measure, when the circumstances to do so arise, does not refer to the investigation and the phase of assessing the indictment. Having in mind the fact that the court has no insight in the case file and the actions taken by the parties, it may only act on the basis of substantiated motions from the parties.

Suspension of pretrial detention is within the sole competence of the court, which may pose practical problems, having in mind the new concept of a procedure, where the emphasis is on the pro-active role of the parties to initiate and undertake actions and exercise their roles in the process. It is not acceptable to exclude the option of pretrial detention being terminated on the basis of a motion by the parties. (Buzharoska, Andreevska and Tumanovski 2015, 21).

4.7. Detention after the publication of the verdict

The trial chamber may order detention even after the publication of the verdict by which the defendant is sentenced to imprisonment, if he is no longer in custody. The trial chamber is competent for the determination or removal of the detention from the completion of the main hearing until the announcement of the verdict, and since the publication of the judgment until its validity, the council is competent. Before the adoption of the decision determining or abolishing detention on the previous grounds, the public prosecutor shall be examined when the procedure is conducted upon his request. If the defendant is already in custody, and the council finds that there are still reasons for detention, it will issue a special decision for the extension of the detention. The Council also makes a special decision when the detention should be determined or repealed. When deciding on detention, a special account shall be taken of the harmfulness of the consequences of the crime and the severity of the endangering or infringement of the security good. The detention, which is determined or extended, according to the provisions of this Article, may last until the serving of the sentence, i.e. until the validity of the verdict, but the longest, until the expiry of pronounced prison sentence. When the court pronounces a prison sentence, the defendant, who is in detention with a decision of the president of the council, may be sent to the institution for serving the sentence even before the verdict becomes final if he so requests. (Article 174 of Criminal Procedure Code).
5. INSUFFICIENT EXPLANATION OF THE LEGAL GROUNDS FOR DETENTION

In most of the cases, the courts in the Republic of Macedonia are using quotations or paraphrasing of the provisions of the CPC, which is one of the shortcomings in the explanations of each of the reasons for determining detention. Another case that often appears in the practice of the courts throughout Macedonia in justifying the risk of escape is the enriched version of the paraphrased provisions of the CPC, that is, quoting additional arguments that the court has in mind, i.e. the amount of the sentence, the nature of the crime, the extent of the damage and the circumstances under which the crime was committed. (Kostova-Koceva Suzana 2016).

These additional arguments are merely speculations as to what could be the reasons for detaining a person and they do not give a relevant and sufficient explanation that relates to the particular case. (Ibid).

The risk of escape is in many cases justified by the fact that the defendant can escape the border only because of the fact that his parents or relatives live abroad. Apart from this fact, no additional information is provided and no alternative measures are considered. (Ibid).

In the Macedonian judicial practice when the public prosecutor submit an indictment with proposal for detention, in most of the cases it lists all the grounds for ordering the detention. In doing so, it does not give adequate explanation that will justify the need for ordering the detention by the judge of the previous procedure, i.e. it does not submit appropriate evidence to the court. Unfortunately, the judge of the previous procedure in most of the cases accept the listed grounds for ordering the detention by the public prosecutor, and at the same time forgetting to state a appropriately argued and sustained solution that will justify the need for ordering the detention.

Of great importance for the Republic of Macedonia is the practical application of the detention, because the manner of dealing with perpetrators of criminal acts is an important test for the maturity and democracy of our country.

6. CONCLUSION

The most stringent measure to ensure the defendant's presence in the criminal procedure is detention which implies the highest degree of coercion and limitation of his rights and freedoms.

The detention can be determined only under the conditions stipulated in the law and its duration must be reduced to the shortest time necessary. The defendant who is in custody has the right to preference in the trial in relation to the trial of the defendant who is not in pretrial detention.
In the previous procedure, the court provides detention only on the grounds proposed by the public prosecutor. Prior to the adoption of the detention decision, the judge of the previous procedure shall examine the two parties and the defense counsel of the circumstances that are of relevance for determining the detention. This guarantees the request provided by the ECHR for contradictions in the procedure for determining the detention measure.

Macedonian CPC follows the model of European legislation and the special grounds for detention are specified in it. Determining the grounds and criteria for determining the detention, the CPC guarantees that detention will not be determined against each accused person for a criminal act, but only in exceptional cases which are provided by law.

I consider that the courts are obliged to explain in detail all the reasons for the grounds for detention in the adoption of the decisions, as well as to provide facts about the justified reasons, and the parties in the procedure to be able to give their arguments at the hearing, which will undoubtedly give a result that will mean a reduction in the intensity of the pronouncement of the measure of detention.

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CONSENSUAL STATE-BUILDING IN KOSOVO: BETWEEN SOVEREIGNTY AND MINORITY RIGHTS

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Abstract
The primary purpose of this research is to examine how consensus-based state building in Kosovo has shaped the establishment and development of multi-ethnic institutions and inter-ethnic relations since Kosovo’s declaration of independence in 2008. Specifically, this research will explain the delicate balance between state sovereignty and minority rights in Kosovo at the national and local level. The methodology used is qualitative, including desk research of existing national legislation, literature review—both national and international—and previously published analytical reports dealing with minority rights and state building in Kosovo. Overall, results generally demonstrate that there is a balance between state sovereignty and minority rights in Kosovo, which comes because of still-unresolved territorial disputes with Serbia and the still-limited ability of the Kosovar state to balance the two as it seeks to join the European Union. The main conclusions drawn from the research are that, while it is possible to both build a state and enact laws and establish institutions that empower and protect minorities; this endeavor represents a daunting task and is, to some degree, dependent on the social and political context of the country. There is no ready-set formula or a blueprint for consensual state building and in order to be successful and workable, any institutional make-up must reflect the desire of the state to protect its minorities while also not jeopardizing and restraining the ability of the state to function as a socio-political entity. Finally, this paper argues that Kosovo’s institutional framework for the protection of minorities has demonstrated surprising resilience in the face of increasing pressures by a variety of factors whose aim is to strengthen state sovereignty in the face of increasing integration in European and global political and economic developments.

Key words: Kosovo, Balkans, Europe, sovereignty, nationalism, independence, minorities, minority rights, self-determination, European Union, constitutionalism

1. INTRODUCTION
Minority rights and protection mechanisms represent a central element of Kosovo’s constitutional and legal framework. Kosovo’s Constitution defines the country as being a state of its citizens as well as a multi-ethnic society consisting of
the Albanian and other Communities traditionally present in Kosovo. Furthermore, according to the Constitution, Kosovo exercises its authority based on “the respect for human rights and freedoms of its citizens”, enshrining human rights and individual freedoms as a cornerstone of sovereignty and state authority in line with democratic principles of governance (Constitution of the Republic of Kosovo, 2008). Consequently, Kosovo’s state identity is based on the principles of equality before the law, eschewing ethnic and/or cultural symbolism in favor of an identity based on civil principles and values. However, competing narratives over identity and culture have meant that Kosovo’s identity and that of its people are still in a state of flux and subject to much debate by and between different strata of society and politics. And nine years after its independence, Kosovo’s identity is still to be found between two strong and competing narratives: multi-ethnicity on the one hand, and nationalism on the other.

This paper will analyze and consider the development of multi-ethnicity in Kosovo as an overarching component of its legal framework over the years, starting with post-Kosovo War UNMIK years, and ending with the adoption of Kosovo’s independent Constitution in 2008; a historical perspective (1999-2008) of multi-ethnicity and minority rights will be provided, with a brief discussion on the development of mechanisms designed to integrate and empower minority communities to participate effectively in public and political life. Furthermore, the paper will briefly and consider some of the competing ideas and narratives over identity in Kosovo, particularly those based on ethnic identities as primary identities overlapping civic identities and will also review some of the ideas proposed by various politicians and opinion-makers on the issue of identity, multi-ethnicity, and nationalism in Kosovo. In doing so, the Yugoslav notion of “brotherhood and unity” among peoples and republic will also be discussed, as the precursor to multi-ethnicity and ethnic pluralism in today’s Kosovo. To conclude, the paper will discuss contemporary ideas and approaches to multi-ethnicity, including lessons for Kosovo.

2. THE DEVELOPMENT OF MULTI-ETHNICITY AS A GOVERNANCE MODEL IN KOSOVO

Multi-ethnicity and minority representation, before they became keystones within the “Ahtisaari Plan” for independent Kosovo, started to be developed relatively early on in Kosovo. During ex-Yugoslavia, the state-sponsored concept of “brotherhood and unity” (bratsvo i jedinstvo in Serbo-Croatian, and vllaznim dhe bashkim in Albanian) was the guiding principle of relations between the various nationalities and ethnic groups living in Kosovo. Brotherhood and Unity was to be the overarching principle of governance, leading to the formation of a general Yugoslav identity; the latter was to, to some extent, neutralize ethnic nationalism.
following the end of World War II that had wounded relations between ethnic communities in Yugoslavia. The Yugoslav Constitution of 1963 defined Brotherhood and Unity and provided a blueprint for inter-ethnic and inter-entity relations in then-Yugoslavia (Gorp 2002):

The nations of Yugoslavia, proceeding from the right of every nation to self-determination, including the right to secession, on the basis of their will freely expressed in the common struggle of all nations and nationalities in the National Liberation War and Socialist Revolution, and in conformity with their historic aspiration, aware that further consolidation of their brotherhood and unity is in the common interest, have, together with the nationalities with which they live, united in a federal republic of free and equal nations and nationalities and founded a socialist federal community of working people-the Socialist Federal Republic of Yugoslavia.

Kosovo was a multi-ethnic society within Yugoslavia, with Albanian and Serbian being official languages, schooling in both Albanian and Serbian (including at the university level), with the so-called “ethnic key” guaranteeing employment for all communities in public institutions and companies, as well as several other measures designed to enforce and entrench multi-ethnicity and representation of all ethnic groups in state institutions and companies (Gorp 2002). Whereas the repression exercised by Serbian authorities in Kosovo from 1989-1999 and the devastation caused by the Kosovo War did sour relations between Albanians and Serbs in particular, the concept of multi-ethnicity and mutual co-existence was not foreign to Kosovo and its people; it had been a form of life and government for close to five decades.

Following the end of the Kosovo War and the advent of NATO forces in Kosovo immediately after the withdrawal of Serbian and Yugoslav forces and state apparatus, a political, security, and legal vacuum was created. United Nations Security Council Resolution 1244 authorized an international civilian and military presence in Kosovo to administer the country, but was lacking in detail about the exact nature of this international administration. The international administration, taking the form of the United Nations Administration Mission in Kosovo (UNMIK) was to be in charge of reconstruction, organizing elections, establishing provisional institutions and preparing Kosovo for a “final settlement” of its status (United Nations Security Council 1999). This left UNMIK and the international community with the unenviable task of not only administering the country following the war, but also in taking important decisions on the make-up of institutions and government which would have lasting effects on Kosovo’s development and internal political organization. The following section shall look at how multi-ethnicity has developed over time in Kosovo.
The United Nations, aided by NATO’s Kosovo Force (KFOR) security mission, proceeded to immediately establish law and order in Kosovo. It adopted many regulations on a wide variety of issues with the aim of establishing institutions in charge of day-to-day governance while also laying the foundation for the first post-war democratic elections. The concept of a multi-ethnic governance was quickly adopted by the UNMIK Administration. Because Kosovo at that time had an undefined status, the best way to deal with legal uncertainties of who was in the majority/minority and, in a sense, how to handle the issue of the undefined status was to adopt multi-ethnicity as a concept of governance. On the one hand, this addressed the undefined political status of Kosovo (whether it was a province of Serbia in which Albanians would be a minority, or if it was a state on its own, in which case the Albanians would be the majority), and on the other it kept the rich legal system that was in place in Kosovo before 1989 before Kosovo’s autonomy was abrogated under coercion and force by Serbia. UNMIK recognized the usefulness of those laws and made them fully applicable under its administration (United Nations Interim Administration Mission in Kosovo 1999).

A Kosovo Transitional Council was established which consisted of representatives of every major political party as well as ethnic groups. The Council was to function as a temporary mechanism of power sharing with the UN administration, as well as act as a coordination mechanism for issues that concerned all communities in Kosovo. The inclusion of ethnic groups in the Council was to foreshadow future developments in Kosovo regarding minority communities and political representation. The work of the Council was contentious and not always effective, but it did lay the foundation for the kind of power-sharing between the majority Albanians and minority communities that would become the norm during not only UNMIK years but also in post-independence Kosovo (Holley 1999).

However, partly because the Council proved to be an ineffective mechanism for power-sharing and taking major decisions in a timely manner, UNMIK proceeded to adopt a regulation establishing the Joint Interim Administrative Council. This Joint Council was mandated to, inter alia, “share provisional administrative management with UNMIK”, and included “representatives of political forces of Kosovo” (United Nations Interim Administration Mission in Kosovo 2000). The regulation specified that of the eight-member Council, four of them have to be from Kosovo, of which three Kosovo Albanian and one Kosovo Serb (United Nations Interim Administration Mission in Kosovo 2000). Institution building inclusive of ethnic groups, and not only political parties, culminated with the adoption of the Constitutional Framework for Provisional Self-Government in Kosovo that acted as the de facto Constitution of Kosovo from 2001 through 2008. The Constitutional Framework built upon the multi-ethnicity of the Council and the Joint Council, and mandated that institutions
must represent the diversity and multi-ethnicity of Kosovo’s people, including at the highest levels of government.

When forming a government following elections, for example, the Constitutional Framework mandated the inclusion of minorities (United Nations Interim Administration Mission in Kosovo 2001):

9.3.5 At all times, at least two Ministers shall be from Communities other than the Community having a majority representation in the Assembly.

At least one of these Ministers shall be from the Kosovo Serb Community and one from another Community.

In the event that there are more than twelve Ministers, a third Minister shall be from a non-majority Community.

The Constitutional Framework also established several other provisions related to the representation of minority communities at all levels of government, and declared both Albanian and Serbian as official languages in all of Kosovo. The first post-war government included representatives of the Kosovo Serb and other communities in Kosovo, and minority communities were also provided with reserved seats in the Parliament (20 out of 120) (UNMIK 2002). Ultimately, whether so intended or purely coincidental, UNMIK had paved the road for the difficult—yet entirely necessary—process of including minority communities in public and political life through a series of regulations and mechanisms. These processes would guide Kosovo in the foreseeable future, and become a permanent fixture of its legal and constitutional framework. In post-independence Kosovo, as we shall see below, multi-ethnicity has become an essential part of the political and institutional process, providing an avenue for minority communities to voice their concerns and that of their constituents (European Center for Minority Issues Kosovo 2015).

Nevertheless, it would be fair to conclude that UNMIK did not adopt the concept of a multi-ethnic government and institutions purely for its adherence to democratic standards of representation, though that did in fact play a major role, but also as a practical reality: it was simply far easier to adopt a well-thought out system of governance and already existing laws than to implement a new system of
government from scratch whose acceptance by the population would be unknown.


Negotiations over Kosovo’s status began in earnest in 2005 and were led by Marti Ahtisaari, ex-President of Finland, and an experienced diplomat. The United Nations Security Council (UNSC), through the Secretary General (UNSG) authorized Ahtisaari to be his Special Envoy, and tasked him with getting the two parties (Kosovo and Serbia) together for negotiations on the future status of Kosovo (United Nations 2005). Though the two parties had agreed to sit around a table and negotiate, their positions on the future status of Kosovo—and therefore its internal organization—remained far apart (UN News 2007). Kosovo’s position was that it wanted full independence with suitable arrangements for minorities, while Serbia argued Kosovo did not need independence and, instead, offered “substantial autonomy” (UN News 2007). These hardened positions, which barely softened over time, made it necessary for the UN Special Envoy to propose his solution to the issue, which he did in March of 2007. The Proposal, dubbed the Comprehensive Proposal for the Kosovo Status Settlement, followed on the steps of the Constitutional Framework and kept much of the same protections and mechanisms, while also proposing significant upgrades over them, particularly related to local self-government.

The Ahtisaari Package foresaw much the same protections as previous laws and regulations in force in Kosovo, including provisions on the Reserved Seats System in Parliament (20 seats out of 120 for minority communities; 10 for Serbs); on the formation of the Government (at least 1 minister out of 10 for minority communities); on languages (Albanian and Serbian official nation-wide, other traditional languages in official use in specific municipalities); on local governance (enhanced competences for Serb-majority municipalities in the field of education and healthcare, and policing); on constitutional provisions designed to avoid being outvoted on major legislation of interest to communities (the Vital Interest Laws clause, requiring 2/3 of MPs from communities for laws on culture, language, etc.); all of those provisions were fully reflected in Kosovo’s Constitution and applicable laws following independence (Constitution of the Republic of Kosovo 2008). In this way, the Ahtisaari Package and the Constitution that was based on it, not only kept the principles of multi-ethnicity established by UNMIK and the Kosovo Provisional Institutions of Local Self-Governance, but expanded upon them (Agimi 2014).

Consequently, the Constitution of independent Kosovo contains a number of provisions designed to protect the rights of minority communities both individually and collectively as communities. In fact, the Constitution refers to ethnic minorities as “communities”, choosing not to use the term “minority” in any
of its provisions (Constitution of the Republic of Kosovo 2008). This is also reflected in applicable laws, such as the Law on the Use of Languages, the Law on Communities, etc. Other provisions of the Constitution set forth reserved seats for communities in parliament in a system designed to incorporate communities at the highest levels of decision-making in Kosovo. The Kosovo Constitution prescribes that the Government of Kosovo must have at least one minister from the Kosovo Serb community, and one Minister from another non-majority community. Should there be more than 10 ministers, at least two (2) of the ministers must represent the Kosovo Serb community. Finally, the Constitution says that those ministers from the Serb community must be appointed after ‘consultations with parties, coalitions or groups representing Communities that are not in the majority in Kosovo’ (Constitution of the Republic of Kosovo 2008). Likewise, certain types of legislation must also respect the Legislation of Vital Interest clause of the Constitution, which affords communities a certain veto-like power over a number of crucial areas (Popova 2013). Multi-ethnicity, both as a principle and as a legal and political practicality in Kosovo, has played a key role in the Kosovo independence process, smoothing over concerns over minority communities and their political role in an independent Kosovo, and laying the groundwork for the development and gradual maturity of multi-ethnic institutions with a separate, civic Kosovo identity.

4. MULTI-ETHNICITY IN INDEPENDENT KOSOVO: POLITICAL ACTORS AND INSTITUTIONS

Previous sections have covered the development of multi-ethnicity and power-sharing in Kosovo following the end of the Kosovo War, the establishment of the United Nations Administration in Kosovo, the development of the domestic legal framework and institutions and all the way to Kosovo’s Declaration of Independence and the adoption of the Constitution of the Republic of Kosovo. This section will provide an overview and examine some of the main actors and political forces, domestically and internationally, that have played or continue to play a role in defining multi-ethnicity in Kosovo. These include, at the very least, major political parties such as the PDK (Democratic Party of Kosovo), LDK (Democratic League of Kosovo), Vetëvendosje (‘Self-Determination’), Lista srpska (Serbian List) and indirectly, the Government of the Republic of Serbia. This section will also discuss, in some detail, how these political parties and/or movements see multi-ethnicity in Kosovo and how those views and positions chime with their thoughts on identity and minority communities.

All major political parties in Kosovo, except Vetëvendosje, officially subscribe to the principles of multi-ethnicity enshrined in the Constitution and laws. All post-1999 Governments have included representatives of minority communities in high-ranking positions of ministers, deputy ministers, or even Deputy Prime
Ministers. The Kosovo Declaration of Independence, the Constitution, and other relevant laws were adopted with large majorities from all parties in parliament except Vetëvendosje. All parties publicly support the current Constitution, and no calls have been made to alter any provisions that touch upon the rights of minority communities or any other rights that could, in theory, affect communities. All parties and political actors, apart from Vetëvendosje, subscribe to the idea of a civic Kosovo identity, which they see as a state identity – distinct from an ethnic, or national identity. As such, they respect the provisions of the Constitution and laws on symbols such as the Flag of Kosovo, the Anthem, the official Seal, etc., when used in an official capacity.

Nevertheless, and perhaps unsurprisingly, the issue of identity, multi-ethnicity, and nationalism remains an unresolved topic in Kosovo. The opposition party Vetëvendosje, the third largest party in the parliament, explicitly rejects multi-ethnicity as a guiding principle of governance; it also rejects and never uses Kosovo’s flag, anthem, seal, and other state symbols. In Vetëvendosje’s view, Kosovo is majority Albanian (over 90%) and should act and be treated as such. Minorities are Kosovo citizens, but should not have special rights or protections. According to Vetëvendosje, decentralization is not the way to solve grievances and complaints about poor representation at the local level. Furthermore, Vetëvendosje argues that the guaranteed (then-reserved) seats system in parliament and the constitutional clause on legislation of vital interest, instead of strengthening democracy and representative government in Kosovo, actually weakens it. Vetëvendosje favors Albanian nationalism and views Kosovo as a state of Albanians which happens to have a number of minorities living in it (Uhlin 2009).

Whereas PDK and LDK do officially subscribe to multi-ethnicity and power sharing with minorities, they do so as a “necessary evil” for having gained independence. PDK and LDK provided crucial support and bore the brunt of compromises during the Vienna status negotiations, and both see compromises made there—since reflected in the Constitution—as a necessary evil, and the price paid for gaining Western support for independence. Vetëvendosje, on the other hand, sometimes dabbles in Albanian nationalism and imagery to construct its image as a movement of the people, PDK and LDK try to frame themselves as parties that respect the past and the sensitivities of the majority population in Kosovo, while also being pro-cooperation with the Serbian and other minorities in Kosovo within the context of Kosovo’s European Union integration agenda (Kelmendi 2014). As a result, they tend to reach out to minority communities, and have formed a number of coalition governments with representatives of minority communities.

50 The current coalition government, for example, has several Kosovo Serb ministers and a Kosovo Serb Deputy Minister, in addition to a Kosovo Turk Minister, and a large number of deputy ministers from minority communities.
communities, including the current government. Lista srpska, at the other end of the spectrum, represents the Kosovo Serb community in Kosovo and stands somewhere in between Vetëvendosje and PDK/LDK. Lista uses Serbian imagery and nationalism to drive the point home that it represents the Serbian community, while still claiming that they are open to cooperation with Albanian political parties other than Vetëvendosje (in fact, they are part of the coalition government with PDK and LDK). However, Lista srpska’s autonomous decision-making comes into question when one considers the outsized role Serbia plays in the design and execution of the party’s policies within the government and outside it. Lista srpska politicians and Kosovo government ministers are usually members of political parties in Serbia, and they have regular meetings with high-ranking Serbian officials wherein they discuss issues that are, on the face of it, internal Kosovo matters. In addition, Serbia’s outsized role in the appointment and management of key Lista srpska representatives represents a peril for internal democracy in Srpska lista, and for the Kosovo Serb community overall (Lista srpska won 9 out of 10 reserved seats for Kosovo Serbs). Lista srpska claims to represent the interests of the Serbian community in Kosovo, and it does so in close cooperation with Serbian officials. Its use of Serbian imagery and nationalism, and its sometimes-vocalized desire to have a monopoly over issues related to the Serbian community, have led to questions being asked over the ability of Lista srpska to differentiate between the interests of the Serbian community and those of the Serbian government (Council for Inclusive Governance 2016).

5. BETWEEN MULTI-ETHNICITY AND NATIONALISM

Multi-ethnicity in Kosovo has taken firm root in its Constitutional and legal framework, which is also reflected in internal political organization and in the conduct of political parties and other actors. Coalition building in post-independence Kosovo is unimaginable without the participation of minority communities; no political party calls or advocates for the dissolution and annulment of mechanisms and legal provisions guaranteeing multi-ethnicity and power sharing with minority communities. Despite difficulties and sometimes-protracted negotiations over power and ministerial positions, political parties from all communities often form government coalitions and govern together. Local self-governments may suffer from lack of capacities and poor finances, but they do not interfere with one another’s competences, and do not take any actions that might make Serb-majority municipalities feel endangered or trampled upon by larger, Albanian-dominated municipalities.

Nevertheless, nationalism and ethnicity are quite alive in Kosovo. Communities, including the Albanian majority, regularly manifest their culture, language, and other lore – and do so without hindrance. Political parties are still
mostly mono-ethnic, there are “Albanian political parties”, “Serbian political parties”, “Turkish political parties”, and so on. Kosovo’s flag is often used by these political forces, but usually in addition to their ethnic or national flag. Requests for better schooling, more funding for economic development, or health care are lodged with authorities based on what is just and equitable for that community—not necessarily for the individual(s) concerned. Politics and political cooperation is usually framed in terms of ethnicities and communities and not programs or ideology. A civic identity based on neutral state symbols is beginning to emerge, but it is still nascent and not accepted by everyone.

Kosovo’s state identity is increasingly taking shape and is widely accepted internationally, with some significant exceptions such as Russia and China. Nationalism is not the driving force for the vast majority of political parties, but they still cling to it and its powerful imagery, particularly around elections or major national issues. Kosovo has established powerful and all-encompassing mechanisms and adopted legislation to safeguard multi-ethnicity at the local and central level. Cooperation and coalition-building has proven to be a winning formula for stable governance, sometimes at the cost of effective governance. Struggling between nationalism and multi-ethnicity, however, a new principle of power-sharing and coordination with all communities has emerged—and it might mean, for Kosovo, a new and strong foundation to build a prosperous and democratic society impervious to the shocks of nationalism and ethno-centrism.

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LIABILITY FOR DAMAGE, INDEMNITY FOR DAMAGE, AND DAMAGES FOR INJURY OR LOSS IN A COURT PROCEDURE IN THE REPUBLIC OF MACEDONIA

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Abstract
The topic is from everyday life where events occur in which there is a damage by taking appropriate actions where the person suffering damage can seek indemnity to the competent courts in the Republic of Macedonia, and in that way to compensate for what was lost with material damage or non-material damage which depends on the damaging event that occurred.
The purpose of the topic is to give a clear overview of what constitutes liability for damage, which parties shall be liable for the damage they cause, how the indemnity for damage is performed, and in the end, how the claim for damages is obtained by the person suffering damage in a court procedure in Republic of Macedonia.

Keywords: compensation, damage, person suffering damage (injured party), tortfeasor

1. INTRODUCTION
In everyday life there are events in which taking appropriate actions can cause proper damage. The causing of damage is a source of legal obligation which follows with the responsibility for compensating the caused damage.

In order to occur obligation relationship from causing damage, it is necessary to meet the conditions that consist of the existence of: a) subjects of the legal obligation – tortfeasor and injured party, b) damage, c) damaging activity, d) a relation arising the connection between the damaging activity and the damage.

The person liable for loss may be a natural or legal person who will cause damage to another, and the injured person may also be a natural or legal person.
The injured party is to be the one whose property is reduced, to whom it was caused (simple loss), i.e. who is prevented from increasing or decreasing of property (profit loss), or who has suffered physical or mental pain or fear (non-material loss).
The damage is a reduction of one's property (simple loss) and prevention of its increase (profit loss), i.e. material damage, as well as the infliction of other physical or mental pain or fear (non-material loss).

Damaging activity represents taking of unlawful activity that can be active and passive. The passive action occurs when someone is obligated to do something, so he does an omission, and with such omission someone has suffered harm.

A relation arising in connection with the damaging activity and the damage is to be proven in a court procedure, and the burden of proof is to the injured party. The purpose in this topic is to determine who is responsible in cases when damage occurs, and how the indemnity for damage is realized in a court procedure before the courts of the Republic of Macedonia.

This topic is covered in the Law on Obligations and in the Law on Civil Procedure of the Republic of Macedonia.

2. LIABILITY FOR DAMAGE

Liability for damage based on fault

There is liability for damage based on fault. The fault is manifested when the tortfeasor caused damage intentionally or with negligence. The damage is caused by intention when the tortfeasor was aware of the consequences that would arise from his actions. Negligence is a lesser degree of fault.

Subjects not liable for damage

Persons who are not capable of reasoning for appropriate reasons shall not be liable for damage they cause to another. If the damage has been made in a state of transient incapacity for judgment, the tortfeasor is responsible for it, unless he proves that he did not find himself in that state by his own fault.

Also, a juvenile until the age of seven shall not be liable for the caused damage. If the juvenile older than seven until the age of fourteen, he is not responsible for the damage. He shall be liable, if on this age he was capable of reasoning. A juvenile who is fourteen years old is responsible for damages under the general rules of liability.

If damage is caused in justifiable self-defense, the tortfeasor is not obliged to indemnity for damage, except when an overdraft of the justifiable self-defense.

When damage is caused in the case of self-help, whoever causes damage to the person who caused the need for self-help is not obligated to compensate this damage.
When there is consent of the person suffering loss to take a certain action to another and thus is caused damage, the person suffering loss can not claim compensation for the damage caused.

**Liability for another**

The Law on Obligations also contains provisions where there is liability for damage to one person when another person causes the damage.

Such is the case with the damage caused by a person who is not capable of reasoning, where the person liable for the damage is the one pursuant to the law, or a decision of a competent body or contract is obliged to supervise the causer of the damage. If the person performing the supervision over the tortfeasor, proves that the supervision has been performed over the tortfeasor as obliged, and the damage would have occurred even when the supervision was carefully supervised, that person could be relieved of liability.

For the damage caused by the minor until the age of seven, his parents shall be liable regardless of their fault. Parents shall not be liable if their child was entrusted to another person who may be liable for the damage.

Parents shall be liable in cases of damage, caused by their child who has reached the age of seven, unless they prove that the damage occurred without their fault. Liability can be solidarity if, apart from parents, their child shall also be liable for the damage.

For damage caused to another by a juvenile who is under the supervision of a guardian, school or other institution, these institutions shall be liable, except they prove that they have supervised the juvenile in the manner in which they have been obliged, or that the damage could occur, despite their careful supervision. In this case, when the juvenile shall be liable for the damage, the liability is solidarity.

**Liability of the employer towards third parties**

In order for this type of liability to exist, it is necessary for the employee to be employed by the employer. The employer shall be liable when the damage to a third party is caused by his worker in the course of work or in connection with the work, unless it is proved in court proceedings that the employee acts in the concrete case as he should. If the employee causes deliberately the damage, the person who suffered damage has the right to claim from him to compensate the damage.

The employer who compensates the person who suffered damage, for the damage caused by his employee intentionally or with utter negligence, is the one who has the right for damages from the employee for the paid amount. This right shall expire after six months of the amount paid.
Also, the legal entity is responsible for damage that its body causes to a third party in the performance of its function. If this body causes the damage intentionally or with utter negligence, the legal entity has the right to claim damages from this body.

**Liability for loss or injury caused by dangerous objects of property or dangerous activity**

The damage caused in connection with a dangerous object is considered to arise from that object, i.e. a dangerous activity is considered to arise from that activity unless it is proved that they were not the cause of the damage.

For the damage from a dangerous object, his holder shall be liable. As a rule, the holder of the object is its owner. But it may happen that the object is found in another person, and then when that another person shall be liable for the damage.

For example, the owner or the holder of a dog, who has been aggressive, is considered to be a dangerous object, and if damage is caused to another from the dog, the damage is compensated by the owner or the holder of the dog, at the time of the occurrence of the damage.

For the harm caused by a dangerous activity, the person who deals with it shall be liable. Thus, the means of work by themselves are not dangerous objects, but if certain dangerous activity is undertaken with them, for the damage that occurs at the employee, shall be liable the entrepreneur of that activity, not the owner of those means.

Frequent are the cases when the dangerous object has been taken from their holder in an unlawful manner, then the one who took away the object shall be liable for the damage that arises from that case.

**Liability in case of accidents caused by a motor vehicle in motion**

In case of an accident caused by a motor vehicle in motion and provoked entirely through the fault of one owner, the rules of liability on the ground of fault shall apply. Should both sides be at fault, each owner shall be liable for the entire injury or loss suffered by them in proportion to the degree of their own fault. Owners of motor vehicles shall be jointly and severally liable for damage inflicted on third persons.

**Liability of producer of defective objects**

Whoever puts on sale an object manufactured by him, which due to a defect unknown to him may cause injury or loss to persons or property, shall be liable for injury or loss which could ensue due to such defect.
Manufacturer shall be liable for dangerous properties of an object, and if has not taken measures of warning of the dangerous properties of the object

**Liability of organizer of performances**

There are frequent cases of organizing appropriate performances by the organizers where the damage occurs.

An organizer of assemblies of large number of people in closed or open-air spaces shall be liable for loss occurring by death or bodily injury suffered by someone due to emergency circumstances, such as swaying of masses of people, general disorder, and the like.

**Liability due to refusal to render necessary aid**

In everyday practice, there are situations where life and health in certain persons are threatened, so it is necessary to give them aid. There is liability for refusal to render aid. Whoever without exposing himself to danger refuses to render aid to a person whose life or health are obviously threatened, shall be liable for ensuing loss if, according to the circumstances of the case, he had to predict such damage.

**Liability relation to duty to conclude a contract**

In practice, there are frequent cases when a person builds a house and can not be connected to infrastructural objects such as electricity, sewage and the like, although there is a legal obligation upon his request to be done so. With the non-termination of the agreement, that person suffers damage.

Then, a person who according to the law is obliged to conclude an agreement is obliged to compensate the damage if at the request of the interested person did not conclude the agreement without delay.

**Liability relation to conducting affairs of general interest**

Here we talk about responsibility of legal entities that perform public interest in communal activity, water supply and sewerage, and the like. Thus, the legal entities that perform communal and other similar activities of public interest shall be liable for the damage if they suspend or irregularly perform their role without justified reasons.

**Liability of several persons for the same damage**

Multiple individuals may be liable for the same damage. Liability for the damage caused by several persons shall be joint and several. An inciter and
accomplice, as well as one assisting the liable persons in order to prevent discovery, shall be jointly and severally liable with them.

Joint and several liability for damage shall also apply to the persons causing it, if acting independently from one another, should their shares in damage caused be impossible to determine. Should there be no doubt that damage is caused by two or several persons who are in some way interconnected, and should it be impossible to establish who is liable for damage, such persons shall be liable jointly and severally.

A judgment-debtor liable jointly and severally paying off an amount higher than his share of damages may demand from any of the remaining debtors the recovery of what he has paid for them.

By establishing liability for damages for undertaken actions in everyday life, a litigation procedure is followed by compensation for material and non-material damage. We will look into this topic and how the compensation for these two types of damage has been carried out.

3. INDEMNITY

Indemnity for damage to property

A responsible person shall be liable to re-establish the situation existing prior to the occurrence of damage. Many times re-establishing of the previous situation fail to compensate the damage entirely, the responsible person shall be liable to pay an indemnity in money to cover for the rest of the damage. If restitution of damage impossible, or should the court find it necessary for the responsible person to do that, the court shall order such person to pay to the person suffering loss an adequate amount of money as compensation for loss. Compensation for damage shall be due from the moment of the damage taking place.

After an object of property, otherwise unlawfully taken away from the owner, is lost due to Act of God, the person responsible shall be liable to provide compensation in money. In case of death, bodily injury or damage to health, indemnity shall, as a rule, be determined in the form of an annuity, either for the life of the injured person or for a definite period. An awarded annuity as a form of damages shall be paid in advance in monthly installments, unless the court provides otherwise. In the future, the court may, at the request of the injured party, increase the indemnity, and at the request of the tortfeasor it may reduce or cancel it if the circumstances significantly changed by the court when the previous decision was made. The right to indemnity in the form of annuities shall not be transferred to another person.
The injured party has the right to demand that instead of indemnity, the total amount to be paid, the amount of which is determined by the amount of the indemnity and the probable duration of the creditor's life.

A person sustaining damage shall be entitled both to indemnity of common damage and compensation of profit lost. The amount of the indemnity is determined according to the prices at the time of the adoption of the court decision. In assessing the amount of the profit lost the profit which was reasonably expected according to the regular course of events or particular circumstances, and whose realization has been prevented by an act or omission of the tortfeasor shall be taken into account.

Indemnity for material damage also shall be followed in the event of death, bodily injury and damage to health. Whoever causes another person's death shall be liable to reimburses the usual expenses of that person's funeral. In case of body injure the tortfeasor is also liable to reimburse expenses of that person's medical treatment for injuries inflicted, as well as other expenses relating to medical treatment, including the salary lost due to disability for work.

A person who was supported or regularly assisted by the deceased, as well as the one entitled by law to request maintenance from the deceased, shall be entitled to damages for loss sustained by the loss of support. Such loss shall be redressed by paying annuities the amount of which shall be established by taking in consideration all the circumstances of the case, but which shall not be higher than the amount which would have been received by the person sustaining damage from the deceased if he were alive.

**Indemnity for non-material damage**

For physical pains suffered, for mental anguish suffered due to reduction of life activities, for becoming disfigured, for offended reputation, honour, freedom or rights of personality, for death of a close person, as well as for fear suffered, the court shall, after finding that the circumstances of the case and particularly the intensity of pains and fear, and their duration, provide a corresponding ground there of – award equitable damages, independently of redressing the property damage, even if the latter is not awarded.

In case of death of a person, the court may award to members of his immediate family (spouse, children and parents) equitable damages for their mental anguish.

Such damages may be also awarded to brothers and sisters should a permanent household unit exist between them and the deceased. In case of a particularly serious disability of a person, the court may award to his spouse, children and parents an equitable money indemnity for their mental anguish.

The indemnity may also be awarded to co-habitee, if a permanent household unit had existed between the co-habitee and the deceased, or injured.
person. At the request by a person sustaining loss the court shall also award damages for future general loss if, according to regular course of events, it became certain that it will continue. For example, mental pain for permanent body deformations. Here the compensation for non-material damage is reached on a one-off basis, but in the court practice there are verdicts where such damage is imposed in the form of awarded annuity.

The heirs of the person suffering damage can not file a claim for compensation of non-material damage, nor can continue the dispute initiated by the injured party who died in the meantime. The claim for compensation of non-material damage is transferred to the heirs if it is recognized by an effective decision or by a written agreement while the person who suffered damage was alive.

4. CLAIMING DAMAGES IN THE COURT PROCEDURE IN THE REPUBLIC OF MACEDONIA

After considering the topic of who is Liable for the occurrence of the damage (1) and how the damage is compensated (2), in order to complete it, the goal in point 3 is to expose how the damage is compensated in the court procedure in the Republic of Macedonia.

Damage can occur in a criminal and misdemeanor event, in an administrative in a civil legal event, and the like. When the damage occurs in a criminal legal and misdemeanor legal event, the person suffering damage may request compensation for damage in the criminal and misdemeanor procedure. The criminal and misdemeanor court may accept the claim for damages or refer the person suffering damage, to entitle his claim for damages, in civil proceedings. The effective verdict of the criminal and misdemeanor court serves to the person suffering damage as evidence for the realization of compensation for damage by filing a lawsuit to the civil litigation court. Since most often with the causing of damage occurs a legal obligation, the damaged and the material and non-material damage are calimed by the injured party before the civil litigation court. As a competent court in the Republic of Macedonia for deciding in disputes for indemnity for damage in the first instance is the Court of First Instance, in the second instance, the Court of Appeal, and it is possible also a third degree for which the Supreme Court of the Republic of Macedonia is competent when an extraordinary legal remedy is applied under the conditions stipulated in the Law on Litigation Procedure.

As a local competent court in the Republic of Macedonia for deciding on indemnity for damages, is the court in the place where the tortfeasor -that is, the defendant as a natural person has a place of residence or if the tortfeasor-the defendant is a legal entity, the place of its headquarters. This is a general local
jurisdiction. For disputes for indemnity for damage, besides the court of general local jurisdiction, competent is the court in whose area the damaging activity was performed or the court on whose territory the damaging consequence occurred. The indemnity for material and non-material damage is effected by filing a lawsuit from the plaintiff against the defendant before the actual and locally competent court in the Republic of Macedonia.

As a plaintiff in the procedure for indemnity for damage, the person suffering damage may be a natural or legal person, and the liable person, - the tortfeasor or (person liable for another) stated above, can also be natural or a legal person. The lawsuit for indemnity for damage should include data, to which court is being filed, then the data on the parties - the plaintiff and the defendant with their addresses of residence and personal identification numbers, the subject-matter of the dispute, the value of the dispute, the request in relation to the main matter and the secondary requirements, the facts on which the plaintiff bases the request and the evidence on which these facts are determined. The plaintiff, when filing the lawsuit if requests indemnity for material damage, simultaneously submits to the court an expert's report from a competent person from a certain vocation in relation to the type and sum of the monetary amount for the damage suffered, and, if also claims non-material damage, submits to the court an expert's report from a competent person from a certain vocation in relation to the type, strength and intensity of the suffered fear, pain or mental pain.

After the presentation of the proposed evidence in the procedure, also taking into account the circumstances after the occurrence of damage, the court shall determine damages in the amount necessary to restore the material state of the person sustaining damage into the state it would have been without the damaging act or omission.

The court may, while taking into account the material situation of the person sustaining loss, order the person liable to pay an indemnity which is lower than the amount of damages if it was not caused either wilfully or by gross negligence, and if the liable person is in poor material situation, so that payment of full indemnity would bring him into poverty.

A person sustaining loss who has contributed to the occurrence of loss or to its becoming larger than otherwise, shall only be entitled to a proportionally reduced indemnity. Should it be impossible to establish which part of damage comes from an act of the person sustaining it, the court shall award the indemnity while taking into account the circumstances of the case.

In deciding on the request for redressing nonmaterial damage, as well as on the amount of such damages, the court shall take into account the significance of the value violated, and the purpose to be achieved by such redress, as well as the
strength and duration of the suffered fear or pain, or reduced life activity of the plaintiff, if on this basis is awarded indemnity for non-material damage.

A claim for damages for damage caused, and the right on lawsuit shall expire three years after the party sustaining injury or loss became aware of the injury and loss and of the tortfeasor. In any event, such claim shall expire five years after the occurrence of damage.

After the presentation of this topic, we are in favor of how a lawsuit should be appealed for indemnity for material and non-material damage.

5. CONCLUSION

The essence that led me to elaborate on this topic is that everyday in life we come across events where by appropriate actions someone inflicts damage to someone else, deliberately or by negligence. The person who suffered damage, often does not know who is liable for the damage, or against whom he shall file a lawsuit in order to realize his indemnity for damage.

Here in topic 1, it is explained what are those parties that are liable for the damage caused to the injured party, and thus it is given to know who shall be sued in appropriate court procedure.

In item 2, it is explained when the indemnity for material and non-material damage is followed, which is very important when compiling a lawsuit for claiming damages to determine which type of damage is individually claimed or at the same time both types of damages are claimed depending on the event.

In item 3, it is explained how a court procedure is initiated with a lawsuit for indemnity for damage in the Republic of Macedonia, before which courts is being filed the indemnity for material and non-material damage, and which elements are contained in the lawsuit.

At the end of the topic, a practical example of how the claim for indemnity of material and non-material damage should look like, with all elements in accordance with the Law on Litigation in the Republic of Macedonia.

I reckon that with this topic, the readers will have a clear idea of how to exercise their right in cases when suffering damage.

6. REFERENCES

Law on obligations of Serbia 2003;
Law on Obligations, 2002;
Perovic S. Comment on the Law on Obligations of Serbia.